

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 226/MP/2015

Subject : Petition under section 79 (1) (c) and 79 (1) (k) of the Electricity Act, 2003 seeking appropriate directions for operationalisation of the LTA dated 14.9.2010 read with letter dated 27.12.2013.

Date of hearing : 31.3.2016

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

Petitioner : TRN Energy Private Limited

Respondent : Power Grid Corporation of India Limited

Parties present : Shri Sanjay Sen, Senior Advocate, TRN Energy Pvt. Ltd.
Shri Matrugupta Mishra, Advocate, TRN Energy Pvt. Ltd.
Shri Tushar Nagar, Advocate, TRN Energy Pvt. Ltd.
Ms. Suparna Srivastava, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL
Shri Swapnil Verma, PGCIL
Shri H.M. Jain, PGCIL

Record of Proceedings

Learned senior counsel for the petitioner submitted as under:

(a) The petitioner has set up a 600 MW (2X300 MW) thermal power generating station at District Raipur, Chhattisgarh. The petitioner made an application to CTU for grant of long term open access for 600 MW. On 14.9.2010, CTU granted LTA to the petitioner.

(b) The petitioner was granted LTA for the Western Region to the tune of 243 MW and 150 LTA for the Northern Region. The remaining 207 MW, as per the Policy, was taken by Chhattisgarh State Power Trading Corporation Limited as its 355 share of 600 MW.

(c) On 11.4.2011, the petitioner entered into BPTA with CTU. On 25.7.2013, the petitioner entered into a PPA with UPPCL for sale of 390 MW power which

provides that UP Discoms can opt to purchase the power earlier than scheduled delivery date, i.e 30.10.2016.

(d) The petitioner vide letter dated 29.7.2013 requested CTU to revise the LTA to comply with the preconditions of the PPA entered into with the UPPCL.

(e) In the 18th Meeting of WR constituents regarding Connectivity and Open Access held on 29.8.2013, the petitioner was permitted change of beneficiary as 390 MW to NR and Nil MW to WR. Subsequently, CTU vide its letter dated 27.12.2013 informed the petitioner that in pursuance of the said meeting dated 29.8.2013, the request of the petitioner to revise/modify the LTA dated 14.9.2010 is allowed.

(f) In the 19th Meeting of WR Constituents regarding Connectivity and Open Access held on 5.9.2014, CTU arbitrarily informed that the modifications in the LTA would be subject to the payment of relinquishment charges as per the CERC Regulations to change the beneficiary region from the Western Region to Northern Region.

(g) The matter was further discussed in the 20th Meeting of WR Constituents regarding Connectivity/Open Access held on 17.2.2015. In the said meeting, CTU imposed a fresh condition upon the petitioner to make a fresh application in the light of the Commission's order dated 16.2.2015 in Petition 92/MP/2014.

(h) The petitioner's generating station is expected to be commissioned in the month of April, 2016 and in default of grant of LTA of 390 MW in NR, the distribution companies of UP may invoke the bank guarantee of Rs. 156 crore. Unless the LTA is granted to the petitioner in terms of the letter dated 27.12.2013, the petitioner shall be gravely prejudiced. The petitioner is already paying interest to the tune of Rs. 1.5 crore on a daily basis.

(i) Learned senior counsel relied upon the judgment of the Hon'ble Supreme Court in State of Punjab Vs Nestle India Limited [(2004) 6 SCC 465] and submitted that the CTU is bound by the principles of promissory estoppels and this principle is also applicable against the statute.

(j) The representation made by CTU was with a *bona fide* belief that interchange of power in the ISTS would be possible only in the manner requested by the letter dated 29.7.2013. Had it not been technically feasible, there would not have been a grant in favour of the petitioner. CTU is bound by its commitment on the basis of which the petitioner has changed its position. Now, CTU in the light of the observation made by the Hon'ble Supreme Court in the Nestle Case (supra), is estopped to resile itself from giving effect to the letter dated 27.12.2013. The petitioner has diligently made an application for modification of

target region more than three years before the date of operationalization of the LTA as required under Regulation 12 of the Connectivity Regulations.

(k) CTU cannot take benefit of its default by putting the petitioner on a low priority, which will cause multiple losses and breach of the terms of the PPA. Additionally it is to be appreciated that additional quantity is available from surrendered and relinquished quantum such as Chhattisgarh Power Trading Co. Ltd, Vedanta, JITPL, and Aryan MP, etc. CTU shall have to provide details of the quantity available for allocation of LTA to the generators,, which have executed PPA, otherwise it will go against the concept of open access envisaged under the Act and also violative of the Connectivity Regulations and Detailed Procedure made thereunder.

2. Learned counsel for CTU submitted as under:

(a) The letter dated 27.12.2013 cannot be given effect to since the same is violative of Regulation 12 of the Connectivity Regulations read with order dated 16.02.2015 in Petition No. 92/MP/2014.

(b) There cannot be an esstopel against the statute. Any order or communication made in violation of statutory provisions cannot be given effect to in any court of law.

(c) A fresh application for LTA is required to be made to CTU which, in turn, is to be followed by putting in place of the required transmission system for operationalizing the changed LTA. A mere approval for the changed LTA cannot tantamount to grant of the changed LTA. CTU immediately informed the petitioner with regard to the requirement of making fresh application for change in region.

3. The Commission observed that in the last date of hearing, UPPTCL was directed to be impleaded as a party to the petition as the grant of MTOA/LTA would involve utilization of transmission line of UPPTCL. However, none appeared on behalf of UPPTCL. The Commission directed to issue fresh notice to UPPTCL who would file its response to the petition by 30.4.2016. In case, no reply is filed by UPPTCL by 30.4.2016, UPPTCL shall be deemed to have no objection to the grant of LTA to TRN Energy and CTU shall accept the application of TRN Energy and process the same.

4. If UPPCL files reply to the petition, then the petition shall be listed for hearing on 5.5.2016 to hear the views of UPPTCL.

By order of the Commission

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