

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 229/RC/2015

Sub: Application under Section 79(1) (c) and 79(1) (k) read along with 79(1)(f) of the Electricity Act, 2003 read with Regulation 21 of the Central Electricity Regulatory Commission (Sharing of Transmission Charges & Losses in Inter State Transmission) Regulations, 2010 along with Regulation 111 (Inherent Powers) and Regulation 115 (Power To Remove Difficulties) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 read with Regulation 2(1) (j) and Regulation 6(1) (d) of the Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012.

Petitioner : Power Grid Corporation of India Limited

Respondents : Lanco Babandh Power Private Limited and others

I.A. 31/2015 in Petition No. 55/MP/2015

Sub: Petition for the relinquishment of the Long Term Open Access under the Bulk Power Transmission Agreement dated 13.05.2010 under Regulation 18 read with Regulation 32 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.

Petitioner : Jindal India Thermal Power Limited.

Respondents : Power Grid Corporation of India Limited and others

Date of hearing : 17.11.2015

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

Parties present : Shri Gopal Jain, Senior Advocate, PGCIL
Shri Anand K. Ganeshan, Advocate, PGCIL
Shri Chinmayee Chandra, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL
Shri Swapnil Verma, PGCIL
Shri Akshi Seem, PGCIL
Shri A.M Pavgi, PGCIL
Shri Aryaman Saxena, PGCIL

Shri Sanjey Sen, Senior Advocate, JIPTL, LANCO and Maruti Clean Energy
Shri Matrugupta Mishra, Advocate, Vedanta, JIPTL and Maruti Clean Energy
Shri Tushar Nagar, Advocate, Vedanta, JIPTL and Maruti Clean Energy
Shri Deepak Khurana, Advocate, Lanco
Shri Sakya Singh, Advocate, Essar
Ms. Molshree Bhatnagar, Advocate, Essar
Shri Rahul Singh, Advocate, MIEL
Shri Alok Shankar, Advocate, GKEL
Shri Ravi Kishore, PTC
Shri Prashant Mathur, PTC
Shri Janmejaya Mahapatra, Jhabua Power Limited
Ms. Roopam Bansal, Jhabua Power Limited
Ms. Abilia Zaidi, POSOCO

Record of Proceedings

Learned counsels for the respondents submitted that the petitioner had served copy of the revised petition on the respondents on 14.11.2014 and requested for time to file replies to the revised petition.

2. Learned senior counsel for the petitioner submitted as under:

(a) As per paras 9 and 10 of the Commission`s order dated 31.5.2010 in Petition No. 233/2009, the Commission had accorded regulatory approval for execution of the nine nos. of HCPTCs based on the affidavit submitted by the project developers of IPPs and on the spot assessment by CTU. The project developers of IPPs have given consent to bear the transmission charges till the time the beneficiaries are firmed up. However, the LTTCs have not opened the Letter of Credit required for operationalization of the LTA.

(b) As per Clause 3 of the National Electricity Policy, there is a need for augmenting transmission capacity.

(c) As per Clause 25.2 (iv) of the Detailed Procedure framed 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) and Clause 3.6 of the Billing, Connection and Disbursement Procedure framed under the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010, LTTCs are required to pay the transmission

charges and to establish payment security mechanism for smooth payment of transmission charges.

(d) The petitioner vide its letters dated 17.7.2015 and 9.10.2015 served notice on the respondents to open Letter of Credit in terms of the provisions of Regulations/Procedures. However, none of the respondents have complied with their obligation to open LC as required.

(e) The Commission in order dated 26.12.2011 in Petition No. 213/MP/2011 had held that the Commission has the power to ensure that inter-State transmission is regulated in a smooth and efficient manner and is not crippled on account of non-payment of transmission charges.

(f) Regulation 13(5) of the Sharing Regulations clearly provides that the notified Model Transmission Service Agreement shall be the default transmission agreement. Regulation 13(1) of the Sharing Regulations provided for framing of the Model Service Agreement which was to be designed to include "Provisions on metering, accounting, billing and recovery of charges for the ISTS from the constituents".

(g) The respondents are default signatories of the Transmission Service Agreement. The effect of Model TSA was analysed by the Commission in order dated 1.5.2013 in Petition No. 196/2011.

(h) Under Section 79 (1) (c) of the Electricity Act, 2003, the Commission is empowered to regulate the inter-State transmission of power. Under Sections 129 and 142 of the Act, the Commission has power to pass orders seeking compliance of the Act, Regulations and orders. Therefore, the Commission is adequately clothed with the powers under the Regulations to redress the difficulties faced by the petitioner.

(i) The Commission vide orders dated 7.10.2015 and 18.6.2015 in Petition Nos. 112/TT/2013 and 162/TT/2013 respectively has directed that since the generation developers have failed to construct the dedicated transmission lines, the tariff for these assets shall be borne by the generators till operationalisation of their LTA as per Regulation 8 (5) of the Sharing Regulations.

3. Learned senior counsel for JIPTL, LANCO and Maruti Clean Coal and Power Limited submitted as under:

(a) Case of each of the generators raises separate issues and cannot be clubbed in one petition.

(b) The reliefs sought against the respondents arise out of separate acts and transactions pertaining to each and every respondent. Therefore, it is not permissible under law to seek common relief on the basis of non-specific

generalized common pleadings against all the Respondents and the petitioner is required to file a separate petition against each of the Respondent.

(c) Ind Bharat Private Limited, Maruti Clean Coal and Power Limited and PTC India Limited on behalf of LANCO have opened LC. Therefore, they may be discharged from the liability for not opening the requisite payment security mechanism required for operationalization of the LTA and notice issued against them needs to be withdrawn.

(d) Jindal India Thermal Power Limited has already relinquished LTA of 1044 MW of power, therefore, the question of opening LC does not arise. GMR Kamalanga Energy Limited is taking up the issue with Haryana Power Purchase Centre and Power Trading Corporation.

4. Learned counsel for Essar Power Limited submitted as under:

(a) The present petition is not maintainable on the grounds of mis-joinder of cause of action.

(b) As per the judgment of the Hon`ble High Court of Madhya Pradesh in Pahelwan Singh and others V Leela Bai (AIR 1998 MP 152), it is settled position of law that any suit suffering from misjoinder of cause of action is liable to be rejected.

(c) The reliefs as prayed by the petitioner are *prima facie* adjudicatory in nature and cannot be treated as compliances arising out of any regulations issued by the Commission and to such extent the present proceedings are not maintainable.

(d) In the present case, the petitioner is seeking compliance of the Commission order dated 31.5.2010 in Petition No. 233/2009. The compliance cannot be sought for a proceedings in which the respondent has not been made party.

5. After hearing the learned counsels for the parties, the Commission directed the respondents to file their replies by 26.11.2014 with an advance copy to the petitioner, who may file its rejoinder, if any, by 3.12.2015. The Commission directed that due date of filing the replies and rejoinders shall be strictly complied with and no extension on that account shall be granted.

6. Learned senior counsel for the petitioner submitted that since Ind Bharat, Maruti Clean Energy and LANCO on behalf of PTC have opened the LC, the prayer made in

the petition for opening the LC is not being pressed against them. The Commission took note of the said submission.

7. The Commission directed to list the petitions on 8.12.2015.

By order of the Commission

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