

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 11/MP/2016

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K.Singhal, Member

Shri A.S. Bakshi, Member

Dr. M.K. Iyer, Member

Date of Order: 26th of September, 2016

In the matter of

Petition under Section 79(1)(c) and (f) of the Electricity Act, 2003 read with Regulations 10, 19 and 23 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 read with Regulations 110, 111, 112 and 115 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

And

In the matter of

National Energy Trading & Services Limited
Plot No.4, Software Units Layout,
Hitech City, Madhapur,
Hyderabad-500081

.....Petitioner No. 1

Lanco Anpara Power Ltd.
411/9, Riverside Apartments,
New Hyderabad, Lucknow
Uttar Pradesh – 226007

...Petitioner No. 2

Vs

Power Grid Corporation of India Limited
B-9, Qutub Institutional Area,
Katwaria Sarai, New Delhi- 110016

.....Respondent

The following were present:

Shri Sanjay Sen, Senior Advocate, LAPL

Shri Avijeet Lala, Advocate, LAPL

Ms. Puja Priyadarshini, Advocate, LAPL

Shri Arun Tholia, LAPL

Shri Sakhya Singha Chaudhuri, LAPL & NETSL
Shri Molshree Bhatnagar, LAPL & NETSL
Ms. Jyoti Prasad, PGCIL
Shri Anil Kumar Meena, PGCIL
Shri Swapnil Verma, PGCIL

ORDER

The petitioners, National Energy Trading & Services Limited (NETSL) and Lanco Anpara Power Limited (LAPL) have filed the present petition under Clauses (c) and (f) of sub-section (1) of Section 79 of the Electricity Act, 2003 and Regulations 10, 19, 23 and 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 (hereinafter "Connectivity Regulations") read with Regulations 110, 111, 112 and 115 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (hereinafter Conduct of Business Regulations) seeking exemption from application of Regulation 10 and 23 of the Connectivity Regulations and consequential dispensation for the petitioner's application dated 18.12.2015 to be treated in continuation of and in furtherance of its earlier application dated 28.6.2012 for Medium Term Open Access and with effect from 28.6.2012.

2. Brief facts of the case leading to the filing of the petition and subsequent developments after the filing of the petition are capitulated as under:

(a) NETSL, an inter-State Trading Licensee, entered into a Power Purchase Agreement (PPA) dated 19.1.2012 with Tamil Nadu Generation and Distribution Company Ltd. (TANGEDCO) for supply of 100 MW of power from the Lanco Anpara 'C' Thermal Power Plant of LAPL for a period of 5 years i.e. from

1.2.2012 to 31.1.2017. NETSL entered into a back to back PPA dated 25.1.2012 with LAPL for supply of 100 MW power for the above period. In accordance with the provisions of the Connectivity Regulations, NETSL made four applications to Central Transmission Utility (CTU) as per the details given below for grant of Medium Term Open Assess (MTOA) to NETSL for 100 MW for supply of power from the thermal power plant of LAPL to TANGEDCO:

Table-1

Date of Application	Capacity for which MTOA sought	Period of MTOA	Result of the application
31.1.2012	100 MW	1.7.2012 to 30.6.2015 (36 months)	Application closed on 13.3.2012 on account of lack of Available Transfer Capacity
30.3.2012	100 MW	1.9.2012 to 30.6.2015 (33 months)	Application closed on 9.5.2012 on account of lack of Available Transfer Capacity
31.5.2012	100 MW	1.11.2012 to 31.5.2013 (7 months)	Application closed 6.7.2012 on account of lack of Available Transfer Capacity
27.6.2012	100 MW	1.6.2013 to 31.5.2016 (36 months)	MTOA granted on 6.8.2012 for the period from 16.6.2013 to 31.5.2016

(b) MTOA was operationalized with effect from 16.6.2013. Since the MTOA granted to NETSL was not covering the balance period of the PPA (i.e. 1.6.2016 to 31.1.2017), NETSL made the following applications to CTU for grant of MTOA for the period from 1.6.2016 to 31.1.2017:

Table-2

Date of Application	Capacity for which MTOA sought	Period of MTOA	Result of the application
23.9.2015	100 MW	1.6.2016 to 31.1.2017	Application closed by CTU on account of absence of No Objection Certificate from Uttar Pradesh SLDC
18.12.2015	100 MW	1.6.2016 to 31.1.2017	Application closed on 10.2.2016 on account of non-availability of margin in Available Transfer Capacity
29.1.2016	100 MW	1.7.2016 to 31.1.2017	Application closed on 10.2.2016 on account of non-availability of margin in Available Transfer Capacity
28.2.2016	100 MW	1.8.2016 to 31.1.2017	Application closed on 6.4.2016 on account of non-availability of margin in Available Transfer Capacity
17.3.2016	100 MW		MTOA granted on 10.5.2016 for the period 1.9.2016 to 31.1.2017 subject to enhancement of ATC with the commissioning of new transmission lines.

(c) MTOA was granted by CTU for the period 1.9.2016 to 31.1.2017 subject to enhancement of Available Transmission Capacity which was expected to be enhanced with the progressive commissioning of the following transmission lines:

- (i) 765 kV Angul-Srikakulam-Vemagiri (PG) D/C line + LILO of 400 kV GazuwakaNuma (Vijaywada (PG) S/C line at Vemagiri (PG) +Opening of Nunna (Vijaywada (PG)- Vemagiri (PG));
- (ii) 765 kV Wardha-Nizamabad D/C line alongwith Nizamaba-Dichipaly 400 kV D/C line.

Subsequently, CTU has informed that due to non-readiness of the above transmission lines, MTOA granted to NETSL cannot be operationalized.

(d) The Commission in its order dated 31.8.2016 in Petition No.134/MP/2016 (Ind-Bharat (Utkal) Ltd. Vs Eastern Regional Load Despatch Centre) has disallowed Ind-Bharat (Utkal) Energy Limited to inject commercial power into the grid through the temporary LILO arrangement and has directed Ind-Bharat to commission dedicated transmission line at the earliest and then inject firm power. As a result, power under the LTA of 500 MW granted to Ind-Bharat is not being scheduled.

(e) The present petition was filed on 25.1.2016 when the application of NETSL dated 18.12.2015 for MTOA for 7 months from 1.6.2016 to 31.1.2017 was pending. Accordingly, the petitioner sought the indulgence of the Commission to relax the provisions of Regulation 10 and 23 of the Connectivity Regulations in order to grant priority to the petitioner for supply of 100 MW power to TANGEDCO for the balance period of the PPA either as a fresh MTOA or in continuation of the MTOA originally granted to NETSL. After the grant of MTOA to NETSL on 10.5.2016 for the period 1.9.2016 to 31.1.2017, the prayers made in the original application have not been pressed by the petitioners. However on account of non-readiness of the transmission lines based on which the MTOA was granted, the petitioner has raised a fresh plea that since an unused capacity of 500 MW originally allocated Ind-Bharat has become available, the petitioner's MTOA for

the period from 1.9.2016 to 31.1.2017 may be operationalized against the said capacity.

(f) The Commission directed Chief (Engg) of the Commission to convene a meeting of the petitioner, CTU and POSOCO in order to explore the possibility of operationalizing the MTOA granted to the petitioner within the framework of the Connectivity Regulations in view of the development of non-scheduling of power under LTA by Ind-Bharat. It has been reported by Chief (Engg) that in the said meeting, no solution could be found as the Connectivity Regulations and Detailed Procedure issued thereunder do not specifically provide for operationalization of MTOA of a MTOA customer against the capacity having become available due to non-scheduling of power under LTA by an LTA customer.

3. During the hearing of the petition on 22.9.2016, CTU submitted a written note in which it has been stated that there is no provision under the Connectivity Regulations and Detailed Procedure for such operationalization of MTOA as sought by the petitioner. According to CTU, para 22.7 of the Detailed Procedure provides for grant of MTOA on the unutilized capacity of a target LTA customer only. Further, as per the Connectivity Regulations and Detailed Procedure, the administrative jurisdiction with matters pertaining to day-to-day operationalization is vested in POSOCO who in turn has to offer such non-utilized capacity under STOA, Day-Ahead or Power Exchange.

4. Learned senior counsel appearing for the petitioners submitted that CTU and POSOCO have taken a stand that the transmission capacity released from Ind-Bharat has to be first considered for STOA and therefore cannot be utilized for the MTOA of the

petitioner. Learned counsel submitted that such a contention is baseless and without backing of the law due to the following reasons:

(a) No Regulation have been specified by either PGCIL or POSOCO to the extent that STOA has to be given preference over granted MTOA where capacity is available in the transmission system. Therefore, the allocation of the 500 MW to STOA is without the authority of law.

(b) The stand of POSOCO and PGCIL is squarely contrary of the express language of Regulation 3 (2) of the CERC Open Access Regulations, 2008, which clearly states that short term customer shall be eligible for STOA for surplus capacity available after LTA and MTOA customers. In effect, PGCIL and POSOCO are now seeking to give preference to STOA which is clearly last in the preference of usage of transmission capacity under Open Access Regulations.

(c) The principles guiding Regulation 25 of the Connectivity Regulations clearly shows that in case of availability of transmission capacity, preference has to be given to LTA followed by MTOA and finally STOA. Therefore, curtailment, if any, has to be in the reverse order. Accordingly, STOA users will be entitled to any capacity out of the 500 MW only after meeting the requirement of existing MTOA holders.

5. Learned Senior Counsel for the petitioner further submitted that Para 22.7 (vi) that CTU may release the LTA capacity intended for target region to STOA or MTOA till the capacity is firmed up and also should be operationalized. The term

'operationalization' has not been defined either in Connectivity Regulation or any other Regulation of the Commission and therefore, operationalization of open access should mean start of point to point flow of electricity. Accordingly, in the light of the provisions of Para 22.7 (vi) of the Detailed Procedure, the capacity of 500 MW available to LTA with Ind-Bharat should be automatically made available to MTOA customers. Learned Senior Counsel further submitted that NETSL is not seeking preferential treatment over other MTOA holders, though the available capacity of 500 MW is sufficient to meet the requirements of all MTOA holders. Learned Counsel also submitted that NETSL undertakes to give up any claim over the 500 MW or claim equity in relation to the 500 MW the moment Ind-Bharat commissioned its dedicated transmission line and power starts flowing from Ind-Bharat. Learned Senior Counsel submitted that it is clearly contrary to Regulations 9 and 25 of the Connectivity Regulations that the MTOA of the petitioner, once curtailed, is not entitled to be reinstated upon subsequent addition in ATC and availability of transmission capacity.

Analysis and Decision

6. In the Petition originally filed, the petitioners had submitted that the maximum period of MTOA prescribed in the Connectivity Regulation is three years, whereas, the period for LTA has been prescribed as exceeding 12 years and not exceeding 25 years. There is no stipulation under the Connectivity Regulations for the period exceeding three years but not exceeding 12 years. On account of this gap, there arise various implementation problems in the grant of LTA and MTOA which lead to issues between parties under the PPA signed by them and result in standard generation. Further, it has been submitted that the period of three years for MTOA is contrary to the term of

Medium Term PPA as per the Competitive Bidding Guidelines of Ministry of Power which is five years (as per the Guideines, the period of medium term PPA is 7 years). We intend to clarify that the Connectivity Regulations have been framed after extensive stakeholder's consultation. It has been consciously decided to prescribe the period of Medium Term Open Access ranging from 3 months to 3 years and the period of Long Term Open Access ranging from 12 years to 25 years. The Commission has recorded the reasons for such prescription in the Statement of Reasons which are extracted as under:-

“99. It has been suggested by NDPL that the application for grant of medium term access shall contain such details as may be laid down under the detailed procedure for the period not less than 3 months but exceeding 3 years. Under such regulation a generator may enter into an agreement with a utility for a period of 15 years or 10 years to cover its loan obligations. Under such a scenario, will the utility have to apply for medium term open access after expiry of every three years? Also in case of denial on account of congestion or non availability of transmission corridor or any other reasons, how would a generator meet its firm power supply obligation under such a scenario? Hence it is suggested that medium term open access should be allowed for any period varying between 3 months up to 12 years. Also in case medium term open access required augmentation of transmission system to facilitate power evacuation, the same may also be allowed.

100. As discussed earlier, the Commission has prescribed a period of more than 3 months and up to 3 years for medium term open access without any augmentation of transmission system having due regard to the margin available in the existing transmission infrastructure. A period of 12 years and more is prescribed for the Long term access with or without system augmentation with due regard to repayment obligation of the investors. It may not be desirable to provide open access for any intermediate period because this will discourage the entities in seeking long term access which is necessary to create additional redundancies and margins in the transmission system to further facilitate short term and medium term open access. As such, any entity desirous of open access for the period between 3 years to 12 years may opt for medium term open access up to four times or may go for long term access for 12 years and may opt for early exist option after paying necessary charges as per terms of the regulation any time before completion of open access period of 12 year.

101. Further, the Regulation 19 (2) has been modified specifying that the start date of the medium-term open access shall not be earlier than 5 months and not later than 1 year from the last day of the month in which application has been made. This is with a view to giving priority for booking of transmission corridor to the medium term open access customers as compared to the short term open access customer. It may be recalled that application for short term open access can be submitted a maximum of 3

months in advance of the month in which STOA is being sought. Processing time for the application of medium term open access is 40 days. With a view to avoid uncertainty regarding estimated flows and projection of commissioning of new transmission elements, it is desirable that start of open access should not be more than a year from the date of application.”

7. In the light of the Statement of Reasons as extracted above, it is clear that the Commission had taken a conscious decision not to have any product granting access to ISTS for the intermediate period of 3 to 12 years as it would discourage the entities to seek long term access which was necessary to create additional redundancies and margins in the transmission system to further facilitate short term and medium term open access. The Commission has clearly visualized that any entity desirous of open access for the period 3 to 12 years may opt for medium term open access upto four times or may go for long term access for 12 years and opt for early exit option after paying the necessary charges as per the terms of the regulations any time before the completion of open access period of 12 years. As regards the suggestion of the petitioners that the Commission should consider the term of MTOA to 5 years matching with the term of medium term PPA, the same has been noted and will be considered while considering the amendment to the Connectivity Regulations.

8. The petitioners have sought relaxation of Regulation 23 of the Connectivity Regulations which provides that “on expiry of the period of medium term open access, the medium term customer shall not be entitled to any overriding preference for renewal of the term”. This provision has been made keeping in view the fact that any overriding preference to the existing medium term customer would adversely affect the chances of the subsequent applicants to get medium term open access. Accordingly, any MTOA customer seeking extension of the MTOA beyond the initial period shall have to make

an application in accordance with the provisions of Regulation 19 of the Connectivity Regulations. It has been argued that non-extension of the medium term open access through overriding preference would result in a situation where the petitioner would be unable to fulfill its obligations under the PPA and therefore, Regulation 23 of the Connectivity Regulations needs to be relaxed. In this connection, the petitioners have relied upon the judgment of the Appellate Tribunal in NTPC Ltd Vs. Madhya Pradesh State Electricity Board (2007 ELR APTEL 7) wherein the Appellate Tribunal has held that in case any regulation causes hardship to a party or works injustice to him or application thereof leads to unjust result, the Regulation can be relaxed. In our considered view, the case of the petitioners does not fall under any of the circumstances described in the judgment of the Appellate Tribunal. The petitioners are aware of the provisions of the Connectivity Regulations with regard to MTOA, particularly the fact that it is granted on the margin available in the existing transmission system or the transmission system under execution and no augmentation is carried out for the purpose of grant of medium term open access. The petitioners are expected to factor in the uncertainties associated with the grant of medium term open access in their contractual obligations under the PPA. Therefore, such uncertainties in the grant of medium term open access which are known to the petitioners cannot be considered as reason for hardship or injustice or unjust results to the petitioners requiring relaxation of the provisions of the Connectivity Regulations. In our view, such cases do not call for relaxation of the statutory regulations.

9. NETSL has been granted MTOA for the period 1.9.2016 to 31.1.2017 by CTU and operationalization of such MTOA has been linked to availability of certain

transmission lines. On account of the non-availability of the transmission lines, the MTOA granted to NETSL cannot be operationalized. The petitioners have submitted that capacity of 500 MW is now available in the existing transmission system on account of non-utilisation of capacity by Ind-Bharat (Utkal) Power Limited on account of non-scheduling of power under LTA pending commissioning of the dedicated transmission line and therefore, MTOA granted to the petitioner has created a vested right in the petitioner to have the power flow upto 100 MW in the existing transmission system. CTU has submitted that the administrative jurisdiction with matters pertaining to day-to-day operationalization is with POSOCO who in turn has to offer such non-utilized capacity under STOA, Day Ahead or Power Exchange. The representative of POSOCO submitted during the hearing that no overriding preference can be given to the petitioners as that would be against the principle of non-discriminatory open access as enshrined in the Act. Learned Senior Counsel submitted that as per Regulation 3(2) of the Open Access Regulations of 2008, short term customer shall be eligible for STOA for the surplus capacity available after LTA and MTOA customers. Further as per Regulation 25 of the Connectivity Regulations, preference has to be given to LTA followed by MTOA and finally by STOA. According to Learned Senior Counsel, the STOA users will be entitled to any capacity out of 500 MW only after meeting the requirement of MTOA holders.

10. We notice that Ind-Bharat (Utkal) Limited has not commissioned the dedicated transmission line and the Commission has disallowed Ind-Bharat to inject firm power through the interim LIFO arrangement. As a result, power under the LTA of Ind-Bharat for 500 MW cannot be scheduled. Ind-Bharat is not a party in this petition. Moreover,

neither CTU nor POSOCO have any specific information about the timeline by which Ind-Bharat could commission its dedicated transmission line and schedule the power under the LTA. The minimum period for grant of MTOA is three months and while considering the MTOA applications, the capacity available for three months and above is taken into consideration. In the absence of any definite information that the resultant capacity on account of non-scheduling of power under LTA by Ind-Bharat would be available for three months or more, the capacity cannot be utilized for MTOA. At present, the said capacity is available on real time basis and is being utilized under STOA Day-Ahead or Power Exchange. In our view, the capacity available on account of non-scheduling of power under LTA by Ind-Bharat cannot be utilized for operationalization of MTOA of NETSL. The petitioners have referred to Regulation 3(2) of Open Access Regulations, 2008 and Regulation 25 of Connectivity Regulations in support of their contention that the STOA users will be entitled to any capacity out of the 500 MW only after meeting the requirement of existing MTOA holders. Regulation 3(2) of Open Access Regulations 2008 provides as under:

“3(2) The short-term customer shall be eligible for short-term open access over the surplus capacity available on the inter-State transmission system after use by the long-term customer and the medium-term customer, by virtue of-

- (a) Inherent design margins;
- (b) Margins available due to variation in power flows; and
- (c) Margins available due to in-built spare transmission capacity created to cater to future load growth or generation addition.”

As per the above Regulations, STOA can be granted on the surplus capacity available in the inter-State transmissions system after use by the long term customer

and medium term customer. Long term customer has been defined as a person granted long term access for use of inter-State transmission system and long term access has been defined as the right to use the inter-State transmission system for a period exceeding 12 years but not exceeding 25 years. Similarly, medium term customer has been defined as a person granted medium term open access for use of inter-State Transmissions system and medium term open access has been defined as the right to use the inter-State transmission system for a period exceeding 3 months but not exceeding 3 years. Therefore, the capacity which is available for more than 12 years can be allocated by a long term customer and the capacity which is available for more than 3 months can be allocated by a medium term customer. A capacity which is available for less than 3 months cannot be utilized by a medium term customer. As already mentioned, the periodicity of availability of the transmission corridor on account of non-scheduling of power under LTA by Ind-Bharat is uncertain and therefore, the capacity cannot be allocated for medium term open access. The petitioner has also relied on Regulation 25 (2) of the Connectivity Regulations which reads as under:-

“25 (2) Subject to provisions of the Grid Code and any other regulation specified by the Commission, the short-term customer shall be curtailed first followed by the medium term customers, which shall be followed by the long term customers and amongst the customers of a particular category, curtailment shall be carried out on pro rata basis.”

The petitioner has submitted that allocation of capacity should be done in reverse priority as curtailment. Priority in curtailment of capacity inter se long term customer, medium term customer and short term customer is applicable only when the capacity has been allocated among these three categories. Allocation of capacity among long term customer, medium term customer and short term customer is decided on the basis of several factors and cannot be decided on the basis of inter se priority of curtailment.

In any case, the petitioner's case is not for allocation of capacity under MTOA but for operationalization of MTOA on the capacity becoming available on account of non-scheduling of power by Ind-Bharat under LTA. Since the period of non-scheduling of power by Ind-Bharat is uncertain, the said capacity cannot be utilized for operationalization of MTOA of the petitioner. The petitioner has also relied on Para 22.7 (vi) in support of its contentions that CTU may release the LTA capacity intended for target region to STOA or MTOA till the capacity is firmed up and accordingly, the capacity of 500 MW LTA available with Ind-Bharat is automatically available for MTOA customer. Para 22.7 (vi) is extracted as under:-

“(vi) Payment of such transmission charges for the balance capacity for which exact source on long term basis is not known, shall not entitle the applicant any right over the transmission system up to the target region and CTU may release this balance transmission capacity up to target region for short-term open access or the medium term open access till the applicant firms up source/destination on long term basis and its operationalization.”

The above provision of the Detailed Procedure is applicable in such cases where the generator who has availed long term access has not firmed up the exact source or destination of power supply. However, in case of Ind-Bharat, the generator has a long term PPA with TANGEDCO for 500 MW. The provisions of Para 22.7 (vi) is not applicable in this case. Therefore, the capacity available on account of non-scheduling of power under LTA by Ind-Bharat cannot be made available for operationalizing the MTOA granted to NETSL.

11. Though NETSL has been granted MTOA with effect from 1.9.2016, the same could not be operationalized on account of non-readiness of certain transmission lines. We direct CTU to take expeditious action to ensure that the said transmission lines are commissioned at the earliest possible and the MTOA of NETSL is operationalized.

Pending operationalization of MTOA by CTU, the petitioners may approach POSOCO for grant of STOA which shall be considered by POSOCO in accordance with the Open Access Regulations, 2008 and the Detailed Procedure made thereunder.

12. Petition No. 11/MP/2016 is disposed of in terms of the above.

sd/-
(M.K. Iyer)
Member

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson