

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 315/MP/2013

Coram:

Shri Gireesh B.Pradhan, Chairperson

Shri A.K.Singhal, Member

Shri A.S.Bakshi, Member

Date of Order : 12.7.2016

In the matter of

Petition for adjudication of disputes arising out of the open access approval granted to the petitioner for evacuation of electricity and terms and conditions for the Bulk Power Transmission Agreement dated 24.12.2010.

And

In the matter of

PEL Power Limited
8-2-293/82/A/76, Road No. 9A,
Jubilee Hills
Hyderabad-500 033

.....Petitioner

Vs

Power Grid Corporation of India Limited
B-9, Qutab Institutional Area,
Katwaria Sarai, New Delhi-110 016

.....Respondent

Parties Present:

1. Shri Anand K.Ganesan, Advocate, PEL Power
2. Shri S.M. Malik, PEL Power
3. Shri Jagam Mohan Rao, PEL Power
4. Shri A.M. Pavgi, PGCIL
5. Shri Swapnil Verma, PGCIL
6. Ms. Sunidhi Saran, PGCIL

ORDER

The petitioner, PEL Power Limited, has filed the present petition seeking adjudication of disputes arising with the respondent, PGCIL in relation to the long term open access granted to it and the subsequent force majeure events

that have arisen leading to the frustration of the contract entered into between the petitioner and the Respondent. The petitioner has submitted as under:

(a) In the year 2007, it had proposed to establish a 1050 MW thermal generating station in the Nagapattinam district in the State of Tamil Nadu and has taken various steps such as requisite approvals and permissions from the concerned authorities. The petitioner has incurred substantial expenditure towards the implementation of the project and has mobilized the required infrastructure including land, water, fuel, etc.

(b) The petitioner has obtained approval from the Ministry of environment and forests, CRZ approval from Maritime authorities, etc.

(c) On 20.10.2008, the petitioner made an application to CTU for grant of long-term open access for 987 MW (after deducting auxiliary consumption) accompanied by fee of Rs. 19,67,752/- for the open access application as well as for the system studies to be undertaken by PGCIL. On 10.12.2010, CTU granted Long Term Open Access to the petitioner.

(d) On 24.12.2010, a Bulk Power Transmission Agreement (BPTA) was executed between the petitioner, PGCIL and IL&FS Tamil Nadu Power Company Limited, which had also proposed to establish a 1200 MW generating station in the vicinity of the petitioner near Cuddalore in Tamil Nadu.

(e) Apart from the above, there was other 1320 MW generating station proposed to be established by NSL Power Pvt. Ltd. in the vicinity of the petitioner's plant site which was also granted the LTOA by CTU on

10.12.2010. However, the said generating station is also under jeopardy due to force majeure conditions on account of restrictions imposed by the Government Authorities on development of generating stations in the said area.

(f) In terms of the BPTA, the petitioner furnished bank guarantee of Rs. 49.35 crore to the Respondent which was valid till 30.4.2015. However, due to non-availability of Consent for Establishment (CFE) from Tamil Nadu Pollution Board, the petitioner has been prevented from establishing the generating station as envisaged.

(g) In the 3rd Co-ordination Committee Meeting held on 1.4.2011, non-availability of CFE was informed to PGCIL which was further reiterated in the subsequent meeting held on 9.9.2011 and 2.12.2011.

(h) The force majeure condition was intimated to PGCIL within a few months of the execution of BPTA and at this stage, no activity was undertaken by PGCIL to construct evacuation transmission facilities in terms of the BPTA. PGCIL has also not acquired land to establish the sub-station for providing the evacuation facility to the proposed generating station of the petitioner.

(i) The acquisition and possession of land is not completed to establish 400/765 kV pooling sub-station. The possession of about half of the land was given to PGCIL only about 6 months back and a substantial portion of the land is still to be acquired. The contract for the onward transmission lines is also not awarded and no development work has begun. For the

above purpose, PFC Consulting Limited had incorporated a wholly owned subsidiary Special Purpose Vehicle (SPV), namely Nagapattinam-Madhugiri Transmission Co. Limited (Nagapattinam-Salem 765 kV D/C line and Salem-Madhugiri 765 kV S/C line) to develop the system and to take over the SPV. However, PGCIL has been taking the position that once the BPTA is executed and the bank guarantee has been provided by the Petitioner, the petitioner has to necessarily relinquish the entire bank guarantee whether or not the generating station is established and it is entitled to invoke the bank guarantee.

(j) The petitioner has incurred an expenditure of Rs. 300 crore on the project and has suffered substantial loss and prejudice on account of non-availability of the pollution control board clearance.

(k) The open access is to be effective from June, 2013 subject to the rights and obligations provided in the BPTA. Even in terms of the BPTA, the open access is to be provided only from the date of availability of the evacuation transmission system of the BPTA. The evacuation system up to the generating switchyard is required to be constructed and commissioned by the petitioner.

(l) The non-development of the generating station by the petitioner is purely on account of force majeure conditions and is not in any manner attributable to any act of commission or omission on the part of the petitioner. In the circumstances, the petitioner cannot be expected or required to perform its obligations under the provision of the BPTA with the respondent.

(m) The respondent is taking a narrow and pedantic view by claiming that it is not liable to return the bank guarantee. The respondent, without taking any steps to establish the transmission system, denying to refund the bank guarantee of Rs. 49.35 crore.

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

“(a) Hold and declare that the rights and obligations of the parties under the BPTA have been frustrated on account of the existence of the force majeure condition in the non-development of the generating station by the Petitioner.

(b) Hold and declare that the Respondent is not entitled to invoke or otherwise retain the bank guarantee of Rs. 49.35 crore provided by the Petitioner to the Respondent.

(c) Direct the Respondent to refund the bank guarantee of Rs. 49.35 crore provided by the Petitioner.

(d) Pass an order in favour of the Petitioner and against the Respondent granting the costs of the present proceedings.”

3. The matter was heard on 4.3.2014 and notice was issued to the respondent to file its reply.

4. PGCIL, vide its reply dated 3.4.2014, has submitted as under:

(a) In the Nagapattinam/Cuddalore area, at the time of planning of transmission system i.e. when the application for LTOA was made by petitioner, large number of IPPs had evinced interest in setting up generation project. The total quantum to be injected in this area was about 8340 MW (ILFS-1200 MW, PEL-1050 MW, PPN Power-1080 MW, NSL-

1320 MW, Chettinad-1320 MW, Sindhya Power-1050 MW, Empee Power-1320 MW). All the above generating projects had indicated their commissioning during end 11th or early 12th plan. Looking into such a high potential of availability of power in this vicinity, a high capacity 765 kV transmission system as planned from Nagapattinam/Cuddalore area up to Padghe (Mumbai) via Salem, Madhugiri, Narendra and Kolhapur. However, the said generating stations have not been commissioned as per their actual commissioning. In fact, such a huge plan of generating additions is one of the reasons that had caused CEA and CTU to project Southern Region to be surplus power. The effect of such misleading information is that Southern Region instead of becoming surplus is facing huge shortage of power due to non-availability of transmission system.

(b) The progress submitted by the petitioner demonstrated that its project is likely to take-off soon and it left no doubt to CTU about its materialization. Therefore, petitioner's contention that he had informed non-availability of CFE in April, 2011 is irrelevant. In fact, the petitioner had informed that CFE is expected to be available in short time. The petitioner himself had informed in the petition that the construction BG is subsisting till 30th April, 2015 i.e. the petitioner was going ahead with the project and it is now an afterthought to withdraw LTA and seek return of BG.

(c) The petitioner's contention that no work had been taken up for transmission system and no expenditure has been made till date is entirely wrong. In fact, the sub-station land is in possession of PGCIL and construction work is in full swing. The Nagapattinam pooling station is expected to be commissioned by October, 2014. PGCIL, after grant of

transmission licence by Commission for the portion of transmission system, is implementing the transmission project.

(d) The Commission in similar case vide order dated 30.4.2013 in Petition No. 153/MP/2012 had clearly clarified that the petitioner is not entitled for return of BG and the respondent was granted liberty to deal with BG in accordance with connectivity regulation."

5. The petitioner in its rejoinder dated 19.4.2014 has submitted as under:

(a) The minutes of the Joint Coordination Committee meetings and also the communication exchange between the parties clearly show that in the year 2011, the petitioner informed PGCIL that due to non-availability of CFE, it is not in a position to commission the project as per scheduled date. At that time, since the bidding process for development of the transmission system was not complete, there was no question of any work being undertaken by PGCIL.

(b) PGCIL has not given any details of work undertaken by it, the status of the land for the sub-station, details of the contract entered into with the contractors and expected date of commissioning of the transmission system. On the other hand, it cannot be that the transmission system is planned and established with the knowledge that it cannot be used by the petitioner and thereafter it is claimed that the system is stranded.

(c) The reliance placed by PGCIL in order dated 30.4.2013 in Petition No. 153/MP/2012 is misplaced and in fact it supports the case of the petitioner. In the said order, the Commission held that the generator was only seeking

to take advantage of subsequent events and the contentions raised by the generator were an afterthought. In the present case, the *bona fide* of the petitioner cannot be in doubt as the entire factual aspects were made available to PGCIL in the year 2011. Even before starting the construction work of the transmission system, PGCIL was fully aware that the petitioner is not in a position to establish its project due to reasons beyond its control.

6. During the course of hearing on 17.6.2014, the learned counsel for the petitioner submitted that non-availability of CFE was informed to PGCIL in the 3rd Joint Co-ordination Committee meeting held on 1.4.2011 which was further reiterated in the subsequent meetings held on 9.9.2011 and 2.12.2011. Learned counsel for the petitioner further submitted that on 16.12.2011, the petitioner informed PGCIL that due to force majeure event, it is not able to establish the generation project and expressed its inability to sign the Transmission Service Agreement. PGCIL in its letter dated 17.1.2012 informed the petitioner that the transmission corridor cannot be put on hold on account of uncertainty of the generating station and threatened to encash the bank guarantee. Learned counsel for the petitioner submitted that as per Article 9 of the BPTA, no party shall be liable for any claim for any loss or damage arising out of the failure to carry out the terms of the agreement if such failure is due to force majeure events such as war, rebellion, etc. including the causes beyond the control of the defaulting party. Learned counsel for the petitioner submitted that on 2.9.2013, the petitioner requested PGCIL to return the bank guarantee of Rs. 49.35 crore.

7. Learned senior counsel for PGCIL submitted that the Order of Govt. of Tamil Nadu dated 8.5.1998 provides for maintenance of 5 km distance from Cavery for establishment of any project. The petitioner was aware of the requirement and should have planned the project accordingly. Tamil Nadu Pollution Control Board made a reference to Govt. of Tamil Nadu for relaxation of G.O. dated 8.5.1998 two years back. The petitioner has not indicated what action has been taken by the petitioner to expedite the matter. The petitioner should have approached the High Court against the decision of Tamil Nadu Govt./Tamil Nadu Pollution Control Board seeking a direction to take decision on its application. Learned senior counsel for PGCIL further submitted that the frustration is self induced and it cannot be a ground for force majeure. Learned senior counsel in support of its contention relied upon the judgments of Hon`ble Supreme Court in J.C Shah Vs Ramaswami (AIR 1969 Supreme Court 110) and U.P. State Sugar Corporation Vs. Sumac International Limited [(1997) 1 SCC 568].

8. *Per Contra*, learned counsel for the petitioner submitted that the judgments relied upon by the learned senior counsel for PGCIL are not relevant in this case. He further submitted that the petitioner was not ignorant about the Government order dated 8.5.1998 relating to maintenance of distance of 5 km from Cavery which order pertains to tannery and textile industries and does not apply to the petitioner who is developing a generation project. Further, the generating station was in fact not within 5 km from the tail end of the Cauvery river which was also confirmed by the expert team from Anna University. The Public Works Department has also certified that the water body ends at the Tail End Regulator of Cauvery river and downstream is only a drain carrier. These

are independent and expert certifications to establish that the power project was not even governed by the said Government Order. Learned counsel further submitted that the petitioner has also obtained the Environmental Clearance and the CRZ clearance and could not envisage the project not being in a position to be set up for want of pollution clearance. Learned counsel submitted that even assuming that the petitioner was in breach of contract in December, 2011 and force majeure events have not taken place, PGCIL would only be entitled for recovery of loss suffered as on that date. Learned counsel in support of its contention relied upon the judgment of the Hon`ble Supreme Court in the case of Fateh Chand Vs. Balkishan Dass [(1994) 1 SC 515] (para 15)] and submitted that since as on December, 2011, PGCIL had not incurred any expenditure, it could not have incurred any loss on account of the petitioner.

9. The petitioner vide affidavit dated 3.7.2014 has placed on record the details of various communications and documents exchanged with TNPCB with regard to Consent for Establishment (CFE) to be granted for the project.

10. PGCIL vide its affidavit dated 6.8.2014 has submitted that the petitioner`s contention that no work had been taken up for transmission system and no expenditure had been made till date is entirely incorrect. In fact, the sub-station land is in possession of PGCIL and construction work is full swing. The Nagapattinam pooling sub-station is likely to be commissioned by October, 2014. PGCIL has further submitted that after grant of transmission licence, it had started implementation of the project. In somewhat identical situation in petition No. 153/MP/2012, after grant of LTA, the project proponent failed to

sign the LTA agreement and sought to withdraw the LTA already granted and return of the bank guarantee on the alleged non-availability of gas as force majeure condition. The Commission vide order dated 31.4.2013, held that the project proponent was not entitled for the return of bank guarantee and PGCIL was granted at liberty to deal with bank guarantee in accordance with Connectivity Regulations.

11. The petitioner, vide its letter dated 15.10.2014 requested PGCIL to provide the following information:

(i) The status of the project in December, 2011 when the petitioner had informed PGCIL about the force majeure condition.

(ii) The expenditure incurred by PGCIL up to December, 2011 in relation to the transmission system being created for the petitioner, which has resulted in damages to PGCIL.

(iii) The steps taken by PGCIL for mitigation of damages after December, 2011, if any.

(iv) Whether PGCIL had informed the Commission about the project of the petitioner not coming up in view of the non-grant of consent for establishment when the Commission was considering the grant of transmission licence which was granted on 9.4.2013.

12. Learned counsel for the petitioner during the hearing on 9.12.2014 submitted that clause 9 of the BPTA provides for the force majeure, which is any event beyond the reasonable control of the parties. The non-availability of CFE falls within the scope of the said clause. Learned counsel further

submitted that the petitioner vide letter dated 16.12.2011 by invoking force majeure clause informed PGCIL that due to non-availability of CFE, the pooling station to be constructed for the petitioner be deferred. It was also informed that as and when the project comes up, the petitioner may be considered as a part of the second pooling station which is planned. Learned counsel submitted that in December 2011, the petitioner had sought information from PGCIL regarding investment made by it on the project. However, PGCIL did not provide the information to the petitioner. Learned counsel submitted that the quantum of damages is to be determined as on the date when the breach occurred. In this regard, learned counsel for the petitioner relied upon the judgment of the Supreme Court in Fateh Chand Vs Balkishan Dass {(1964)1 SCR 515: AIR 1963 SC 1405} (para 15) and submitted that PGCIL cannot rely on subsequent actions taken and expenditure incurred by it claim the same as damages from the petitioner.

13. *Per contra*, the learned counsel for PGCIL submitted the petitioner sought information from PGCIL after the petition was reserved for order. He further submitted that the communications/representations of the petitioner only indicate that the generation project is likely to take-off soon and the petitioner did not write to withdraw the LTA. Therefore, PGCIL was not in doubt about its materialization.

14. PGCIL in its written submission dated 15.12.2014 has submitted as under:

(a) As per additional documents filed by the petitioner on 3.7.2014, the petitioner has diligently pursued the clearance as per G.O. 127 of 1998.

Despite its best efforts it was not able to obtain the same.

(b) The petitioner vide its letter dated 16.12.2011 informed the CTU not to proceed with the development of associated transmission system from that date.

(c) The purpose of Bank Guarantee (BG) in BPTAs is to ensure seriousness and commitment from the generators while ensuring the sanguinity of the transmission system developer. The pleadings and submissions of the petitioner do not correspond to its prayers.

(d) The Consent for Execution (CFE) could not be obtained by the petitioner due to its own fault. PGCIL has submitted the following details with regard to CFE.

Date	Events
15.6.2010	Petitioner applies for clearances with TNPCB
10.8.2010	<p>TNPCB informs Petitioner that it was returning the application stating that "the unit has not obtained relaxation of G.O. 127 dated 8.5.2010 from the Government....</p> <p>TNPCB also clarifies that it had not rejected the petitioner's application on substantive grounds but "for want of (certain) particulars".</p> <p>Thus the petitioner was clearly at fault in properly and adequately pursuing the CFE clearance himself.</p>
24.10.2010	BPTA is signed between the petitioner and the respondent
10.12.2010	LTOA is granted to the petitioner
3.2.2011	It is only 6 months later since the TNPCB letter, that the petitioner addresses the concerns raised in the previous TNPCB letter dated 10.8.2010. This delay is clearly and solely attributable to the Petitioner itself.
11.3.2011	Bank Guarantee is executed.

(e) The above table clearly shows that the petitioner was at fault for having waited for six months in re-applying for the CFE.

(f) The petitioner has continuously represented that it was close to obtaining the CFE (Consent for Execution) and has not signified the event of force majeure till filing the petition. The petitioner in December 2011 never informed PGCIL not to develop the transmission system.

(g) The petitioner vide its letter dated 16.12.2011 requested PGCIL to defer its requirement for the present transmission system associated with the IPPS of Nagapattinam/Cuddalore area-package-A (Nagampattinam-Salem-Madhugiri).

(h) The petitioner vide letter dated 24.1.2012, had expressly informed PGCIL that it is interested to construct the generating station and required the proposed Transmission System. In the said letter, the petitioner requested for extension of time up to 31.7.2012 to sign the TSA and not to revoke the LTA and Bank Guarantee.

(i) In the JCC Meetings of Southern Region held on 1.4.2011, 9.9.2011 and 2.12.2011, the petitioner consistently maintained that it would soon confirm the status of grant of CFE and thus continued to represent that the associated transmission system is required to be built for it. Since the associated transmission system is in the final stages of construction, it would be inequitable if PGCIL is restricted to invoke the Bank Guarantee.

15. The petitioner in its written submission dated 26.12.2014 has submitted as under:

(a) The petitioner has taken the following steps to establish the generating station.

S. No.	Approval	Date on which obtained
1	Environmental Clearance from MoEF	26.3.2010
2	CRZ clearance from MoEF	19.5.2011
3	NOC for stack height from Airport Authority of India	21.12.2009
4	Indigenous Coal Linkage from MoC	27.8.2010
5	Permission for drawal of Sea Water from TNMB	6.7.2008
6	Forest & wild life	11.6.2010
7	Department of Archaeology	5.1.2011
8	Jetty/Port	11.2.2009
9	Power Trading-MOA with PTC	7.1.2010
10	Power Evacuation-BPTA with PGCIL	24.12.2010
11	Financial Closing-Sanction of Term Loan by Axis Bank	4.1.2011

(b) The project site was located along the sea coast of Bay of Bengal in the State of Tamil Nadu and in the vicinity of the Kaveri delta region. For the said purpose, Consent For Establishment (CFE) was required from the Tamil Nadu Pollution Control Board. The non-availability of the CFE is the issue in the present proceedings.

(c) On 10.12.2010, CTU granted LTOA to the petitioner. On 24.12.2010, the petitioner executed BPTA with PGCIL and IL&FS Tamil Nadu Power Company Limited, which had also proposed to establish a 1200 MW generating station in the vicinity of the petitioner near Cuddalore in the State of Tamil Nadu.

(d) There was another generating station with a capacity of 1320 MW proposed to be established by NSL Power Pvt. Ltd in the vicinity of the petitioner's project site who was also granted the LTOA by CTU 10.12.2010. However, due to force majeure event on account of restrictions

placed by the Government Authorities on development of generating stations in the said area, the said generating station is also under jeopardy.

(e) The petitioner furnished bank guarantee for an amount of Rs. 49.35 crore to compensate for the loss suffered PGCIL in case of any default on the part of the petitioner to abide the terms of the open access arrangement.

(f) The basic premise on which PGCIL is proceeding that the bank guarantee amount of Rs. 49.35 crore is to be appropriated in full is misconceived. The BG is only a security provided and not a measure of liquidated damages under the BPTA. There is no provision in the BPTA or otherwise in the Commission`s Regulations that the entire amount of BG provided is to be treated as liquidated damages and shall be invoked in case there is a breach by a party. PGCIL has not given any details of the amounts incurred by it on account of the actions of the petitioner. The petitioner vide its memo had sought information from PGCIL in this regard. In response, no reply has been filed by PGCIL. The petitioner has placed on record the evidence that there was no expenditure incurred by PGCIL to establish the transmission system till December 2011 when the petitioner had claimed force majeure event. The investment approval for the transmission system was accorded by the Board of Directors of PGCIL in January, 2013 whereas the force majeure event was communicated to PGCIL on 16.12.2011. Therefore, PGCIL cannot claim damages for breach of contract in December, 2011.

(g) In the meetings of JCC for Southern Region held on 1.4.2011 and 9.9.2011, the petitioner informed that CFE is yet to be issued and is likely to be received shortly. Subsequently, in the JCC meeting held on 2.12.2011, the petitioner informed that CFE was still pending and requested for two weeks time to confirm the status of CFE. The petitioner vide its letter dated 16.12.2011 invoking the provisions of force majeure event requested the petitioner to defer its requirement for the present transmission system associated with the IPPs of Nagapattinam/Cuddalore area-Package A (Nagapattinam-Salem- Madhugiri) due to non-availability of CFE. The petitioner further requested PGCIL to consider it for the 2nd pooling station proposed by PGCIL.

(h) In the request for deferring, the petitioner stated that the present transmission system is not required and consider it for the 2nd pooling station as and when proposed and established by PGCIL. It cannot be the case that when the petitioner sought for being considered as part of the 2nd pooling station, it was to be considered for both the 1st pooling station and the 2nd pooling station. It can only mean that the petitioner is not considered for the 1st pooling station.

(i) In response to force majeure letter dated 16.12.2011, PGCIL vide its letter dated 17.1.2012 informed that the timeframe for the petitioner's generation project was uncertain and the transmission corridor cannot be put on hold and PGCIL shall not be able to reserve capacity in the transmission corridor for a project which is uncertain. PGCIL, in the said letter dated 17.1.2012, requested the petitioner to sign the TSA of PFC

Consulting Ltd. failing which action for encashment of construction BG shall be initiated. In response, the petitioner vide its letter dated 24.1.2012 clarified that it is not abandoning the project but is interested to establish the same and would require the proposed transmission system. The proposed transmission system refers to the 2nd pooling station which was proposed by PGCIL in the meeting held on 2.12.2011.

Analysis and decision:

16. We have heard the learned counsels of the petitioner and the respondent and perused documents on record. The following issues arise for our consideration.

(a) Whether non-grant of Consent for Execution (CFE) is a force majeure event in accordance with clause 9 of the BPTA?

(b) What should CTU do when number of Power Developers are facing force majeure situation? Whether CTU does review of implementation of transmission corridors in view of force majeure situation?

(c) Whether the petitioner has sought only deferment of its Associated Transmission System or has sought relinquishment of LTA under Regulations.

(d) Whether the petitioner is entitled for return of Bank Guarantee?

These issues have been discussed in the succeeding paragraphs.

Issue No. 1: Whether non-grant of Consent for Execution (CFE) is a force majeure event in accordance with clause 9 of the BPTA?

17. Let us first consider the provisions of clause 9 of the BPTA with regard to force majeure event which provides as under:

"9. The parties shall ensure due compliance with the terms of this Agreement. However, no party shall be liable for any claim for any loss or damage whatsoever arising out of failure to carry out the terms of the Agreement to the extent that such a failure is due to force majeure events such as war, rebellion, mutiny, civil commotion, riot, strike, lock out, fire,

flood, forces of nature, major accidents, act of God, change of law and any other causes beyond the control of defaulting party. But any party claiming the benefit of this clause shall satisfy the other party of the existence of such an event and give written notice of 30 days to the other party to this effect. Transmission/drawal of power shall be started as soon as practicable by the parties concerned after such eventuality has come to an end or ceased to exist."

18. On 20.10.2008, the petitioner made an application to CTU for grant of LTA for 987 MW. On 10.12.2010, CTU after carrying out of the necessary system studies granted LTA to the petitioner. On 24.12.2010, the petitioner entered into Bulk Power Transmission Agreement (BPTA) along with ILFS & Tamil Nadu Power Company Limited which had also proposed the establishment of a 1200 MW generating station in the vicinity of the Petitioner near Cuddalore in the State of Tamil Nadu with PGCIL and submitted Bank Guarantee of Rs. 49.35 crore in terms of BPTA. The petitioner has acquired the entire land for construction of power plant, achieved financial closure, completed the bidding process for award of the EPC contract, obtained coal linkage and various other permissions and approvals required for the project including Environmental Clearance and CRZ clearance except for no objection/clearance certificate i.e. Consent for Establishment (CFE) from Tamil Nadu Pollution Control Board (TNPCB) to establish its generating station.

19. In the 3rd, 6th and 7th Joint Coordination Committee meetings held on 1.4.2011, 9.9.2011 and 2.12.2011 respectively, the petitioner informed PGCIL that its project has already been granted all the statutory clearances. However, CFE for the project is yet to be issued by the Tamil Nadu Pollution Control Board. The petitioner has submitted that through various communications, the petitioner informed PGCIL that due to force majeure, it is not in a position to

establish the generating station and to use the transmission open access to be established by PGCIL.

20. The petitioner vide its letter dated 16.12.2011 explaining the force majeure situation informed PGCIL that due to non-availability of CFE, it is not in a position to meet the commissioning schedule of April, 2014 and requested to defer its requirement for the present transmission system associated with the IPPs of Nagampattinam/Cuddalore area-package-A (Nagapattinam-Salem Madhugiri). Relevant portion of the said letter dated 16.12.2011 is extracted as under:

“In view of the above the project construction could not be taken up although all other clearances/approvals/permissions including FC are in place. As such we have approached the Ministry of Power, Gol and also represented to CEA to help us in the matter. A copy of the representation has already been handed over to you in person during the co-ordination meeting on 2nd December, 2011. **For reasons beyond our control a force-majeure situation of TNPCB not granting the CFE so far, we would not be in a position to meet the commissioning schedule of April 2014. Hence, we request you to defer our requirement for the present transmission system associated with the IPPs of Nagapattinam/ Cuddalore area- Package A (Nagapattinam-Salem-Madhugiri).** As suggested by you in Para 7.1.f of the Minutes as and when the second pooling station is proposed in the near future when NSL, EMPEE, Sindya Power and Chettinad power, etc., achieve progress, our requirement may also be considered for the same pooling station and the sequential transmission system that would be required/proposed depending on the load.”

Perusal of the said letter dated 16.12.2011 reveals that the petitioner informed PGCIL that due to force majeure conditions, it would be not a position to execute the project and requested to defer its requirement from the present transmission system and consider it for the 2nd pooling station as and when proposed and established by PGCIL. In the said letter, the petitioner has pleaded force majeure and has stated that the power project not be considered for the Pooling Station being planned. The petitioner has submitted that it be considered as a part of the second pooling station as and when it is proposed.

In the 7thJCC meeting held on 2.12.2011, PGCIL informed that the projects which are yet to obtain CFE may be considered only as a part of the 2nd pooling station. The relevant portion of said 7th JCC meeting is extracted as under:

“The Tamil Nadu Thermal Power Producers Association (TTPPA) has earlier made representation & representative of PEL Power has also requested to consider establishment of pooling station near to the Nagapattinam area. Upon this ED, POWERGRID explained that location of pooling station has been decided considering various constraints including LILO of existing Neyveli-Trichy 400 kV line for integration of pooling station with ISTS grid which cannot be made very long. However, in future if the generation projects in the Nagapattinam area also shows good progress, as they are yet to receive CFE from TNNPCB, looking into the quantum of power a second pooling station may be planned at other location. He also informed that because of one generation project, the others evacuation shall not get effected as IL&FS is very advance in the site activities.”

21. We are of the view that the petitioner has acted in a *bona fide* manner. The petitioner has kept PGCIL informed of the status on a periodic basis. Even in the meeting held on 2.12.2011, the petitioner informed PGCIL that it will confirm the status within two weeks. The petitioner vide its letter dated 16.12.2011 informed PGCIL about the non-availability of CFE and it being a force majeure condition and requested that the petitioner not be considered for the Pooling station being planned. At that stage, no activity was undertaken by PGCIL. Even as per the tariff petition filed by PGCIL for the Pooling Station in question, the Investment Approval itself for the project was taken only in January, 2013. In the circumstances above, we are of the view that PGCIL was informed well in time of the non grant of CFE.

22. PGCIL has relied upon the Commission's order dated 30.4.2013 in Petition No. 153/MP/2012 in which the Commission held that the petitioner is not entitled for return of BG and the respondent is at liberty to deal with BG in

accordance with Connectivity Regulations. Relevant portion of said order is extracted as under:

"14. In the instant case, the petitioner made an application to the respondent which is the nodal agency for grant of LTA for 360 MW. The respondent after complying with the procedure prescribed by this Commission and carrying out of the necessary system studies, decided to grant LTA to the petitioner. The decision was communicated to the petitioner by the respondent under letter dated 17.8.2011. The respondent advised the petitioner to execute the LTA agreement and furnish the Bank Guarantee for the construction phase in accordance with the Connectivity Regulations since augmentation of transmission capacity is required. The respondent while conveying grant of LTA under letter dated 17.8.2011 inter alia informed the petitioner that in case of non-signing of LTA agreement within 30 days of receipt of the draft agreement from the respondent, LTA would be treated as cancelled and fresh application would be required. The respondent sent the final agreements by e-mail dated 24.10.2011 (Annexure P-8 of the petition) suggesting a meeting at the respondent's office on 28.10.2011 in view of urgency in finalising the LTA agreement. It appears that the petitioner did not participate in the meeting proposed for 28.10.2011 as the petition is silent in this regard. The petitioner by its letter/e-mail dated 2.11.2011 sought some clarifications. The matter does not seem to have been pursued further and the petitioner developed cold feet. After issue of the advisory by Ministry of Power on 14.3.2012, the petitioner approached the respondent for cancellation for LTA and return of the Bank Guarantee. We do not find any linkage between the Ministry of Power advisory regarding the non-availability of natural gas and the petitioner's decision not to sign the LTA Agreement. In fact the petitioner's decision to withdraw the LTA started when it failed to sign the LTA Agreement within one month of grant of LTA i.e. by 17.9.2011 and tried to buy time by seeking some clarification. The petitioner appears to have seized the opportunity to withdraw the application citing force majeure after the issue of Ministry of Power advisory on 14.3.2012 regarding non-availability of natural gas. The purpose of application Bank Guarantee is to ensure commitment of the project developer to use the transmission line for which LTA has been sought and to give comfort to the CTU that the transmission line would not be stranded after it is built. The system to which LTA was sought was a part of the High Capacity Power Transmission Corridor-XI (Transmission System Associated with IPP projects in Nagapattinam/Cuddalore Area) for which the regulatory approval has been accorded by this Commission based on the commitment of the generation projects in that area including the petitioner. If the project developers are allowed to withdraw their applications in this manner, then the transmission planning cannot be effectively done and the transmission capacity will remain stranded leading to under-recovery of the project cost.

15. In view of the above, the petitioner is not entitled to return of the Bank Guarantee as prayed for in the petition and the respondent is at liberty to deal with the Bank Guarantee in accordance with the Connectivity Regulations. The petition is accordingly disposed of."

23. It is noted that said case was pertaining to application BG where LTA Agreement was not signed and construction BG was not submitted. Therefore, there is no force in PGCIL's contention that the said case is squarely applicable to present case.

24. Similarly, Hon`ble Appellate Tribunal for Electricity vide its judgment dated 15.4.2015 in Appeal No. 197 of 2014 had observed as under:

“32. Since the Appellant did not sign the LTAA, the Bank Guarantee was encashed. The question is whether the alleged force majeure conditions furnishes a good ground for the Appellant to contend that the Bank Guarantee ought not to have been encashed. **The Connectivity Regulations do not anywhere state that if the applicant is able to prove the existence of any circumstances beyond its control or existence of any force majeure conditions, which prevented it from performing the contract, its Bank Guarantee should not be encashed.** The Connectivity Regulations do not prohibit the LTA applicant from withdrawing its LTA application. The Connectivity Regulations provide that in the event the LTA applicant withdraws LTA application, it will not be required to sign the LTAA but it will have to forgo the Bank Guarantee furnished by it along with the LTA application. The Bank Guarantee can then be encashed by the nodal agency. The purpose behind this provision is correctly stated in the impugned order and we concur with the said reasoning. The purpose behind the requirement of furnishing Bank Guarantee and the provisions for its encashment if the LTAA is not signed is to ensure commitment of the project developer to use the transmission line for which LTA has been sought. It gives assurance to Respondent No.1 that the transmission line would not be stranded after it is built. If the LTA applicants are allowed to withdraw the LTA applications without any deterrent like encashment of Bank Guarantee, then the purpose behind the scheme of grant of LTOA will be frustrated. We, therefore, find encashment of the Appellant's Bank Guarantee to be perfectly legal.

33. Assuming that the Appellant's contention about the existence of force majeure conditions is correct, so long as Respondent No.1 by its acts of omission or commission has not contributed to the Appellant's being unable to commence operation of its power plant, Respondent No.1 cannot be held responsible for it and encashment of Bank Guarantee cannot be faulted on that count.

25. We have gone through the aforementioned judgment. The above judgment was given in a case where the appellant had given application BG & was granted LTA by CTU but the appellant did not sign either LTA or BPTA. However, in the present case, there is a BPTA where a clause regarding Force Majeure is provided.

26. ATE in the said judgment has observed that there is no provision in the Connectivity Regulations in regard to circumstances beyond its control or existence of any force majeure conditions or the consequences thereof. However, in the present case the BPTA explicitly provides for a force majeure condition and also the consequence. Perusal of the Article 9 of the BPTA reveals that any party claiming benefits under Article 9 of the BPTA is required to satisfy the other party of the existence of such force majeure event and give written notice of 30 days to the other party to this effect. Article 9 of the BPTA further provides that transmission/drawl of power shall be started as soon as practicable by the parties concerned after such eventuality comes to an end or ceases to exist. It is noted that Article 9 of the BPTA does not envisage a case of abandoning the project because of force majeure events. It provides only for deferment of the transmission system in view of force majeure events. It also provides that transmission/drawal of power to be started as soon as practicable by the parties concerned after such eventuality comes to an end or ceases to exist. In view of the above findings, we are of the view that the petitioner's case does not fall under Article 9 of the BPTA. Therefore, the petitioner is not entitled for any relief under Article 9 of the BPTA.

Issue No. 2: What treatment should be done by CTU for such Power Developers for whom comprehensive transmission planning has been done, are facing force majeure situation? Whether CTU should review implementation of transmission corridors in view of force majeure situation?

27. PGCIL has submitted that the petitioner in JCC meeting informed that it is in the process of getting clearance from TNPCB and requires the proposed transmission system. We have perused the minutes of JCC meetings held on 1.4.2011, 9.9.2011 and 2.12.2011. During the 6th JCC meeting held on 9.9.2011, PGCIL had also observed that not only the petitioner but some other developers are facing problem of non-grant of CFE and informed that the Empowered Committee had recommended a joint site visit by CEA and CTU to

get first hand assessment of the various projects at site. However, CTU has never appraised the Commission about the outcome of the joint visit by CEA and CTU.

28. During 7th JCC meeting held on 2.12.2011, PGCIL had observed as under:

“.... in future if the generation projects in the Nagapattinam area also shows good progress, as they are yet to receive CFE from TNPCB, looking into the quantum of power a second pooling station may be planned at other location. He also informed that because of one generation project, the others evacuation shall not get effected as IL&FS is very advance in the site activities.”

29. The petitioner vide its letter dated 16.12.2011 informed PGCIL about the non-availability of CFE and it being a force majeure condition and requested that the petitioner not be considered for the pooling station being planned. In response, PGCIL vide its letter dated 17.1.2012 replied as under:

“Here it may be mentioned that the subject common transmission system has been planned for IPPs including PEL generation project in the Nagapattinam/Cuddalore area. Hence, due to uncertainty of PEL generation project, development of transmission corridor cannot be put on hold, as it shall adversely affect the power evacuation from other generation projects in the area. Further, POWERGRID shall not be able to reserve the capacity in the transmission corridor for a project which is uncertain”

30. Perusal of the minutes of 7th JCC meeting reveals that PGCIL was aware that not only the petitioner but other generation developers in the region are also facing difficulties due to non-grant of CFE by TNPCB. The petitioner vide its said letter dated 16.12.2011 *inter alia* requested PGCIL to defer its requirement for the present transmission system associated with the IPPs of Nagapattinam/Cuddalore area-Package A (Nagapattinam-Salem-Madhugiri) and to consider its requirement with the construction of the proposed second pooling station in the area. However, PGCIL did not pay heed to the requests made by the petitioner and in fact started the process of taking investment

approvals, etc. much after the petitioner claimed force majeure and to consider the petitioner for the second pooling station.

31. Section 38 of the Act deals with function of the Central Transmission Utility.

Section 38 of the Act is extracted as under:

“Section 38. (Central Transmission Utility and functions):

(1)

(2) The functions of the Central Transmission Utility shall be –

(a) to undertake transmission of electricity through inter-State transmission system;

(b) to discharge all functions of planning and co-ordination relating to inter-State transmission system with –

(i) State Transmission Utilities;

(ii) Central Government;

(iii) State Governments;

(iv) generating companies;

(v) Regional Power Committees;

(vi) Authority;

(vii) licensees;

(viii) any other person notified by the Central Government in this behalf;

(c) to ensure development of an efficient, co-ordinated and economical system of inter-State transmission lines for smooth flow of electricity from generating stations to the load centres;

.....”

A close reading of above section reveals that CTU has been vested with the functions of planning and coordination relating to inter-State transmission system. While carrying out the planning, CTU is not only required to co-ordinate with project developer but also has been vested with the responsibility to ensure development of efficient, coordinated and economical system of transmission lines for smooth flow of electricity from the generating station to the load centres.

32. CTU should take periodic review of progress of generating projects and its transmission system and re-plan/review the transmission plans in case there is adverse progress in generation projects. The review of transmission system

would depend upon status of execution of transmission system. In case works for execution of transmission system has not been awarded, CTU can re-plan according to system studies at Standing Committee Meeting. In case works for execution of transmission project has been awarded and need arises to re-plan, CTU should discuss the same at Standing Committee Meeting and endeavour to ensure that transmission system required for the system conveying different meaning is only built and beneficiaries not to be saddled with charges of the system which is not required. It is also noted that PGCIL never brought difficulties faced by the generators for which evacuation systems were planned by CEA and CTU to the notice of the Commission. In our view, PGCIL has not discharged the vital responsibilities assigned to it under the Act with respect to transmission planning.

Issue No. 3: Whether the petitioner has sought only deferment of its associated transmission system or has sought relinquishment of LTA granted to it?

33. The petitioner, vide its letter dated 16.12.2011 explaining the force majeure event informed PGCIL that it is not able to meet the commissioning schedule of April, 2014 and requested to defer its requirement for present transmission system associated with the IPPs of Nagapattinam/Cuddalore area-Package A (Nagapattinam-Salem-Madhugiri). The relevant portion of the said letter dated 16.12.2011 is extracted as under:

“ For reasons beyond our control a force-majeure situation of TNPCB not granting the CFE so far, we would not be in a position to meet the commissioning schedule of April 2014. Hence, we request you to defer out requirement for the present transmission system associated with the IPPs of Nagapattinam/Cuddalore area- Package A (Nagapattinam-Salem-Madhugiri). As suggested by you in Para 7.1.f of the Minutes as and when the second pooling station is proposed in the near future when NSL, EMPEE, Sindya Power and Chettinad power, etc., achieve progress, our requirement may also be considered for the same pooling station and the sequential transmission system that would be required/proposed depending on the load.”

Further, the petitioner, vide letter dated 24.1.2012, informed PGCIL that it was not abandoning the power project but was interested in establishing the same and would require the proposed transmission system. The relevant portion of the letter dated 24.1.2012 is as under:

“The very fact that we have invested substantial amounts on the project development so far and obtained all the clearances except CFE goes to prove that we are sincere in our efforts in implementation of the project as per schedule. Further the efforts and pains we have taken in identifying the land for the pooling station and bringing all the IPPS in the corridor to provide this land at free of cost to PGCIL etc. shows that how interested we were in getting the Transmission line on fast track. But, unfortunately we have hit the roadblock of CFE for the conditions beyond our control and constrained by this force-majeure situation we were forced to express our inability to sign the TSA with PFC Consulting limited. We would like to inform you that we are very much interest in the construction of the power plant and require the proposed Transmission System and hence request your good self to arrange for sending a similar letter to GOTN as was send by CEA. Further, we were informed during the meeting held on 02.12.2011 that ILFS and PEL only signed the BPTA so far and Chettinad Power is willing to sign. It was also informed that ILFS is adding another 2300 MW. Further, Chettinad Power is also adding another 3X660 MW. Considering this, the proposed Transmission System would be ultimately having adequate load. It was even stated in the meeting that PGCIL would be willing to arrange a separate pooling station for the plants in our Project area.

34. We have considered the submission of the petitioner. It is noted that the petitioner vide its letter dated 16.12.2011 requested PGCIL to defer the requirement of present transmission system associated with the IPPs of Nagapattinam/Cuddalore area-Package A (Nagapattinam-Salem-Madhugiri). Subsequently, the petitioner also requested PGCIL to consider its requirement for the second pooling station proposed in the near future when NSL, EMPEE, Sindya Power and Chettinad power, etc., achieve progress. The proposed transmission system refers to the 2nd Pooling station which was proposed by PGCIL in the meeting held on 2.12.2011 and which was also mentioned by the petitioner in its communication dated 16.12.2011. It is further noticed that the petitioner vide letter dated 24.1.2012 stated that they are very much interested in the construction of the power plant and require the proposed transmission

system. It appears from the letters of the petitioner that the petitioner never wanted to abandon the project and it was only seeking deferment of the requirement of present transmission system to the proposed transmission system. However, the petitioner has prayed for refund of bank guarantee of Rs. 49.35 crore in the petition. This implies that the petitioner was actually seeking relinquishment of LTA granted to it, else the BG would have been subsisting till it is replaced by payment security mechanism at the operationalization of LTA as per applicable Regulations. Since the petitioner sought return of bank guarantee first time on 26.7.2013, this date shall be treated as request date of relinquishment sought. Regulation 18 (1) (b) of the Connectivity Regulations provides for relinquishment of access right in case the long term customer has not availed access right for at least 12 (twelve) years. In this case, the petitioner sought for relinquishment of access right vide letter dated 26.7.2013 as stated above. As per the Connectivity Regulations, the long term customer needs to submit application for relinquishment to CTU at least 1 year prior to the date from which the applicant desires to relinquish the access right. However, the petitioner may seek relinquishment without any notice period, where it needs to bear 66% of estimated transmission charges for the period falling short of 1 year under 2nd proviso to Regulation 18 (1) (b). In such a case, the relinquishment shall be effective from 26.7.2013. In addition to above, the petitioner needs to bear 66% of estimated transmission charges for Stranded Capacity for 12 years as per Connectivity Regulations. The payment of the relinquishment charges shall be decided by the Commission after considering the recommendations of the Committee formed vide order dated 28.8.2015 in Petition No. 92/MP/2015.

Issue No. 4: Whether the petitioner is entitled for return of Bank Guarantee?

35. The petitioner has vide affidavits dated 19.4.2014 and 3.7.2014 has submitted that the issue of non-grant of CFE by TNPCB was intimated to PGCIL for the first time in April, 2011 during JCC meeting held on 1.4.2011 and subsequently during JCC meeting held on 9.9.2011 and 2.12.2011. The petitioner has submitted that till then, the respondent had not started any activity to construct the transmission system as per the BPTA. The petitioner has further submitted that the transmission licence for the transmission system to be developed by respondent was issued by the Commission only on 9.4.2013. As per record available on the PGCIL's website, the PGCIL had incurred only Rs. 4.86 crore as on December, 2013 for the transmission lines in the subject petition.

36. PGCIL, vide affidavit dated 6.8.2014, has submitted that the contention of the petitioner that no work had been taken up for transmission system and no expenditure had been made till date is entirely incorrect. PGCIL has further submitted that the sub-station land for Nagapattinam pooling sub-station is in possession of PGCIL and construction work is in full swing. The sub-station is likely to be commissioned by October, 2014. Further, after grant of transmission license by the Commission, work for implementation of transmission system has started.

37. The petitioner has vide letter dated 15.10.2014 with copy to the Commission requested PGCIL to submit status of the project in December, 2011 when the petitioner had informed PGCIL about the force majeure

condition, expenditure incurred by PGCIL up to December, 2011 in relation to the transmission system being constructed for the petitioner and steps taken by PGCIL for mitigation of damages after December, 2011, if any. In response, PGCIL vide its affidavit dated 15.12.2014 has submitted that the petitioner vide letter dated 16.12.2011 requested PGCIL to defer the ATS associated with the IPPs of Nagapattinam/Cuddalore area- Package A (Nagapattinam-Salem-Madhugiri). However, the petitioner has not made any request not to develop the ATS. PGCIL has further submitted that the petitioner had applied for clearance of TNPCB on 15.6.2010. However, its application was returned "*for want of (certain) particulars*" as the unit did not have obtained relaxation of G.O. 12 dated 8.5.2010 from the Government of Tamil Nadu. The petitioner vide its letter dated 3.2.2011 informed PGCIL regarding issue raised by TNPCB i.e. after 6 months. Therefore, the delay is clearly on part of the petitioner.

38. We have considered the submissions of the petitioner and respondent. It is noted that the petitioner has obtained permissions and approvals required for the project except for no objection/clearance certificate i.e. Consent for Approval (CFE) of Tamil Nadu Pollution Control Board (TNPCB) to establish the generating station. On 15.6.2010, the petitioner applied for clearance of TNPCB. However, TNPCB sought certain information and returned the application. Subsequently, the petitioner took up the matter with MoP, Govt. of India, Govt. of Tamil Nadu, CEA, CTU and other authorities appraising the delay in grant of clearance by TNPCB.

30. It is further noted that the petitioner has contended that PGCIL had not started construction of transmission system till the time it intimated PGCIL

about the force majeure event due to non-grant of clearance by TNPCB as the licence for construction of transmission system was issued by the Commission only in 4.9.2013 and had incurred only Rs. 4.86 crore as in December, 2013. According to PGCIL, the associated transmission system is in the final stages of construction and it would be inequitable if PGCIL is restricted from recovering the full amount under the bank guarantee. It is noted that the petitioner vide its affidavit dated 16.10.2014 requested PGCIL to provide status of the project in December 2011 when the petitioner informed PGCIL regarding force majeure event. However, PGCIL did not provide status of the project as on December 2011 which shows that the contention of the petitioner appears to be correct. However, perusal of the petitioner's letter dated 16.12.2011 reveals that the petitioner in the said letter requested PGCIL to defer its requirement for the transmission system associated with the IPPs of Nagapattinam/Cuddalore area Package-A (Nagapattinam-Salem-Madhugiri) to the second pooling station as and when envisaged and it had not made any request to abandon the project.

40. Regulation 18 of the Connectivity Regulations provides as under:

“18. Relinquishment of access rights

(1) A long-term customer may relinquish the long-term access rights fully or partly before the expiry of the full term of long-term access, by making payment of compensation for stranded capacity as follows:-

(a) Long-term customer who has availed access rights for atleast 12 years

(i) **Notice of one (1) year** – If such a customer submits an application to the Central Transmission Utility at least 1 (one) year prior to the date from which such customer desires to relinquish the access rights, there shall be no charges.

(ii) **Notice of less than one (1) year** – If such a customer submits an application to the Central Transmission Utility at any time lesser than a period of 1 (one) year prior to the date from which such customer desires to relinquish the access rights, such customer shall

pay an amount equal to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of a notice period of one (1) year.

(b) Long-term customer who has not availed access rights for at least 12 (twelve) years – such customer shall pay an amount equal to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of 12 (twelve) years of access rights:

Provided that such a customer shall submit an application to the Central Transmission Utility at least 1 (one) year prior to the date from which such customer desires to relinquish the access rights;

Provided further that in case a customer submits an application for relinquishment of long-term access rights at any time at a notice period of less than one year, then such customer shall pay an amount equal to 66% of the estimated transmission charges (net present value) for the period falling short of a notice period of one (1) year, in addition to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of 12 (twelve) years of access rights.

(2) The discount rate that shall be applicable for computing the net present value as referred to in sub-clause (a) and (b) of clause (1) above shall be the discount rate to be used for bid evaluation in the Commission's Notification issued from time to time in accordance with the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees issued by the Ministry of Power.

(3) The compensation paid by the long-term customer for the stranded transmission capacity shall be used for reducing transmission charges payable by other long-term customers and medium-term customers in the year in which such compensation payment is due in the ratio of transmission charges payable for that year by such long term customers and medium-term customers.”

Under the above provisions, long term customer may relinquish long term access rights fully or partly, before the expiry of full term of long term access, by making payment of compensation for stranded capacity as provided herein. It is pertinent to mention that the regulations do not envisage any exemption from payment of compensation in case of relinquishment of LTA on any ground. As per regulations, a long term customer is liable to pay compensation of an amount equal to 66% of the estimated transmission charges (net present

value) for the stranded transmission capacity for the period falling short of 12 years of access right in case he relinquishes access right before expiry of 12 years upon giving a notice of one year for seeking relinquishment. It is clarified that the Commission vide its order dated 28.8.2015 in Petition No. 92/MP/2015 has constituted a Committee for assessment/determination of stranded transmission capacity with regard to relinquishment of LTA right by a long term customer and relinquishment charges in terms of the provisions of the Connectivity Regulations. Assessment of stranded capacity on account of relinquishment of LTA and determination of relinquishment charges shall be decided by the Commission after considering the recommendations of the Committee.

41. Till the issue of stranded capacity and payment of relinquishment charges is decided by the Commission after considering the recommendations of the Committee, the petitioner should extend the validity of the Bank Guarantee. Accordingly, the petitioner is directed to extend the Bank Guarantee till 31.12.2016 or till further order of the Commission, whichever is later. CTU is directed not to encash the Bank Guarantee without seeking directions from the Commission.

42. With the above, the petition is disposed of.

Sd/-
(A.S.Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson