

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 92/MP/2015

- Subject : Petition seeking directions with regard to difficulties in implementing some of the directions given in the Order dated 16.2.2015 in Petition No. 92/MP/2014 along with IA Nos. 43/2014, 51/2014, 52/2014, 54/2014, 56/2014 and 59/2014, Petition No. 376/MP/2014, Petition No. 382/MP/2014, Petition No. 393/MP/2014 and Review Petition No. 25/RP/2014.
- 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 : Power Grid Corporation of India Limited.
- Respondents : Kerala State Electricity Board & Others.
- Parties present : Ms. Suparna Srivastava, Advocate, PGCIL
Shri Dilip Rozekar, PGCIL
Ms. Jyoti Prasad, PGCIL
Shri Swapnil Verma, PGCIL
Shri Abhishek Gupta, MB Power
Shri Hemant Sahai, Advocate, EPJL
Ms. Mazag Andrebi, Advocate, EPJL
Shri Aniket Prasoon, Advocate, EPJL
Ms. Divya Chaturvedi, Advocate, DIL & JPL
Ms. Arunima Kedia, Advocate, JPL
Ms. Pragya Singh, POSOCO
Shri Mohit Shinghal, CEPL
Shri S. Rajasekaran, CEPL
Shri Ashok Rajan, NLDC
Shri S.S. Barpanda, NLDC
Shri Aditya Pyasi, Advocate, Vedanta
Shri Manish Tyoji, Advocate, JITPL
Shri C.S. Bobade, Advocate, JITPL
Shri Sanjay Sen, Senior Advocate, JITPL & Vedanta
Shri Matrugupta Mishra, Advocate, JITPL & Vedanta
Shri Hemant Singh, Advocate, JITPL & Vedanta
Shri Ruth Alwin, Advocate, JITPL & Vedanta

Shri Nishant Kumar, Advocate, JITPL & Vedanta
Ms. Shikha Ohri, Advocate, CEPI & GKEL
Ms. Swapna Seshadri, Advocate, KSKMPCL
Shri Anand K Ganesan, Advocate, PELPL
Ms. Akanksha Tyagi, Advocate, PGCIL
Shri Deepak Khurana, Advocate, DB Power
Shri Manoj Rastogi, TRN/Maruti
Shri Rishav Ranjan,
Shri Anshul Roy, PGCIL
Ms. Vartika Nema, PGCIL
Shri Vikas Adhuna, DB Power
Shri Saransh Shaw, Advocate, APNRL
Shri Parinay D. Shah, Advocate, APNRL
Shri Anil R. Sah, ILFSTNPL
Shri Sanjiv K. Goel, JPVV

Record of Proceedings

At the outset, learned counsel for Essar Power Jharkhand Limited (EPJL) and Brahmini Thermal Power Private Limited (BTPPL) submitted that in response to the Terms of Reference framed by the Commission in para 9 of the RoP for the hearing dated 2.5.2017, various generators and stakeholders have filed their comments. Learned counsel further submitted as under:

- a). The payment of relinquishment charges is meant to compensate for the stranded transmission capacity resulting from relinquishment of LTA. Therefore, determination of specific quantum of the stranded transmission capacity and identification of transmission assets thereof in ISTS in terms of power transfer capability is *sine qua non* for imposition of relinquishment charges. This would require clear identification of several factors such as what should be treated as stranded capacity, the duration for which capacity is stranded, whose capacity is stranded and how much of the capacity remains stranded.
- b). Regulations are a part of the Transmission Service Agreement, therefore, principles of Sections 73 and 74 of the Indian Contract Act, 1872 would be attracted. The corollary to this is that the loss is when there is any stranded capacity in the network. The burden will be on the CTU to demonstrate that there is a stranded capacity which has resulted in the loss.
- c). Stranded capacity has to be measured in terms of power transfer capacity and not just the design capacity of the individual assets. Apart from the fact that there is a N-1 requirement for safety, there are other requirements to be met as required by CEA. Therefore, the actual power transfer capacity that gets stranded needs to be ascertained.

d). Apportioning the appropriate amount of the apportioned portion to the one making the relinquishment needs to be carried out. There should be no discrimination on application of stranded capacity charges between IPPs, Central Public Sector Undertaking (CPSU) generators and discoms.

e). In a meshed network, there cannot be any stranded capacity. The role and responsibility of CTU requires it to plan its network in such a way that the capacity is grown commensurate with demand and supply. It is a matter of fact that with the National Grid and unification of frequencies, the flow of power is much more efficient which has ultimately benefitted the Discoms as they have ability to draw power from different regions and to meet their short-term requirements.

f). In a dedicated transmission line, there could be stranded capacity. However, the circumstances in which the dedicated transmission line got commissioned needs to be seen. As per the Electricity Policy and Tariff Policy, CTU has an important planning and co-ordination function. There is also a requirement for them to co-ordinate with the IPPs in building the transmission lines. CTU cannot argue that it built the transmission lines irrespective of the IPP being ready or not. Merely signing the contract is not sufficient.

g). In a dedicated transmission line, firstly, it would be for the CTU to demonstrate that it went through the proper process of co-ordination to affirm that it did not built the transmission capacity without reference to the development and construction of the IPP and secondly, in a dedicated transmission line, the construction should be done on a modular basis.

h). As per Para 5.3.2 of the National Electricity Policy and Para 7.1 of the Tariff Policy 2016, merely signing of the agreement does not necessarily mean that demand or capacity will actually come up. PGCIL's role as CTU is coming in conflict with its functions as transmission licensee.

i). In a huge meshed network, it is neither practically possible to identify the quantum of stranded power transmission transfer capability to an individual IPP nor justifiable to attribute such capacity solely to the private sector generation developers.

j). The LTA holder cannot be penalized for something which is beyond its control. It is well known that maximum amount of risk is involved in the construction phase of any infrastructure project like a power project and therefore, the relevant force majeure clause should be read in a manner which serves the basic purpose of protecting the parties for reasons beyond their control during the construction phase as well as the operation phase.

2. Learned senior counsel for JITPL and Vedanta submitted that comments of CTU have not been received and therefore, there can be no fruitful discussion during the arguments. Learned senior counsel submitted that Regulation 18 of the Connectivity

Regulations is unimplementable on account of the fact that if relinquishment charges are imposed and collected by PGCIL for relinquishment of LTA by a generator, then there is no mechanism for refund of such relinquishment charges in the event a fresh beneficiary comes forward and applies for LTA before the expiry of 12 years from the date of operationalization of the LTA of the generator who has relinquished. This is on account of the fact that relinquishment charges, at best, are meant for preventing any adverse financial impact qua PoC or transmission charges on the existing beneficiaries as a result of exit of a particular generator. Learned senior counsel further submitted that in the event there is another entity or generator which can fill in the void of the other generator who has relinquished LTA, then the existing beneficiaries would be in fact benefitted by the said relinquishment, which is not the intent of Regulation 18.

3. Learned counsel for PGCIL requested the Commission to change the Terms of Reference and submitted that the 2009 Connectivity Regulations should be read harmoniously with the 2010 Sharing Regulations. Learned counsel further submitted that as per the 2010 Sharing Regulations, PGCIL is revenue neutral and the compensation is of the DIC's who are in the system of PoC and have been bearing and sharing the transmission charges and losses. Learned counsel further submitted that both relinquishment and stranded capacity have to be read in context of the Long Term Customers and in the meshed network, there will never be unutilized capacity.

4. Learned counsels for the respondents objected to the submissions made by the learned counsel for PGCIL on the ground of variation in PGCIL's previous stance and introduction of new issues during the course of hearing.

5. After hearing the learned counsels for the parties, the Commission observed that there is no need to change the Terms of Reference. The Commission directed CTU to file its consolidated submissions including the legal and commercial propositions made during the hearing within ten days. The Commission directed the respondents/stakeholders to file their response within one week thereafter. The Commission directed the parties to comply with the due date of filing the replies.

6. The petition shall be listed for hearing on 2.8.2017.

By order of the Commission

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