

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 245/MP/2016

Subject : Petition seeking fixation of and adjudication on the transmission charges for the proposed use of PGCIL's inter-State transmission facility of 400 kV Bhadravati sub-station for conveyance of 200 MW power from GMR Warora Energy Limited in terms of the PPA dated 17.3.2010.

Date of hearing : 7.9.2017

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

Petitioner : Maharashtra State Electricity Distribution Co. Limited (MSEDCL).

Respondents : Power Grid Corporation of India Limited & Others.

Parties present : Ms. Deepa Dhawan, Advocate, MSEDCL
Shri Kiran Gandhi, Advocate, MSEDCL
Shri A.S. Chavan, MSEDCL
Ms. Ranjitha Ramachandran, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL
Shri Vishrov Mukherjee, Advocate, GMRWEL
Ms. Raveena Dhamija, Advocate, GMRWEL
Shri Ajaya Kumar Nathini, GMRWEL

Record of Proceedings

At the outset, learned counsel for the petitioner submitted that the present petition has been filed for seeking fixation of transmission charges on the long term intervening transmission facilities on 400 kV Bhadravati Chandrapur transmission line owned and operated by PGCIL for evacuation of 200 MW power from the 2X300 MW generating station of the GMR Warora Energy Limited (GWEL). Learned counsel for the petitioner further submitted as under:

a). On 7.7.2010, the petitioner made an application to MSETCL for allotment of transmission capacity through Long Term Open Access (LTOA) under Maharashtra State Electricity Regulatory Commission (Transmission Open Access) Regulations, 2005 for evacuation of 200 MW power from GWEL's generating station. On 15.9.2016, MSETCL granted LTOA to the petitioner.

b). On 19.10.2012, the petitioner made an application to MSETCL for grant of 200 MW connectivity from Warora Project through STU. The petitioner informed MSETCL that it is the responsibility of MSETCL to evacuate power from bus bar of EMCO's generating station.

c). In the 27th Standing Committee meeting held on 30.7.2007, EMCO had obtained connectivity for its 520 MW generating station on 400 kV Bhadravati sub-station. On 17.1.2009, EMCO entered into BPTA with PGCIL for 520 LTA. However, at the time of submitting RfP, EMCO did not disclose about the connectivity granted by CTU as well as connectivity granted by STU for 2X135 MW.

d). On 6.3.2013, the petitioner filed Petition No. 34 of 2013 before the MERC seeking direction to MSETCL to grant connectivity from GWEL's generating station directly through the intra-State transmission system. However, MSETCL vide its letter dated 25.3.2013 confirmed that the petitioner has already been granted 200MW LTA on intra-State transmission network and directed the petitioner to ask GWEL to apply for grid connectivity to the STU network. Based on the above letter, MERC vide its order dated 28.8.2013 held that GWEL is responsible for establishing connectivity and access the State transmission network and GWEL will have to establish connectivity with the State transmission network and execute necessary connectivity agreement with the transmission licensee.

e). Aggrieved by the decision of the MERC, the petitioner filed an appeal before the Appellate Tribunal. The APTEL vide its judgment dated 8.5.2015 in Appeal No. 304 of 2013 set aside the order of the MERC dated 28.8.2013 and directed that (i) till the evacuation arrangement for off take of power from bus bar of EMCO's generating station is provided by MSEDCL, EMCO will supply power to MSEDCL through its dedicated transmission line through the inter-State transmission system, and (ii) during the period of power supplied to MSETCL through inter-State system, MSEDCL shall bear the transmission charges and losses for use of inter-State transmission line.

f). As per the judgment of APTEL, MSEDCL has to arrange the evacuation of power from the bus bar of EMCO's generating station. Therefore, MSEDCL seeks long term intervening transmission facility on PGCIL 400 kV ISTS line from Bhadravati to Chandrapur upto MSETCL's sub-station.

g). PGCIL owns two numbers of 400 kV DC transmission line from Bhadravati to Chandrapur. One line has a length of 11 kms and another line having length of 17 kms. It is clear from the records that the power transmitted during peak months i.e. October 2015 and May 2016 from Bhadravati to Chandrapur is in the range of 100 MW for October, 2015 and the maximum power flow in May, 2016 is 900MW. During these months, at majority of times, the power is flowing in reverse direction from Chandrapur to Bhadravati to cater to the load in Southern region through PGCIL's HVDC system. Therefore, there is surplus capacity available in PGCIL transmission line for transmission of power from Bhadravati to Chandrapur.

h). In line with the APTEL's order dated 8.5.2015 and as a cost effective option, the petitioner is seeking permission for the use of intervening transmission facility for contract path on PGCIL's transmission line from Bhadrawati to Chandrapur for the conveyance of 200 MW of power from EMCO's generating station. The contract path method fits in well with the philosophy contained in the National Electricity Policy and Tariff Policy and is in line with Sections 35 and 36 of the Electricity Act, 2003 (the Act) which require determination of transmission charges for intervening transmission facility.

i). Section 35 of the Act provides use of intervening transmission facilities to the extent of surplus capacity available with licensee and Section 36 of the Act provides charges of use of intervening transmission facilities. Therefore, the Act provides uses of intervening transmission facilities both ISTS and in STS. Accordingly, the present case fulfills the conditions of Sections 35 and 36 of the Act.

j). The intervening transmission facility has been defined in the explanation to Section 36 of the Act. An explanation only explains and does not expand or add to the scope of the original section. The purpose of an Explanation is, however, not to limit the scope of the main provision. An 'Explanation' must be interpreted according to its own tenor. It should not be so construed as to widen the ambit of the Section. Sections 35 and 36 of the Act are two distinct provisions enabling any licensee to use the transmission system of another licensee. Principles of harmonious construction of statute demand that these two provisions are to be interpreted in such a way that application of one must not make other provision otiose or redundant.

k). In general, the term used in the Act is 'transmission system' and only in two Sections i.e. Sections 35 and 36, the term 'transmission facility' has been mentioned. It is therefore, clearly implied that for the purpose of Sections 35 and 36, the transmission assets specifically used for the transaction have to be identified. Hence, there is a need to identify applicable transmission elements which are used for conveyance of 200 MW power to MSEDCL. In support of her contentions, learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in S. Sundaram Pillai vs. V.R. Pattabiraman & Others [(1985) 1 SCC 591] and APTEL in Gujarat electricity Transmission Company Limited Vs. CERC [Appeal No. 198 of 2009].

2. In her rebuttal, learned counsel for PGCIL submitted as under:

a). The petitioner is wrongly relying upon the APTEL's judgment in Gujarat electricity Transmission Company Limited Vs. CERC [Appeal No. 198 of 2009] and the same is not applicable in the present set of facts as in the said case there was no reserved capacity. Therefore, it was an intervening transmission facility whereas in the present case, there is an LTA which is operationalized, so, there is a reserved capacity.

b). The petitioner is seeking to invoke the provisions of Sections 35 and 36 of the Act for the use of PGCIL's transmission system. For such long and continued use, the petitioner is required to follow the process of applying for and obtaining LTA under the

applicable Open Access Regulations and cannot seek the intervening transmission facility under Sections 35 and 36 of the Electricity Act.

c). The intervening transmission system being allowed to be used under Sections 35 and 36 of the Act is not by way of an alternate to those permitted under the Open Access Regulations notified by the Commission in terms of Sections 38, 40 and 79(1)(c) and 91 (d) read with Section 178 of the Act.

d). GWEL (formerly known as EMCO) had earlier been granted 550 MW LTA from its generating station for evacuation and delivery to its beneficiaries including the petitioner utilizing the inter-State transmission system (ISTS). The 200 MW power under LTA is already being delivered to the petitioner across entire State of Maharashtra at large number of ISTS nodes of Western Region through ISTS transmission systems. Accordingly, a single contract path as required for applicability of Central Electricity Regulatory Commission (Rates, Charges and Term and Conditions for use of intervening Transmission Facilities) regulations, 2010 cannot be identified in the instant case. The said Regulations are applicable where the intervening transmission facilities that are incidental to ISTS are getting used. However, in the instant case, the LTA has been granted utilizing the State network.

e). It is clear from the APTEL's judgment dated 8.5.2015 that the petitioner is taking its power through inter-State transmission system and the petitioner shall bear the transmission charges and losses for use of inter-State transmission system, till the evacuation arrangement for off-take of power from the bus bar of EMCO's generating station.

f). Learned counsel for PGCIL sought permission file an affidavit in order to substantiate that a single contract path cannot be identified in the present case. Request was allowed by the Commission.

3. Learned counsel for GWEL submitted that the obligation of establishing connectivity and accessing the transmission network from the bus bar of the petitioner's generating station for evacuation of power is that of the petitioner. GWEL is not obliged to arrange for evacuation of power beyond the Power Plant Bus Bar in terms of the RfP and PPA. The said position has also been upheld by the APTEL in the judgment dated 8.5.2015 in Appeal No. 304 of 2013. Any order in the present matter shall take into account the APTEL's said judgment and energy accounting has to be at the Bus-Bar of the Power Station in terms of the APTEL's judgment dated 8.5.2016. Any arrangement for evacuation of power ought to take into account that any modality for delivery of power to the petitioner shall consider the entire path from the bus-bar of GWEL's power station till Chandrapur. Learned counsel further submitted that any arrangement approved for the petitioner ought to be revenue neutral to GWEL and in case of any financial impact on GWEL, the loss should be borne by the petitioner.

4. Learned counsel for the petitioner submitted that there is a provision for intervening transmission facility under Sections 35 and 36 of the Act and provision for LTA under the Open Access Regulations. It is open for the petitioner to adopt any mode for evacuation of power as neither the Open Access Regulations preclude the invocation of Sections 35 and 36 of the Act nor there is any such embargo in the Act that one cannot switch over from LTOA to intervening transmission facility.

5. After hearing the learned counsels for the parties at length, the Commission directed PGCIL to file an affidavit with respect to identification of the single contracted path by 6.10.2017 with an advance copy to the petitioner, who may file its response, if any, by 18.10.2017. The Commission directed the parties to file their written submissions by 18.10.2017 with a copy to each other. The Commission directed that due date of filing the affidavit, response and written submissions should be strictly complied with, failing which, the order shall be passed based on the documents available on record.

6. Subject to the above, the Commission reserved the order in the petition.

By order of the Commission

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