

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**I.A. No. 62/2016 in
Petition No. 190/MP/2016**

- Subject : Petition under Section 79 (1) (c) and (f) of the Electricity Act, 2003 read with CERC (Grant of Connectivity, Long Term Access and Medium Term Open Access in inter-State transmission and related matters) Regulations, 2009 seeking directions in respect of LTA granted for Budhil Hydro Electric Project in terms thereof.
- Petitioner : Greenco Budhil Hydro Power Pvt. Limited.
- Respondent : Power Grid Corporation of India Limited and Others
- Date of hearing : 16.2.2017
- Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member
- Parties present : Shri Sanjay Sen, Senior Advocate, GBHPPL
Shri Matrugupta Mishra, Advocate, GEPL
Shri Nishant Kumar, Advocate, GEPL
Shri Piyush Singh, Advocate, GEPL
Shri Sahil Kaul, Advocate, GEPL
Ms. Suparna Srivastava, Advocate, PGCIL
Shri A.M. Pavgi, PGCIL

Record of Proceedings

Learned senior counsel for the petitioner submitted that the present Interlocutory Application has been filed seeking directions to PTC India Ltd. to surrender its long-term access rights from Budhil Hydro Electric Project to the Haryana State and directions to PGCIL to modify the existing BPTA for a change in the drawee and drawl location and directions.

2. Learned senior counsel for the petitioner submitted that the present application is necessitated on account of PGCIL's letters dated 7.11.2016, 9.11.2016 and 19.11.2016 pursuant to the hearing held on 3.11.2016 in I.A. Nos. 41 of 2016 and 32 of 2016 in Petition Nos. 528/TT/2014 and 18/TT/2015 respectively. Learned counsel further submitted as under:

(a). In the said hearings, PGCIL threatened to take coercive measures against the petitioner with respect to the transaction being undertaken by the petitioner with the Uttarakhand Power Corporation Ltd. (UPCL) on account of non-payment of alleged transmission charges claimed by PGCIL. The said charges are disputed and pertain to the long term access granted to PTC for supply of power to Haryana Utilities and have nothing to do with the short term open access being availed by the petitioner for supply of power to UPCL. The aforesaid letters are illegal and bad in law as PGCIL cannot claim transmission charges for both LTA and STOA, meant for two different beneficiaries, and for the same capacity, simultaneously.

(b) The petitioner has paid the transmission charges from May 2012 to March 2016 at the rate of approximately above Rs.1.35 crore per month to PGCIL even though the petitioner is not using the Long Term Access to the transmission of power to HPGCL because of the termination of its PPA with PTC. The petitioner's liability to pay transmission charges ceased to exist when the petitioner executed a fresh long-term agreement with UPCL.

(c) As per the provisions of Section 38 of the Electricity Act, 2003, PGCIL is under an obligation to grant a non-discriminatory open access in the inter-State transmission system. In the present case, as there is no stay on the termination of PPA executed between the petitioner and PTC, PGCIL cannot at all withhold the grant of a fresh open access to the petitioner in terms of the PPA executed by the petitioner with UPCL. The pendency of the appeal in the Supreme Court no way controls or affects the long term access rights of PTC.

(d) PGCIL, at the best, can seek indemnification from the petitioner qua any liability falling upon it in the event the PPA between the petitioner and PTC is held to be valid by any court of law. The petitioner has already provided the said indemnification vide its letter dated 17.5.2016.

3. Learned counsel for PGCIL submitted as under:

(a) The dispute pending before the Hon'ble Supreme Court has relevance to the issue of grant of LTA to the petitioner on alternative drawee entity and therefore, CTU cannot take a view that the dispute before the Supreme Court is alien to the request of the petitioner for delivery of power to UPCL.

(b) During the course of hearing on 14.12.2016, the petitioner offered to provide indemnification as may be required. If the petitioner is willing to submit an undertaking on affidavit to relinquish the fresh LTA and bear applicable relinquishment charges as and when may be incident upon the decision of the Supreme Court and/or any appropriate forum that the Supreme Court may refer the matter for adjudication.

(c) CTU cannot decide on the issue of whether or not the stream of litigation on the petitioner bars the creation of new LTA rights in favour of the concerned generating entity or not.

(d) The petitioner may apply for power evacuation by way of MTOA. The grant of MTOA, however, shall be subject to downsizing if and when the PTC's LTA is required to be operationalized under the directions of an appropriate forum. This may specially be so as

PTC/Haryana may want to claim priority in operationalization of PTC's LTA over any MTOA granted afresh to the petitioner.

4. After hearing the learned senior counsel for the petitioner and learned counsel for PGCIL, the Commission directed PTC to file its reply on affidavit as a last opportunity, on or before 10.3.2017 with an advance copy to the petitioner who may file its rejoinder, if any, by 24.3.2017. The Commission directed that the due date of filing the reply and rejoinder should be strictly complied with. No extension shall be granted on that account.

5. The petition shall be listed for hearing on 11.4.2017.

By order of the Commission

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