

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 311/MP/2014
With IA No. 45/2015**

**Coram:
Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member**

**Date of Hearing: 02.6.2015
Date of Order : 14.3.2016**

In the matter of

Petition under Section 79 (1) (c) of the Electricity Act, 2003 read with Regulations 111 and 114 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and appropriate provisions of the Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Access in inter-State transmission and related matters) Regulations, 2009; Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010; Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014; Central Electricity Regulatory Commission (Grant of Regulatory Approval for execution of Inter-State Transmission Scheme to Central Transmission utility) Regulations, 2010.

**And
In the matter of**

Power Grid Corporation of India Ltd.
B-9, Qutab Institutional Area, Katwaria Sarai,
New Delhi- 110016.

....Petitioner

Vs

1. Executive Director (Commercial)
NTPC Ltd.
Core-7, Scope Complex,
Lodhi Road, New Delhi-110 003.

2. Chief Engineer (Commercial)
North Bihar Distribution Company Ltd.
Vidyut Bhawan, Bailey Road,
Patna, Bihar-800 001

3. Chief Engineer (Commercial)

Southern Bihar Distribution Company Ltd.
Vidyut Bhawan, Bailey Road,
Patna, Bihar-800 001

4. Chief Engineer (Commercial and Revenue)
Jharkhand State Electricity Board
In front of main secretariat,
Doranda, Ranchi-834 002

5. Superintending Engineer
Ajmer Vidyut Vitran Nigam Limited
Old Power House, Hathi Bhata, Jaipur Road,
Ajmer, Rajasthan

6. Director (Finance)
Jaipur Vidyut Vitran Nigam Ltd.
Vidyut Bhawan, Janpath, Jaipur-302 005

7. Superintending Engineer
Jodhpur Vidyut Vitran Nigam Ltd.
400 k V GSS Building,
Ajmer Road, Heerapura, Jaipur,
Rajasthan

8. Himachal Pradesh State Electricity Board
Vidyut Bhawan, Kumar House complex Building-II
Shimla.

9. Superintending Engineer (Inter-State Billing)
Punjab State Power Corporation Limited
Shed No. T-1A, Thermal design, Near 22 No. Phatak
Punjab State Power Corporation Ltd, Patiala

10. Chief Engineer/SO and Commercial
Haryana Power Purchase Centre,
Shakti Bhawan, Energy Exchange,
Room No.4446, Top Floor,
Sector-6, Panchkula-134 109

11. Chief Engineer
Power Development Department,
Govt. of Jammu and Kashmir,
SLDC, Building, 1st Floor,
Gladani Power House, Narwal, Jammu

12. UTC-Chandigarh
DIV-11, Opposite Transport Nagar
Indl. PH-1, Chandigarh

13. General Manager (Finance)

Madhya Pradesh TRADECO
Shakti Bhawan, Vidyut Nagar,
Rampur,
Jabalpur-482 008 (MP)

14. General Manager (PP)
Maharashtra State Electricity Distribution Co. Ltd.
Prakashgad, 4th Floor,
Bandra (East), Mumbai-400 052

15. Chief Finance Manager
Gujarat Urja Vikas Nigam Ltd.
Vidyut Bhawan, Race Course,
Baroda-390 007

16. Executive Engineer
Electricity Department
Administration of Daman and Diu
Daman-396 210

17. Superintending Engineer
Electricity Department,
Administration of Dadra Nagar Haveli
UT, Silvassa, 236 230.

...Respondents

Following were present:

Ms. Suparna Srivastava, Advocate, PGCIL
Shri A.M. Pavgi, PGCIL
Ms. Jyoti Prasad, PGCIL
Shri Rakesh Prasad, PGCIL
Shri Manju Gupta, PGCIL
Ms. Poorva Saigal, Advocate, NTPC
Ms. Anushree Bardhan, Advocate, NTPC
Shri V.K. Jain, NTPC
Shri Umesh Ambali, NTPC
Shri Nishant, NTPC

ORDER

The petitioner, Power Grid Corporation of India Limited, has filed the present petition seeking directions to the respondents to sign Long Term Access Agreements (LTA Agreements) for transmission system for evacuation of power from Darlipalli Super Thermal Power Project (generating station) and grant of Regulatory Approval for execution of the associated transmission system.

2. Gist of the submission of the petitioner is as under:
- (a) NTPC Ltd. has planned to set up a 1600 MW (2x800 MW) thermal power project at Darpalli in the State of Odisha.
 - (b) On 27.1.2011 and 16.5.2011, NTPC made applications to CTU for grant of connectivity and LTA respectively for transfer of power from the generating station to certain beneficiaries in Eastern Region. On 26.4.2012 and 10.4.2013, CTU granted connectivity and LTA to NTPC.
 - (c) The common transmission system for Phase-II generation projects in Odisha including Darlipali is to be implemented through Tariff Based Competitive Bidding route. However, Government of India, Ministry of Power vide its letter dated 27.5.2013 informed that PGCIL shall implement 765 kV Darlipalli-Jharsuguda transmission line with compressed time schedule through regulated tariff mechanism.
 - (d) Subsequently, NTPC informed the petitioner that 1st unit of the proposed generating station shall be commissioned in June, 2018 and start-up power shall be required by March, 2016 through 765 kV Darlipalli-Jharsuguda transmission line.
 - (e) Ministry of Power vide its letter dated 17.1.2011 allocated 50% power to the home State of Odisha, 35% to other constituents of Eastern Region with unallocated share of 15% power from the proposed generating station.

(f) NTPC while submitting the applications for grant of LTA dated 27.1.2011 submitted the following details with regard to allocation of power from the proposed generating station:

Beneficiary States	Power allocation as per LTA application and grant	Power allocation as per Ministry of Power, GOI.
Bihar	154.13 MW	35 %
Jharkhand	102.11 MW	
DVC	--	
Sikkim	15.29 MW	
West Bengal	283.75 MW	
Odisha	---(**)	50%
Unallocated	Unallocated quota of 237.98 MW would be distributed to other beneficiaries in proportion to allocated	15%

** With respect to Orisha it shall separately take up development of the evacuation system for its share (793.25 MW).

(g) The matter was taken up with the constituents of Eastern Region to sign the LTA Agreement. However, despite its best efforts, the petitioner has been unable to sign the LTA agreements with the beneficiaries as they projected their difficulties or have just plainly averted signing the LTA Agreements. Therefore, the implementation of the transmission system has stalled.

(h) In the 26th ERPC meeting held on 18.1.2014, certain constituents, namely West Bengal and Sikkim informed that Ministry of Power has not allocated the power from the proposed generating station and moreover, unless there is settlement of disputes on PoC issues, it would be difficult for them to sign the agreement. In this regard, it is clarified that Hon`ble High Court of Delhi in its common interim order dated 30.7.2013 in various writ

petitions has upheld the Sharing Regulations. Hon`ble High Court of Delhi has categorically directed the respective constituents to comply with the provisions of Sharing Regulations with regard to payment to PGCIL, as per the existing methodology. There is no ad interim stay of the Sharing Regulations by the Hon`ble High Court.

(i) As per Regulation 15 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Access in inter-State transmission and related matters) Regulations, 2009 (Connectivity Regulations) and Detailed Procedure made thereunder, the firmed up beneficiaries of the proposed generating station may sign LTA Agreement with CTU.

(j) Having failed to achieve the execution of LTA Agreement with constituents of Eastern Region, the petitioner requested NTPC to sign the LTA Agreement without any delay so that power may be evacuated from the transmission line without any hindrance or delay. PGCIL also apprised NTPC that in absence of LTA Agreement, it shall not be possible for the petitioner to obtain investment approval from its Board of Directors, which is a basic requirement to take further action in regard to installation of Associate Transmission system.

3. Against the above background, the petitioner has made the following prayers:

“(a) Direct the Respondents-ER-Constituents to sign the required Long Term Access Agreement in line with CERC (Grant of Connectivity, Long-term Access and Medium Term Open Access in inter-state Transmission and related matters) Regulations, 2009 and the Detailed Procedure with the Petitioner, without any delay,

so that the transmission system for evacuation of power from Darlipalli TPS could be taken up.

(b) In the alternative, direct Respondent No. 1 NTPC Limited to sign the required Long Term Access Agreement in line with Regulations 15 of CERC (Grant of Connectivity, Long Term Access and Medium-Term Open Access in inter-state Transmission and related matters) Regulations, 2009 and the Detailed Procedure with the Petitioner, without any delay.

(c) Grant Regulatory approval for taking up implementation of identified transmission systems for transmission of power for immediate evacuation of power from Darlipalli TPS of NTPC Limited who have been granted Connectivity/LTA.

(d) Grant approval for inclusion of the assets for which the transmission charges are to be recovered through the Point of Connection Charge methodology or any other sharing mechanism notified by CERC from time to time.

(e) Pass such other relief as Hon'ble Commission deems fit and appropriate under the circumstances of the case so as to avoid recurrence of such incidences leading to the delay in execution of transmission network.”

4. The petitioner has filed Interlocutory Application seeking urgent hearing in the light of the fact that the first unit of the generating station is scheduled for commissioning in June 2018 and the transmission line from the generating station upto Jharsuguda has been entrusted to PGCIL for execution in compressed time schedule by Ministry of Power. Since, the beneficiaries have shown reluctance in signing the LTA Agreement, the petitioner is not able to take up the investment approval from the Board to implement the scheme.

5. The matter was admitted on 18.11.2014 and notice was issued to the respondents to file their replies. NTPC was directed to submit status of generation project and signing of the PPA.

6. Reply to the petition has been filed by NTPC and GRIDCO Ltd.

7. NTPC vide its affidavit dated 16.12.2014 has submitted that NTPC has entered into a PPA with West Bengal State Electricity Distribution Company Limited

(WBSSEDCL) on 13.11.2010. NTPC has submitted the status of generating station as under:

S.No.	Name of the activity	Status as on 15.12.2014
1	Status of PPA	PPA signed with Sikkim (21.10.2010). Bihar/ BSEB (4.11.10), West Bengal (13.11.2010), Jharkhand (19.11.2010) and Odisha (27.12.2010)
2	Water	Firm water allocation of 95 cusecs obtained from WRD, GoO in June, 2014. CWC Concurrence obtained for 120 cusec vide letter dated 24.4.2012
3.	Fuel	Coal requirement (total-8 MTPA) 7 MTPA from Dulanga Captive Block and 1 MTPA from Talaipali Coal Block
4.	FR	FR approved on 27.9.2010
5.	Investment Approval	Investment approval accorded on 16 th January, 2014 by the Board of Directors
6.	Main Plant Award	Main plant award SG &TG placed to M/s. BHEL and M/s. Toshiba respectively on 17.2.2014
Clearances		
7	NOC from AAI	Available(26.12.2011)
8	Defense Clearance	Available(11.11.2008)
9	MOEF Clearance	Accorded for Darlipalli on 17.2.2014 and Dulanga Mine on 3.3.2014
10	Scheduled COD of Unit #1	June 2018
11	Scheduled COD of Unit#2	December 2018

8. NTPC, vide its reply affidavit dated 19.12.2014, has submitted as under:

(a) The power generated at the generating station is for sale to the beneficiaries namely, State Utilities of Odisha, West Bengal, Bihar, Jharkhand and Sikkim. As per the PPA, the beneficiaries are required to arrange transmission of power from the bus bar of the generating Station and NTPC is required to generate and deliver power at the bus-bar and the title to the power passes to the beneficiaries at the bus-bar of the generating station.

(b) As per clause 3.2 of the PPA, the beneficiaries of the generating station have been clearly identified and the delivery of power, in so far as the obligation of NTPC is concerned, is at the bus-bar of the generating station. Accordingly, the LTA Agreement needs to be signed by such beneficiaries for purchase of power from the generating station and beneficiaries are liable to discharge all obligations *qua* PGCIL and as provided under the applicable regulations for availing the transmission facilities for conveyance of power from the place of the generation to the respective State.

(c) On 6.5.2011, NTPC made an application to CTU for grant of LTA on behalf of beneficiaries stating that NTPC is making the present application for and on behalf of the beneficiaries. Accordingly, the beneficiaries of the generating station having been identified and the terms of the Power Purchase Agreement entered into with the beneficiaries providing for the delivery of power by NTPC at the bus-bar with the obligation of the beneficiaries to evacuate power from the bus-bar to their State periphery, the transmission and other applicable charges for the use in the said transmission system are payable by the beneficiaries procuring power and not by NTPC. This is particularly as provided under the Connectivity Regulations prior to the coming into force of the Central Electricity Regulatory Commission (Sharing of Transmission Charges) Regulations, 2010 (Sharing Regulations) effective from 1.1.2011 and thereafter under the said Sharing Regulations.

(d) Since NTPC does not use the inter-State transmission system for the purpose of evacuation of power from the proposed generation station, it is not required to enter into any such LTA Agreement.

(e) Delay in signing the LTA Agreement cannot be considered a reason for delay in the implementation of the transmission line.

(f) Regulation 13 (5) provides that the notified Model Transmission Service Agreement shall be the default transmission agreement and shall mandatorily apply to all designated ISTS customers. In case the beneficiaries are not signing the LTA Agreement, PGCIL should enforce the Model Transmission Agreement. Therefore, the petitioner's prayer seeking direction to NTPC to sign the LTA Agreement is liable to be rejected. However, the beneficiaries of the generating station should be directed to sign the LTA Agreement in terms of the Regulation 15 of the Sharing Regulations, failing which the beneficiaries should be deemed to have signed Model Transmission Service Agreement as specified in Regulation 13 (5) of the Sharing Regulations.

(g) As per Clause 7 of Regulation 13 of the Sharing Regulations, signing of any commercial agreement cannot be an impediment to the construction of a transmission system. Therefore, it is open for the Commission to grant Regulatory Approval of ATS to the generating station.

(h) NTPC is merely facilitating the process of timely implementation of the ATS for the generating station by applying for the grant of LTA, on behalf of the beneficiaries. NTPC cannot be fastened with any legal obligation to sign the LTA Agreement on account of the above application having been made

on behalf of the beneficiaries. The subsequent signing of the Agreement is entirely on account of the beneficiaries in terms of the applicable law.

9. GRIDCO Limited, vide its reply dated 10.3.2015 has submitted that NTPC vide its letter dated 24.1.2013 requested GRIDCO to provide consent letter for making LTA's application on behalf of GRIDCO by NTPC for evacuation of allocated power from the proposed generating station. GRIDCO vide its letter dated 30.4.2014 accorded consent to NTPC to make application for grant of LTA for evacuation of its share from the generating station. However, NTPC vide its letter dated 18.6.2014 advised GRIDCO to make application directly to CTU for grant of LTA. Accordingly, on 3.11.2014, GRIDCO made an application to CTU for grant of LTA. GRIDCO has submitted that vide its letters dated 30.12.2014 and 31.1.2015 GRIDCO requested PGCIL to provide status of LTA application. However, no communication was received from PGCIL in this regard. Moreover, GRIDCO had never been asked to sign any such LTA Agreement. GRIDCO has requested to direct PGCIL to grant LTA to GRIDCO at the earliest to enable it to sign the LTA Agreement.

10. During the hearing on 2.6.2015, learned counsel for the petitioner submitted that Bihar State Electricity Board and West Bengal State Electricity Board have signed the LTA agreements for evacuation of power from the generating station. Jharkhand State Electricity Board and Power Department, Government of Sikkim have not signed LTA agreements. Learned counsel for the petitioner further submitted that NTPC who is the applicant for grant of connectivity/LTA should come forward and sign the remaining LTA's since the beneficiaries are reluctant to sign the LTA agreement. Learned counsel for NTPC submitted that Sikkim has given in-principle approval during CEA's Standing Committee meeting held on 25.5.2015.

During the said meeting, Sikkim stated that it is in the process of obtaining internal approval for signing the LTA agreement and Jharkhand is in the process of signing the LTA agreement.

11. NTPC was directed vide ROP for hearing dated 2.6.2015 to submit a report stating that Jharkhand and Sikkim have signed the LTA agreements.

12. NTPC vide its affidavit dated 18.6.2015 has submitted that to facilitate the process of development of Associated Transmission System (ATS) of the generating station, NTPC made a consolidated application to CTU for grant of LTA on behalf of the beneficiaries of West Bengal, Bihar, Jharkhand and Sikkim after due authorization stating that the beneficiaries agreed to sign all the necessary agreements thereafter. NTPC has further submitted that after receipt of intimation of grant of LTA, NTPC requested the beneficiaries to sign LTA agreement with CTU. NTPC made its best efforts to facilitate the process of signing of LTA agreement between CTU and the beneficiaries. The LTA Agreement is an agreement between the statutory nodal planning agency i.e. CTU and the transmission service user to formalize the grant of LTA on the planned transmission system. After signing of LTA agreement, the development of transmission system is to be undertaken by the transmission developer, namely PGCIL which is CTU also in the present case. NTPC has submitted that Clause 24 of the Detailed Procedure made under Connectivity Regulations provides that where the beneficiaries of the generation station are firmed up, and LTA Agreement may be signed by the beneficiaries. In the present case, the beneficiaries of the generating station have been firmed up and the PPAs have been signed with them. NTPC has submitted that the LTA Agreement is an agreement which records commitment of the transmission service user to pay charges to secure investment of the transmission system developer

over the entire life of the transmission system and contains clauses with such effect. Any difference with regard to LTA Agreement can be settled between transmission developer and the beneficiaries only. NTPC in no way can be expected to provide provision acceptable to both the parties but can only facilitate the process of signing of LTA Agreement. NTPC has requested to direct the petitioner to confirm the status of signing of LTA Agreement for the generating station.

13. The petitioner vide affidavit dated 11.2.2016 has submitted that Jharkhand State Electricity Board and Power Department, Government of Sikkim have signed the LTA agreements on 11.06.2015 and 23.6.2015 respectively. The petitioner has submitted that GRIDCO has submitted its application to CTU for grant of long term Access for 748 MW. CTU granted LTA to GRIDCO on 17.8.2015 and LTA Agreement was entered into with GRIDCO on 3.12.2015.

Analysis and Decision:

14. We have considered the submissions of the petitioner and the respondents and perused documents in record. The following issues arise for our consideration:

- (a) Who should sign LTA Agreement in the present case?
- (b) Whether CTU is entitled for grant of Regulatory Approval for Associated Transmission system?
- (c) Whether assets covered in the present petition should be considered for inclusion in PoC under the Central Electricity Regulatory Commission (Sharing of Inter-State transmission and losses) Regulations, 2010 (Sharing Regulations)?

The above issues have been dealt with as under:

Issue No.1: Who should sign LTA Agreement in the present case?

15. NTPC is developing a 1600 MW (2x800 MW) thermal power project at Darpalli in the State of Odisha. Government of India, Ministry of Power has allocated 50% power to home State of Odisha, 35% to other constituents of Eastern Region with unallocated share of 15%. Government of India, Ministry of Power vide its letter dated 27.5.2013 has entrusted PGCIL to implement the evacuation system of the generating station, namely 765 kV D/C Darlipalli-Jharsuguda transmission line under compressed time schedule through regulated tariff mechanism. According to NTPC, the 1st unit of the proposed generating station shall be commissioned in June 2018 and startup power would be required by March, 2016.

16. On 10.4.2013, CTU granted LTA to NTPC. The petitioner has submitted that despite its efforts, it is unable to sign the LTA Agreements with the beneficiaries due to difficulties projected by them. Therefore, the implementation of the transmission system has stalled. The petitioner has submitted that the matter was discussed in the 26th ERPC meeting held on 18.1.2014. In the said meeting, certain constituents, namely West Bengal and Sikkim have informed that since power from the proposed generating station has not yet been allocated to them by Ministry of Power, it would be difficult for them to sign the LTA Agreements.

17. NTPC, vide its affidavit dated 18.6.2015, has submitted that West Bengal State Electricity Distribution Company Limited, Bihar State Electricity Board and Jharkhand State Electricity Board have signed the LTA Agreements. During the course of the hearing on 2.6.2015, learned counsel for the petitioner informed that only West Bengal State Electricity Distribution Company Limited and Bihar State Electricity Board have signed the LTA Agreements. The petitioner vide its affidavit dated 11.2.2016 has informed that Jharkhand State Electricity Board, Power

Department, Govt. of Sikkim and GRIDCO Ltd. have signed their respective LTA Agreements. Since the beneficiaries of the proposed generating station have signed LTA Agreements, the first and second prayers of the petitioner no more survive.

Issue No. 2: Whether CTU is entitled for grant of regulatory approval in the present case?

18. Regulation 3 of the Central Electricity Regulatory Commission (Grant of Regulatory Approval for execution of Inter-State Transmission Scheme to Central Transmission Utility) Regulations, 2010, as amended from time to time (Regulatory Approval Regulations) provides as under:

"3 Scope and applicability

(1) These regulations shall apply to:

(i) an ISTS Scheme proposed by Central Transmission Utility, for which generators have sought long-term access as per the Central Electricity Regulatory Commission (Grant of Connectivity, Long-Term Access and Medium-Term Open Access to the Inter-State Transmission and Related Matters) Regulations, 2009, and for which consultation with Central Electricity Authority and beneficiaries if already identified has been held for setting up the ISTS Scheme, but for which Power Purchase Agreements with all the beneficiaries have not been signed on the date of application.

(ii) an ISTS Scheme for system strengthening/up-gradation, identified by Central Transmission Utility to enable reliable, efficient, co-ordinated and economical flow of electricity within and across the region for which consultation with Central Electricity Authority and beneficiaries if identified has been held. Grant of Regulatory Approval for execution of Inter-State Transmission Scheme to Central Transmission.

(iii) ISTS Scheme proposed by CTU, for which the Central Government authorized Solar Power Park Developer has sought long term access, and for which consultation with CEA and beneficiaries wherever identified has been held for setting up the ISTS scheme and the Solar Power Park Developer undertakes to bear all liabilities on behalf of the solar power generators to be set up in the Solar Park."

As per the above provisions, regulatory approval can be granted for a system strengthening scheme or an ISTS scheme proposed by Central Transmission Utility, for which generators have sought long-term access as per the provisions of the

Connectivity Regulations but for which Power Purchase Agreements with all the beneficiaries have not been signed.

19. Though on the date of filing of the application, all beneficiaries had not signed the PPA, NTPC vide its affidavit dated 19.12.2014 has confirmed that all beneficiaries have subsequently signed the PPAs with NTPC. Therefore, the present case is not covered under the provisions of Regulation 3 of the Regulatory Approval Regulations. There is no necessity for according regulatory approval in this case. Prayer at para 23 (d) of the petition is disposed of accordingly.

Issue No. 3: Whether assets covered in present petition shall be considered for inclusion in PoC under Sharing Regulations?

20. Since the assets being implemented by the petitioner are ISTS in nature, the same shall be considered for inclusion of PoC under the provisions of Sharing Regulations after the commercial operation of the said assets.

21. The petition alongwith IA is disposed of with the above.

Sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson