

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 127/MP/2013

**Coram:
Shri V.S. Verma, Member
Shri M. Deena Dayalan, Member**

**Date of Hearing: 17.09.2013
Date of order: 21.02.2014**

In the matter of

Petition under Section 79(1) (f) of the Electricity Act, 2003 read with Regulation 32 of the CERC (Grant of Connectivity, Long-term access and medium term Open Access in inter-State Transmission and related matters) Regulations, 2009.

**And
in the matter of**

EMCO Energy Limited,
701-702, Naman Centre,
Plot C-31, G Block
Bandra Kurla Complex,
Bandra (East),
Mumbai-400 051

Petitioner

Vs

Power Grid Corporation of India Ltd.,
B-9, Qutab Institutional Area,
Katwaria Sarai,
New Delhi-110 016

Respondent

Parties Present:

Shri Sanjay Sen, Senior Advocate, EMCO
Shri Rajiv Yadav, Advocate, EMCO
Shri A.M.Pavgi, PGCIL
Shri R.P.Padhi, PGCIL

ORDER

The petitioner has sought adjudication of its dispute with respondent, Power Grid Corporation of India Ltd (PGCIL) with regard to the date of commencement of



the long-term access (LTA) granted under the Bulk Power Transmission Agreement dated 17.1.2009 (BPTA) and its liability to share Western Region transmission charges. The petitioner has prayed for the following reliefs, namely -

- “(a) Declare that PGCIL is not entitled to levy any transmission charges under the Bulk Power Transmission Agreement dated 17.1.2009 until completion of the Western Region System Strengthening Scheme-II;*
- (b) Direct that after completion of Western Region System Strengthening Scheme-II, PGCIL shall levy transmission charges only for the capacity which has been commissioned by the petitioner;*
- (c) Direct PGCIL to withdraw bills produced at Annexure P-8 towards transmission charges;*
- (d) Direct PGCIL to refund a sum of Rs. 62,22,32,588/- paid by the petitioner as transmission charges for the period October 2012-May 2013, or in the alternative, direct PGCIL to adjust the same against the short term open access charges and transmission charges that may be payable by the petitioner in future;*
- (e) Pass such other order(s), as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the present case.”*

Petitioner's claim

2. The petitioner has established a thermal power plant at Warora, District Chandrapur in the State of Maharashtra with total capacity of 600 MW (2 X 300MW) (the power plant). Unit-1 of the power plant was synchronised with the Western Region grid on 10.12.2012 and has been under commercial operation since 19.3.2013. The petitioner has stated in the petition that it has been engaged in operationalization of Unit-2.

3. The petitioner made an application dated 14.5.2007 to PGCIL, in the capacity of Central Transmission Utility (CTU) for grant of Long-Term Open Access (LTOA) for

transfer of 520 MW power from the power plant for supply to the States in Western Region with expected date of commencement of LTOA as June 2009, as under:

Beneficiary	Quantum (MW)
MSEDCL	200
MPPTCL	200
GUVNL	100
Western Region Constituents	20

4. The petitioner has stated that LTOA applied for did not entail any system strengthening or capacity augmentation and no capital expenditure was to be incurred by PGCIL to meet its demand since PGCIL was already engaged in the strengthening of transmission network in Western Region to cater to future load projections. It has been stated that the petitioner's application along with the applications made by some other generating companies for grant of LTOA was considered at 9th meeting of Western Region constituents held on 30.7.2007. At the meeting PGCIL observed that the petitioner could not be granted LTOA until the commissioning of WRSS-II. From the minutes of the meeting, copy of which has been annexed by the petitioner, it is noticed that it was agreed to grant LTOA to the petitioner.

5. The petitioner has submitted that PGCIL vide its letter dated 22.10.2007 granted LTA to the petitioner, subject to construction of 400 kV D/C transmission line from the power plant (Warora) to Bhadravati along with 2 nos. 400 kV bay extension at Bhadravati sub-station as the dedicated transmission line, *"availability of transmission system of Sipat-I and II, Sipat-II supplementary schemes, Kahalgaon –II and WR system strengthening schemes I, II, III, and IV"* and execution of the Bulk

Power Transmission Agreement. As a condition for grant of LTOA, on 17.1.2009 BPTA was executed between the parties. As per the BPTA, the commencement of LTOA was specifically made subject to the availability of the transmission system as agreed to at the meeting held on 30.7.2007.

6. The petitioner has stated that construction of 400 kV bays at Bhadravati sub-station was entrusted to PGCIL as deposit work. The first circuit of the dedicated 400 kV D/C transmission line was charged on 19.10.2012 and the second circuit on 17.11.2012. The operation and maintenance of 400 kV bays at Bhadravati sub-station belonging to the petitioner has been entrusted to PGCIL.

7. The petitioner has stated that it received a bill dated 15.11.2012 from PGCIL towards Point of Connection (PoC) transmission charges for the month of October 2012 for 520 MW for which LTOA was granted. Thereafter, PGCIL has been raising bills for the PoC transmission charges on a monthly basis. The petitioner has stated that it has been paying the bills for the transmission charges under duress or under protest. At one of the hearings it was clarified that bill for the transmission charges for the month of October, 2010 pertain to the period 19.10.2012 to 31.10.2012.

8. The petitioner, vide its letter dated 26.11.2012, informed PGCIL about test charging of its dedicated 400 kV D/C transmission line and the proposed synchronization of Unit-1 of the power plant in first week of December, 2012 and requested to reverse the PoC transmission charges levied prior to the date of synchronization of the power plant. The petitioner sent another letter dated 6.12.2012

to PGCIL wherein it was pointed out that commencement of LTA was subject to fulfilment of certain preliminary conditions by PGCIL, including ensuring "availability of transmission system of Sipat-I & II, Sipat-II supplementary schemes, Kahalgaon-II and WR system strengthening schemes I, II, III, IV". Alleging that preliminary conditions for LTA commencement remained unfulfilled and the power plant was not synchronized with the grid, the petitioner requested PGCIL to reverse/ waive off the PoC transmission charges for the months of October and November, 2012 and levy the PoC charges unit-wise from the date of achieving synchronization of the respective unit. The petitioner wrote yet another letter dated 16.3.2013 on the lines of earlier two letters, impressing upon PGCIL that the system strengthening required for grant of LTA did not entail any capital expenditure exclusively attributable to the petitioner and the system strengthening planned for Sipat Central Generating Station and Western Region strengthening had not been completed by PGCIL.

9. The petitioner has stated that on 27.3.2013, it executed a long-term PPA with Electricity Department, UT of Dadra and Nagar Haveli for supply of 200 MW power on tariff discovered through Case-I bidding. Prior thereto, the petitioner, vide letter dated 1.9.2012, claims to have requested PGCIL for a change of quantum allocation of power. However, the petitioner has stated, it did not receive any response from PGCIL for change in LTOA quantum because of the inadequacy of the existing transmission network in Western Region to accommodate an additional 200 MW quantum and refusal of Gujarat Energy Transmission Corporation Limited to schedule the petitioner's supply of power to Dadra and Nagar Haveli. In view of denial of change of beneficiary/quantum allocation, the petitioner has stated, it has been supplying power to Dadra and Nagar Haveli after availing short-term open

access and has incurred short-term open access charges to the tune of more than ₹3.50 crore. Thus, the petitioner has pointed out, PGCIL has been recovering the PoC transmission charges, which are said to be to the extent of more than ₹63 crore as well as the short-term open access charges.

10. According to the petitioner, commissioning of WRSS-II was a condition precedent for grant of LTA but has not been completed. The petitioner has stated that Unit-2 of the power plant was not synchronized to the grid in the month of October, 2012 when PGCIL started billing for the entire capacity of LTOA. The petitioner has alleged that levy of the transmission charges under these circumstances is contrary to the provisions of the BPTA. According to the petitioner, levy of monthly PoC transmission charges under these circumstances is inconsistent with the provisions of the BPTA since the system strengthening has not yet been completed.

Reply by PGCIL

11. The Respondent, PGCIL has filed its counter-reply under affidavit dated 26.8.2013. PGCIL has not specifically denied/traversed the averments/allegations made in the petition. Thus, there is no dispute as regards the basic facts. PGCIL has stated that after of receipt of the application for LTOA made by the petitioner and other generating companies, system studies were carried out considering Western Region load-generation scenario corresponding to 2009-10 timeframe. At that time, power was imported by Western Region from Eastern Region. The power plant executed by the petitioner got delayed and the first unit was commissioned in March, 2013 instead of June 2009 indicated in the application for LTOA. In the meantime, a number of generation projects have been commissioned in Western Region and now

the power generally flows from Western Region to Eastern Region. Also, due to huge power deficit in Southern Region, power is being transferred from Western Region to Southern Region over Bhadravati-Ramagundam HVDC link by utilizing its full capacity. Thus, due to the change in load-generation scenario across the regions, the power flow pattern in lines in Maharashtra has changed, PGCIL has stated. PGCIL has pointed out that the petitioner has not submitted long-term PPA with any of the beneficiaries indicated in the LTOA application and the power is being transferred on short-term and medium-term basis.

12. PGCIL has stated that the petitioner informed that Unit-1 along with the dedicated transmission system was expected to be commissioned by October, 2012. In view of above, transmission charges of 520 MW were levied from 19.10.2012, the date of availability of the dedicated transmission system. PGCIL has clarified that it, as CTU, collects the transmission charges from DICs and disburses the same to the ISTS licensees, as per the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010. PGCIL does not benefit from collection of the transmission charges as these are disbursed to the ISTS licensees and it is, therefore, revenue-neutral. PGCIL has stated that the request made by the petitioner under its letter dated 16.3.2013 was included in the agenda of 18th meeting of Western Region constituents held on 29.8.2013 since the decision on LTA arrangement to the petitioner was made after discussions with all the stakeholders, CEA, WRPC, regional constituents.

13. We have heard the learned counsel for the petitioner and the representatives of the respondent.

Analysis and Decision

14. The application made by the petitioner for grant of LTA was considered at the meeting of Western Region constituents held on 30.7.2007. The minutes of the meeting reveal the following discussion and the decisions arrived at:

“3.2 POWERGRID informed that studies were carried out considering Western Region load generation scenario corresponding to 2009-10 time frame. It was also assumed that transmission system of Sipat-I & II, Sipat-II supplementary schemes, Kahalgaon-II and WR system strengthening schemes I, II, III, & IV scheduled for implementation by this time frame would be available.

Considering the proximity of Bhadravati S/s to the generation project, for injection of power from the proposed generation project to Bhadravati, a 400kV D/c line between EMCO generation switchyard and Bhadravati is proposed as under:

- *EMCO generation project – Bhadravati 400 kV D/c along with 2nos. 400kV bay extension at Bhadravati S/s*

POWERGRID informed that Western Region System Strengthening scheme-II (WRSS-II) is likely to be commissioned by Mid 2010. However, commencement of open access is intended from June 2009. Accordingly, sensitivity studies have been carried out considering transmission system of WRSS-II is not available. It was observed that loading of major transmission corridor beyond Bhadravati would become critical under normal as well as contingency conditions.

It was pointed out that till commissioning of WRSS-II system, there will not be any major transmission corridor available between East-West corridor in the lower part of the region. Due to this, there will be transmission constraint for transfer of power to different drawee utilities on long-term basis. Hence, it was proposed that long-term open access may be provided after commissioning of all the transmission system indicated para (3.2) above including WRSS-II transmission system. However, till that time during intervening period power transfer may be effected through short-term basis, depending on the availability of transmission corridor capacity, for which M/s EMCO may apply for short-term open access as per CERC regulation.

After detailed deliberation, the following was agreed:

i) 400kV EMCO generation project (near Warora) – Bhadravati D/c along with 2 nos. 400kV bay extension at Bhadravati S/s is a dedicated transmission system of EMCO generation project and shall be built, owned, operated and maintained by M/s EMCO Energy Ltd.

ii) It was agreed that M/s EMCO Energy Ltd be provided open access with reference to their long-term open access application for 25 years for transfer of 520MW power from proposed generation project near Warora in Maharashtra to above identified beneficiaries once all the transmission system indicated para (3.2) above including WRSS-II transmission system is available.

It was agreed that till the availability of transmission system indicated para (3.2) above including WRSS-II transmission system, during intervening period power transfer may be effected through short-term basis, depending on the availability of transmission corridor capacity, for which M/s EMCO may apply for short-term open access as per CERC regulation.

iii) It was also agreed that in addition to above, M/s EMCO Energy Ltd shall sign BPTA with POWERGRID for sharing of WR transmission charges corresponding to 520MW generation capacity before commencement of Long-term Open Access. Further, M/s EMCO Energy Ltd shall take necessary action to fulfil the terms and conditions of open access application.

iv) Date of commencement of above long-term open access is from the date of commissioning of above identified system strengthening scheme at para 3.2(i) and (3.2) above including availability Western Region System Strengthening scheme-II.”

15. Pursuant to the above decision, PGCIL by its letter dated 22.10.2007 “**PERMITTED**” the petitioner to avail LTA. The date of commencement of LTA, as indicated in the letter is as under:

“ Date of commencement of open access Date of commencement of above open access would be from the fulfilment of

(1) Availability of above indicated transmission system

(2) Availability of the transmission system of Sipat-I & II Sipat-II a supplementary schemes,



Kahalgaon-II and WR system strengthening schemes I, II, III & IV

(3) Signing of BPTA with POWERGRID by M/S EMCO Energy Ltd. For sharing of Western Regional transmission charges corresponding to entire 520 MW generation capacity.”

16. The BPTA defines the date of commencement of open access as under:

“Date from which the open access is granted: from the date of availability of Evacuation as indicated below and also subject to availability of transmission system of various generation projects i.e. Barh and Western Region System Strengthening scheme-II expected to be available by Mid 2010. Till such time, M/s EMCO may apply for short-term Open Access to RLDC/NLDC for transfer of power from the generation project.

And Whereas the transmission system for evacuation of power from Generation project in Warora, Dist. Chandrapur, Maharashtra was evolved by CEA and POWERGRID which was discussed in the 9th meeting of WR constituents regarding Long Term open Access applications held on 30/7/2007 at Indore. During the meeting following scheme was agreed to be associated with the above Generation Project:

Evacuation System

- i) *EMCO generation project – Bhadravati 400kV D/C along with 2 nos. 400kV bay extension at Bhadravati S/S.*

M/S Emco Energy Ltd shall ensure availability of above identified evacuation system at its own cost before commencement of Long-term Open Access.”

17. From the above extracts, it is noted that at the meeting held on 30.7.2007, it was decided to grant LTOA to the petitioner on fulfilment of three conditions, namely (a) construction of dedicated transmission system by the petitioner, (b) availability of the transmission system of Sipat-I and II Sipat-II supplementary schemes, Kahalgaon-II and WR system strengthening schemes I, II, III and IV, and (c) signing of the BPTA by the petitioner for sharing of the transmission charges for Western

Region. These three conditions were reiterated by PGCIL in its letter dated 22.10.2007 while communicating its decision to the petitioner. Under the BPTA it was agreed that LTOA would commence on availability of the dedicated transmission system to be constructed by the petitioner. The commencement of open access was also “subject to” to availability of transmission system of Barh generation project and WRSS-II, which was likely to be commissioned by mid of 2010. Therefore, commencement of LTA was delinked from availability of other transmission system of Sipat-I and II, Sipat-II supplementary schemes, Kahalgaon-II and WR system strengthening schemes I, III and IV. BPTA is later in time and has been executed in pursuance of the conditions communicated to the petitioner. Therefore, it is the BPTA which is enforceable and the conditions which are not incorporated in the BPTA, but communicated earlier have become insignificant. Therefore, commencement of LTOA was subject to fulfilment of the following conditions, namely-

(a) Availability of the dedicated transmission system to be constructed by the generator, and

(b) Availability of transmission system of Barh generation project and WRSS-II.

18. The date of commencement of LTOA has been made “subject to” the condition of availability of transmission system of Barh generation project and WRSS-II. “Subject to” is an expression whereby a limitation is expressed. In Black's Law Dictionary, Fifth Edition (P 1278) the expression 'Subject to' has been defined as under:

"Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided, answerable for."

19. Therefore, the condition of availability of the dedicated transmission system is subservient or obedient to the condition of availability of the transmission system of Barh generation project and WRSS-II. In other words, LTOA would commence only when both the conditions have been concurrently satisfied.

20. The first condition as to availability of the dedicated transmission system was fulfilled as one circuit of 400 kV Warora-Bhadravati D/C transmission line was charged on 19.10.2012 and the second circuit on 17.11.2012. As regards the second condition, no averments or submissions with respect to availability of transmission system associated with Barh generation project have been made. The petitioner has stated that LTOA has not yet commenced since WRSS-II has yet not been commissioned, which is a condition precedent for commencement of LTOA. Therefore, it is not liable to share the transmission charges. On the contrary, PGCIL has contended that the transmission charges of 520 MW were levied since the dedicated transmission system became available in October 2012 on charging of first circuit of Warora-Bhadrawati 400 kV D/C transmission line. The levy of transmission charges by PGCIL from October 2012 is contrary of the provisions of the BPTA according to which, as already held, for commencement of open access, availability of WRSS-II is *sine qua non*. It is an undisputed fact that WRSS-II has not been commissioned as yet and thus, LTOA has not commenced. Therefore, the question of incurring any liability by the petitioner to share the transmission charges does not arise. Such a liability will be incurred only on commencement of LTOA.

21. It is pertinent to point out that the condition of availability of WRSS-II was imposed at the instance of PGCIL. The petitioner had sought LTOA from June, 2009. However, PGCIL, after system studies found that the available capacity was inadequate to meet transfer of power to different drawee utilities on long-term basis as there would not be any major transmission corridor available between East-West corridor in the lower part of Western Region and flow of power from the power project would cause transmission constraint.

22. PGCIL is aware that the petitioner becomes liable for sharing of the transmission charges on availability of strengthening scheme as this position has been admitted by PGCIL in its reply affidavit and yet the petitioner has been billed from a date when WRSS-II was not available. The relevant part of PGCIL's reply is extracted hereunder:

*"In the BPTA signed by M/s EMCO with POWERGRID dated 17.01.2009, M/s EMCO was to share the transmission charges corresponding to 520MW from the date of availability of dedicated transmission system **as well as** strengthening mentioned in the intimation letter. In view of above, transmission charges of 520MW were levied on M/s EMCO from October 2012 i.e. from the date of availability of dedicated transmission system "* (Emphasis added).

23. PGCIL has further stated that before commissioning of the power project, a number of other generation projects have been commissioned in Western Region and this has completely changed the scenario since now the power generally flows from Western Region to Eastern Region though earlier power flowed from Eastern Region to Western Region. The other factor highlighted by PGCIL in support of its plea of change in scenario is that power to Southern Region is now being transferred

from Western Region to Southern Region over Bhadravati-Ramagundam HVDC link by utilizing its full capacity. Thus, according to PGCIL, due to the change in load-generation scenario across the regions, the power flow pattern in lines has changed. Under these circumstances, PGCIL has argued that availability of WRSS-II has lost significance. We are not impressed by the submission of PGCIL.

24. Now, question arises in the present circumstances that what should be the effective date of LTOA. The BTPA specifies that the open access will start from June, 2009. However, the commissioning of generating units is specified mid, 2009, December, 2009 and December, 2010. The operationalization of LTOA was not specified i.e. whether LTOA would start irrespective of commissioning of units or not. In the meantime, the dedicated transmission line and the generating units were not commissioned as per the schedule specified in the BPTA. The generating unit was commissioned on 16.3.2013 and the dedicated transmission line was commissioned on 17.11.2012 (both the circuits). However, the petitioner has availed the ISTS from the injection of power from its plant from the date of synchronization of units-I and II i.e. w.e.f. 10.12.2012 and April, 2013 respectively.

25. The petitioner has emphasized that without physical connectivity to Bhadravati sub-station, PoC charges are not applicable. Further, the petitioner vide its letter dated 21.11.2012 changed its stand and requested for PoC charges from synchronization of unit-I. The petitioner further in its letter dated 6.12.2012 has stated that all the conditions to start LTOA have not been fulfilled. Therefore, PoC charges should commence from the date of achieving synchronization of respective units. It is clear from the above that the petitioner is changing its stand frequently.

26. The petitioner in its letter dated 1.9.2012 requested the respondent to change in the LTOA quantum allocation as under:

S.No.	Buyer/Target Region	LTOA (BPTA)	Revised Target in the PPA
1	MPPTCL (WR)	200	100
2	MSEDCL (WR)	200	200
3	GUVNL (WR)	100	DNH-200
4	WR Constituents	20	20

27. The petitioner requested that since the PPA with Dadra and Nagar Haveli (DNH) has comes into effect from October, 2012, necessary change in LTOA allocation for facilitating dispatching of 200 MW to DNH be done. In this regard, on 14.8.2012 Lol was issued by DNH to the successful bidder to supply of power at periphery of ED-DNH for the period of 7 years and 3 months commencing from 1.10.2012. However, the same could not be made effective due to non-availability of evacuate in system for DNH. It appears that the petitioner was ready to accept commencement of LTOA with effect from October, 2012.

28. At the meeting of the Western Region constituents held on 29.8.2013, the constituents of WR were of view that LTA for 520 MW was granted without identification of transmission system strengthening considering that generator would be coming in December, 2009. WR constituents were not in agreement to any further reduction in LTOA quantum. However, WR constituents were in agreement to grant LTA to the petitioner for 520 MW with revised beneficiaries.

29. Shifting of LTOA has implication on all other DICs of NEW grid and the terms and condition of LTOA should be clear i.e. date of commencement should be firmed up. In similar case in Northern Region, RPC had also not permitted shifting of date of LTOA.

However, there is no role of Standing Committee or RPC to decide date of LTOA. The petitioner's request for reduction in LTOA from 520 MW to 260 MW should be dealt with as per Connectivity Regulations, 2009.

30. The petitioner has applied LTOA for 520 MW and at the time of signing of BPTA, the petitioner had indicated that 520 MW power is to be transmitted irrespective of commissioning of different units. The petitioner had not linked the quantum of power on pro-rate basis with commissioning of different units at the time of signing of BPTA.

31. The petitioner has granted LTOA under Open Access Regulations, 2004 and it had agreed to bear the transmission charges of Western Region corresponding to 520 MW from the said generation project. BPTA provides that LTOA will start before or at synchronization of the units. The petitioner made an application for grant of LTOA from the month of June, 2009 considering commissioning of units as mid June, 2009, December, 2009 and December, 2010. Hence, taking the vague condition imposed in the BPTA and non-coordination of PGCIL for operationalization of LTOA without non-availability of lines of WRSS-II, we direct that LTOA would commence for full capacity (520 MW) from the date of synchronization of unit-I i.e. 10.12.2012.

32. Since, the Short Term Open Access charges to the extent of ₹ 3.5 crore were collected by PGCIL for transferring power to Dadra and Nagar Haveli through Short Term Open Access, the adjustment of Short Term Open Access with LTOA shall be done in accordance with the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 as amended from time to time.

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

Sd/-
(M Deena Dayalan)
Member

sd/-
(V S Verma)
Member

