

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 166/MP/2015

Subject : Petition seeking termination of TSA and Long Term Access granted to the respondent on account of its default in establishing payment security along with prayer for compensation and declaratory relief.

Date of hearing : 15.10.2015

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Petitioner : Power Grid Corporation of India Limited

Respondent : PTC India Limited

Parties present : Shri Akansha Tyagi, Advocate, PGCIL
Shri Gautam Chawla, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL
Shri Swapnil Verma, PGCIL
Shri Ravi Kishore, PTC
Shri Anil Sharma, LANCO Amerkantak
Shri M.G. Ramachandran, Advocate, Haryana

Record of Proceedings

Learned counsel for the petitioner submitted as under:

(a) The respondent's contention that the present petition has become infructuous due to the observation of the Hon`ble Supreme Court in order dated 18.9.2015 in I.A. No. 9/2015 in Civil Appeal No. 10329/2011, is not correct. However, it is evident from a perusal of the said order, the Hon`ble Supreme Court did not pass any directions with respect to opening of the Letter of Credit, although LANCO undertook to open Letter of Credit amounting to ₹ 13.82 in favour of the petitioner on behalf of PTC India Limited.

(b) The opening of the Letter of Credit prior to operationalization of LTA is a regulatory obligation of the LTTCs/designated ISTS customers in terms of the Connectivity Regulations. Therefore, any assumption by LANCO of this regulatory duty of the LTTCs/DICs ought not to be considered as precedent and

should be considered in the context of LANCO's undertaking recorded in the order of the Hon`ble Supreme Court.

(b) The letter of credit is an instrument which acts as a payment security mechanism for the obligations of a LTTCs/DICs towards payment of transmission charges and the same ought to be replenished from time to time.

(e) The prayers in the petition are not limited to opening of LC.

(f) As per clause 3.6.1 of TSA, DICs are required to open LC in favour of CTU within one month from the effective date. Therefore, as a transmission licensee, the petitioner has a right towards complete and timely payment of transmission charges.

(g) As per the BPTA executed with PTC, on 27.7.2009, the petitioner can only bind the respondent for any issue with respect to the payment of transmission charges and maintenance of payment security mechanism. The petitioner has no mutual rights and obligation towards LANCO. Therefore, regardless of LANCO undertaking and without prejudice to the petitioner's rights, the charges would continue to be payable by the respondent in terms of the applicable regulations.

2. Learned counsel for the respondent submitted as under:

(a) The Hon`ble Appellate Tribunal for Electricity vide its interim order dated 23.3.2011 had directed LANCO to supply 35% power to Chhattisgarh and balance 65% power to Haryana. The Hon`ble Supreme Court vide its interim order dated 16.12.2011 directed that LANCO would continue to supply power as per APTEL order.

(b) The matter is *sub judice* before the Hon`ble Supreme Court and the petitioner has been impleaded as a necessary party to the proceedings. However, this fact was not disclosed by the petitioner before the Commission.

(c) As per the direction of the Hon`ble Supreme Court dated 18.9.2015 LANCO has already opened LC on behalf of PTC India.

(d) As per Clause 3.6.1 of TSA, DICs are required to open LC in favour of CTU within one month from the effective date. In the petition, the petitioner is only seeking direction to the respondent to open the Letter of credit and seeking permission for termination of TSA for non-compliance of the regulations.

3. The representative of LANCO submitted that the Open Access has not been operationalized by the petitioner and the present petition has been filed seeking direction to the respondent to open LC.

4. The Commission desired to know whether the LC has been opened for entire capacity for which LTA has been granted or in proportionate to the power supplied to Haryana. Learned counsel for LANCO submitted that the LC amount has been paid for the entire capacity of 300 MW.

5. After hearing the learned counsels and representative of the petitioner and the respondents, the Commission directed the respondent to submit on affidavit, by 13.11.2015 that it would pay the transmission charges as per the TSA. The Commission also directed the petitioner to file the information within the specified date and observed that information received after the due date shall not be considered while passing the final order in the petition.

6. Subject to above, the Commission reserved the order in the petition.

By order of the Commission

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