

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 240/MP/2016

Subject : Petition for seeking declaration that no relinquishment charges are payable for termination of the Medium Term Open Access, dated 6.10.2015, granted to the petitioner by PGCIL.

Date of hearing : 6.7.2017

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

Petitioner : Thermal Powertech Corporation India Limited (TPCIL).

Respondent : Power Grid Corporation of India Limited.

Petition No. 153/MP/2016

Subject : Petition for seeking declaration that no relinquishment charges are payable for surrendering the Medium Term Open Access, dated 22.7.2015, granted to the petitioner by PGCIL.

Date of hearing : 6.7.2017

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

Petitioner : GMR Warora Energy Limited (GMRWEL).

Respondents : Power Grid Corporation of India Limited and Others.

Parties present : Shri Sitesh Mukherjee, Advocate, TPCIL
Shri Gautam Chawla, Advocate, TPCIL
Ms. Akanksha Tyagi, Advocate, TPCIL
Shri Kedar Guttikar, TPCIL
Shri Matrugupta Mishra, Advocate, GMRWEL
Shri Nishant Kumar, Advocate, GMRWEL

Shri Ajaya Kumar Nathini, GMRWEL
Ms. Suparna Srivastava, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL
Shri Dilip Rozekar, PGCIL
Shri Swapnil Verma, PGCIL

Record of Proceedings

At the outset, learned counsel for TPCIL submitted that the present petition has been filed seeking declaration that no relinquishment charges are payable for termination of the Medium Term Open Access (MTOA) granted to TPCIL. Learned counsel further submitted as under:

- a). TPCIL entered into MToA Agreement with PGCIL for transmission of 230.55 MW to AP Discoms for the period from January 2016 to March 2017. Recital D of the MToA Agreement clearly stipulates that granted MToA is liable for termination/downsizing with notice period of 1 month, if the LTA applications granted on target beneficiary basis firm up long term PPA and are operationalized during the period of MToA.
- b). On 21.6.2016, PGCIL operationalized the 1240 MW LTA of TPCIL. Pursuant to operationalization of LTA, TPCIL vide its letter dated 9.8.2016 requested PGCIL to terminate its 230.55 MW MTOA. In response, PGCIL vide letter dated 6.9.2016 informed TPCIL that its request for relinquishment has been accepted subject to payment of relinquishment charges. TPCIL requested PGCIL to waive the payment of relinquishment charges against the termination of MToA.
- c). Subsequently, on 22.9.2016, PGCIL raised PoC bill for the month of August 2016 towards transmission charges as per the provisions of the Sharing Regulations. TPCIL requested PGCIL to withdraw the PoC Bill and informed that there is no provision in the Connectivity Regulations and in the Detailed Procedure to charge for termination of MToA on account of operationalization of LTA for the same corridor/region and the same beneficiary. MToA had overlapped with the LTA and this clearly amounts to double billing of the petitioner.
- d). PGCIL has wrongly relied upon Regulation 24 of the Connectivity Regulations for interpreting the termination of MToA as relinquishment of MToA and for levying relinquishment charges on the petitioner.
- e). MToA customer relinquishing its MToA rights has to pay charges corresponding to the transmission charges for the period of such relinquishment or 30 days, whichever is less. However, in the present matter, TPCIL has not relinquished its MToA under the Connectivity Regulations, but in fact, it has terminated its MToA under the MToA Agreement. There is no provision in the MToA Agreement for the levy of relinquishment charges upon the termination of MToA and therefore, no relinquishment charges can be levied on TPCIL.

f). The monthly transmission charges payable as per the PoC mechanism are same for both LTA and MToA. TPCIL will continue to use PGCIL's system and to pay the same transmission charges against the LTA. If PGCIL's interpretation is accepted, then an LTA applicant will have to pay for both MToA charges and LTA charges on the same transmission corridor/region. This would result in double charging of transmission charges to TPCIL and would be detrimental to the generators, discoms and end users. Therefore, MToA charges should be offset against LTA charges, to prevent double charging.

g). In line with the Tariff Policy and National Electricity Policy, the Connectivity Regulations and Sharing Regulations stipulate that transmission charges are payable for use of transmission capacity, where the yearly cost of the transmission lines is shared by the users of the transmission lines, apportioned on a monthly basis among the users in proportion to their use. The said regulations do not stipulate for double billing.

h). In light of the amendment dated 17.2.2017 to the Connectivity Regulations, insertion of Regulation 15 B makes it clear that Regulation 24 is not applicable in the case of termination/downsizing of the MTOA by LTC's upon operationalization of their LTA. Payment of relinquishment charges irrespective of any loss/damage to PGCIL would lead to its unjust enrichment. Amendments are clarificatory and can be applied retrospectively.

2. Learned counsel for GMRWEL adopted the submissions made by the learned counsel for TPCIL and submitted as under:

a). The Commission vide order dated 16.2.2015 in Petition No. 92/MP/2014 has decided the protocol for processing the MTOA and LTA applications and the same was upheld by the APTEL in Appeals No. 81 and 94 of 2015. In accordance with the same, GMRWEL applied to PGCIL for grant of MToA for 150 MW on 27.11.2013.

b). On 22.7.2015, CTU granted MToA to GMRWEL. GMRWEL also applied for grant of LTA in order to secure the corridor. In response, PGCIL directed GMRWEL to surrender the already granted MTOA. Accordingly, GMRWEL vide its letter dated 30.10.2015 surrendered MToA granted to it. Based on the surrendered MToA, PGCIL granted LTA of 150 MW to GMRWEL for supply of power to TANGEDCO. Subsequently, PGCIL raised a bill under the Sharing Regulations on GMRWEL towards relinquishment charges by interpreting the conversion from MToA to LTA as relinquishment of MToA.

c). No relinquishment charges can be imposed in the present case as there is no relinquishment of MToA. There is no abandonment of the access rights by GMRWEL in order to enable PGCIL to grant that right to another person. Infact, GMRWEL continues to utilize its right of accessing the inter-State transmission system by getting promoted from a 3 years access right to a 15 years access right.

d). The interpretation of the word “relinquishment” has been fructified by referring to the explanation in Statement of Reasons for Regulations 18 and 24 of the Connectivity Regulations which states that the transfer of access rights to a third party/entity or the reversion of the said rights to the nodal agency is the fundamental test whether relinquishment of MToA has happened or not.

e). It is a settled principle of law that a provision of Statute specifying levy of charges has to be strictly construed and for the said reason, the requirement of the trigger event, which in the present case has to be relinquishment of access right in the system in favour of either a 3rd party or reversion back to the nodal agency has to be established in no uncertain terms. Since, in the present case, GMRWEL continues to enjoy the access rights for conveyance of power qua the same beneficiary and the PPA, no case of relinquishment can be made out against GMRWEL.

f). In the present case, GMRWEL has moved from MTOA to LTA while rest of the transaction remains the same. The monthly transmission charges to be payable as per the PoC mechanism are same for both the Access rights. Therefore, such conversion from MToA to LTA cannot at all be termed as relinquishment within the meaning of Regulation 24 of the Connectivity Regulations.

g). Amendment to the Connectivity Regulations dated 17.2.2017 is a clarificatory provision and is in the form of legislative clarification. However, Regulation 24 of the Connectivity Regulations stands unamended. In support of his contentions, learned counsel relied upon the following judgments of the Hon’ble Supreme Court and Madras High Court in:

(i). Commissioner of Income Tax Vs. Rasiklal Maneklal and Others, (1989) 2 SCC 454;

(ii). P. Nallammal and Another Vs. State, (1999) 6 SCC 559; and

(iii). Natesa Udayar Vs. Murugappa Udayar & Others, S.A. 830 of 1978, Madras High Court.

3. In their rebuttal, learned counsel for PGCIL submitted as under:

a). The amendment dated 17.2.2017 to the Connectivity Regulations is not merely a clarification but is a change/alteration in the rights of the parties that are using the PGCIL’s system. The substantive rights of the parties have been modified to the extent specified in the Amendment. It indicates that all the covenants agreed and all the undertakings given in JCC Meetings incorporated in terms of grant are now to be read in accordance with the amendment to the Connectivity Regulations. Therefore, the amendment is prospective in operation. In respect of the present petitions, since, the contracts were signed in accordance with the law that existed at that point of time and the corresponding rights and obligations of the parties that they had undertaken then, shall flow in accordance with those contracts. The Amendment dated 17.2.2017 to the Connectivity Regulations does not apply in the present cases.

- b). The conditionality attached with the MToA grant has been completely misconstrued by TPCIL to plead a case for termination of MToA on account of operationalization of LTA, which cannot be permitted.
- c). The conditionality of termination/downsizing nowhere contemplated any termination/downsizing of MToA upon operationalization of the TPCIL's LTA, this was more so when the petitioner already had a firm PPA qua which it had obtained MToA. There was no 'option' made available to TPCIL nor could it be, to terminate or downsize its MToA which TPCIL subsequently sought to wrongly exercise.
- d). The reliance placed by TPCIL on Recital D for claiming termination of MToA upon operationalization of LTA is inadmissible. Under Recital H of the MToA Agreement, TPCIL acknowledged that the provisions of Connectivity Regulations were to be applicable to the MToA grant.
- e). The provisions of Regulation 24 of the 2009 Connectivity Regulations are mandatory in their operation. Relinquishment of MToA rights is necessarily subject to payment of relinquishment charges as prescribed therein. The question of any loss/damage to PGCIL on account of such relinquishment is not a material consideration.
- f). When there is no termination/ downsizing of MToA on the happening of the event specified in condition (iv) of the MToA grant made to TPCIL, then the matter would fall within the realm of relinquishment and for which TPCIL would be liable to pay mandatory relinquishment charges under the provisions of Regulation 24 of the Connectivity Regulations.
- g). Upon the operationalization of the LTA on 21.6.2016, there were two bills for August 2016 which were raised by PGCIL on TPCIL; Bill 1 towards transmission charges for LTA and Bill 2 towards transmission charges for relinquishment of MTOA. TPCIL is wrongly construing the PoC billing under Regulation 24 to be a double billing for power transfer in the same month while seeking quashing of the same.
- h). With respect to grant of MToA to GMRWEL, the MToA was granted for 150 MW subject to signing of requisite MToA Agreement and fulfillment of other conditions intimated in the grant. GMRWEL was also granted LTA for transfer of 150 MW which was subject to the specific condition that the LTA would not be operationalized until the MToA grant of 150 MW for the same PPA was relinquished.
- i). The grant of MToA to November 2013 application and grant of LTA to December 2013 application was made with the consent of GMRWEL with the clear understanding that whenever the LTA got operationalized for full quantum, the MToA was to be relinquished along with payment of applicable relinquishment charges as recorded in the Minutes of Meeting dated 15.7.2015 of Western and Southern Region constituents.
- j). GMRWEL unequivocally agreed with PGCIL that the issue of foreclosure of MToA upon operationalization of LTA was to be treated as per the provisions of the Connectivity regulations. Any closure of MToA was subject to payment of

relinquishment charges as per Regulation 24 of the Connectivity Regulations and also as per the condition attached to the LTA grant.

k). GMRWEL now cannot be permitted to contend that it is wholly alien to the scheme of giving up of access rights as laid down in the Connectivity Regulations and for quashing of the invoice dated 9.6.2016 and that there is no relinquishment but a switching over of MToA rights to LTA rights, which is not at all envisaged in the Connectivity Regulations.

4. In response to the Commission's query regarding the number of petitions wherein the LTA and MToA rights of the parties are being affected by the Amendment dated 17.2.2017 to the Connectivity Regulations, learned counsel for PGCIL undertook to place on record the said information. The Commission directed PGCIL to file the same on affidavit by 11.8.2017.

5. After hearing the learned counsels for the parties, the Commission reserved the order in the petition.

By order of the Commission

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