

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 32/MP/2017

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A. K. Singhal, Member

Shri A. S. Bakshi, Member

Dr. M. K. Iyer, Member

Date of order: 26th of September, 2017

In the matter of

Petition under Section 79(1)(c) and Section 79(1)(f) of the Electricity Act, 2003 read with the provisions of the Central Electricity Regulatory Commission (Grant of Connectivity, Long Term and Medium Term Open Access in inter-State transmission and related matters) Regulations, 2009 and the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010.

And

In the matter of

Power Grid Corporation of India Limited
B-9, Qutab Institutional Area
Katwaria Sarai
New Delhi- 1100016

..... **Petitioner**

Versus

Himachal Sorang Power Ltd.
Ashirwad Building, D-7, Lane-1,
New shimla, Shimla-171 009

..... **Respondent**

Northern Regional Load Despatch Centre
18-A, Katwaria Sarai,
New Delhi-110 016

...**Proforma Respondent**

Parties Present:

Ms. Swapna Seshadri, Advocate, PGCIL

Ms. Saloni Sacheti, Advocate, PGCIL

Shri Ajay Upadhya, PGCIL

ORDER

The Petitioner, Power Grid Corporation of India Limited (“**PGCIL**”) has filed the present petition under Section 79 (1) (c) and (f) of the Electricity Act, 2003 for seeking direction to the Respondent, Himachal Sorang Power Limited (hereinafter referred to as “**HSPL**”) to pay the past and current dues along with surcharge and to open the LC for appropriate amount.

2. HSPL is implementing a run of river Hydro Electric Power Project with a generation capacity of 100 MW (2X50 MW) on the Sorang Nallah tributary of Satluj river, in the Kinnaur district of Himachal Pradesh. HSPL was granted long term open access by the Petitioner on 17.7.2009 for 25 years and for the purpose, a Bulk Power Transmission Agreement was executed on 21.10.2009 according to which the date of commencement of open access was May, 2011 or actual date of commercial operation of the first unit, whichever is earlier. As per the BPTA, a specific line, namely LILO of one-circuit of Karcham Wangtoo-Abdullapur 400 kV D/C (Quad) line at Sorang was to be constructed and commissioned to provide long term open access to HSPL. HSPL vide its letter dated 2.8.2010 requested PGCIL to revise the date of commencement of open access from May 2011 to January 2012 due to anticipated delay in commissioning of its generating units. The matter was discussed in the 19th meeting of the Technical Coordination Committee (TCC) and 21st meeting of NRPC held on 1st and 2nd June, 2011 respectively which did not recommend extension of the date of commencement of open access. Subsequent to the decision in NRPC, HSPL vide its letter dated 7.7.2011 requested the Petitioner that the commencement of open access should start from the date of commissioning of Karcham Wangtoo-Abdullapur transmission line i.e. 1.4.2012 from which HSPL was entitled to avail the open access

and consequently was liable to pay the transmission charges from the said date. Accordingly, the Petitioner raised the bills on the HSPL from 1.4.2012 onwards.

3. HSPL filed Petition No. 43/MP/2012 for seeking extension of LTA commencement upto September, 2012 due to force majeure event. The Commission vide order dated 31.3.2013 rejected the claim of HSPL for further postponement of commencement of open access and directed that HSPL was liable to pay the transmission charges to PGCIL from 1.4.2012. Aggrieved by the decision of the Commission, HSPL filed an appeal before the Appellate Tribunal. The Appellate Tribunal vide its interim order dated 27.3.2014 in Appeal No. 54 of 2014 directed HSPL to furnish the bank guarantee of 50% of the amount payable and to pay current dues from 1.3.2014 onwards. Accordingly, HSPL proposed to make 30% payment upfront and the balance in 18 instalments from July 2014 to December, 2015 and started making monthly payments regularly and clearing the outstanding dues as per the proposed schedule. Subsequently, the Appellate Tribunal vide its final judgment dated 30.4.2015 dismissed the appeal.

4. The Petitioner has submitted that HSPL paid outstanding dues till December, 2015 and was making the monthly payment of the current dues till the month of March 2016. Thereafter, HSPL suddenly stopped making payments of transmission charges and has not extended the Letter of Credit beyond May, 2016. The Petitioner through various letters requested HSPL to pay the transmission charges and to open LC. In response, HSPL vide its letter dated 8.12.2016 expressed its inability to pay the outstanding dues due to fund crunch and informed that the project is currently being

minimally maintained by it and no repair works have been initiated due to non-availability of funds.

5. The Petitioner has submitted that HSPL has claimed financial constrains in not only commissioning its generation units but also in servicing the long term access being availed by it. The Petitioner has submitted that as on 31.1.2017, Rs. 29.28 crore is outstanding against HSPL. The Petitioner has submitted that the Commission vide orders dated 3.2.2013 and 14.9.2015 in Petition Nos. 78/MP/2014 and 78/MP/2015 respectively has recognised that non-payment or not initiating payment security would cripple the entire inter-State transmission system and granted liberty to the Petitioner to regulate the power supply/curtail short term open access in case of pending dues/non-establishment of LC as per the provisions of the Central Electricity Regulatory Commission (Regulation of Power Supply) Regulations, 2010.

6. The Petitioner has submitted that PGCIL is not able to implement the provisions of the Central Electricity Regulatory Commission (Regulation of Power Supply) Regulations, 2010 on HSPL as the generation unit of HSPL is still to be commissioned and no further recourse is available to the Petitioner to recover the transmission charges from HSPL. The Petitioner has requested to direct HSPL to settle the outstanding transmission charges along with surcharge prior to allowing scheduling its power.

7. Against the above background, the Petitioner has made the following prayers:

“(a) Direct Himachal Sorang Power Ltd. to pay the past and current dues alongwith applicable surcharge and also establish the LC as payment security mechanism towards the transmission charges, so as to continue its long term access.

(b) Alternatively, allow the LTA to be revoked and allow the recovery of transmission charges from other DICs. Also make the Respondent liable to pay the relinquishment charges as per the Regulations towards cancellation of LTA. To allow further grant of LTA to the Respondent by the CTU only after the Respondent clears the entire dues alongwith applicable surcharge, which shall be passed onto the other DICs.”

8. The matter was heard on 6.7.2017 and 29.8.2017. None was present on behalf of the Respondent despite notice. No reply has been filed by the Respondent. During the course of hearing, learned counsel for the Petitioner requested the Commission to direct the Respondent to comply with the provisions of the regulations. Learned counsel further submitted that as per the information available, Greenko has taken over HSPL but the Petitioner could not serve the copy of the Petition to Greenko with regard to the transmission charges.

Analysis and Decision:

9. We have considered the submissions of the Petitioner. The Petitioner has argued that HSPL is not paying the transmission charges since April, 2016 and is not opening the LC as payment security mechanism towards the transmission charges. The Petitioner has submitted that as on 31.1.2017, Rs. 29.28 crore is outstanding against HSPL. HSPL had applied for 100 MW LTA in March 2009 from Sorang HEP in Himachal Pradesh. On 17.7.2009, HSPL was granted LTA. Subsequently, BPTA was signed between the Petitioner and HSPL according to which the date of commencement of open access was May, 2011 or actual date of commercial operation of the first unit, whichever is earlier. Pursuant to the direction of the

Appellate Tribunal dated 26.5.2014 in Appeal No. 54 of 2014 filed by HSPL, HSPL cleared all outstanding dues by December, 2015 and was making payments of the current dues till the month of March, 2016. However, thereafter, HSPL suddenly stopped making payment of transmission charges. HSPL vide its letter dated 8.12.2016 informed the Petitioner that it is not able to pay outstanding dues as there was penstock burst at the time of commissioning of unit 2 of the project in November, 2015 and it is in continuous discussion with both its lenders and shareholders for additional infusion of debt and equity funds respectively for completing the project, including payment of arrears of the Petitioner's dues. The Petitioner has argued that non-payment of transmission charges by HSPL and other DICs will disrupt the entire regulatory mechanism which has been evolved and put in place in order to supply safer, reliable and quality power to the consumers and will act as a dampener to the investment in the transmission sector.

10. None was present on behalf of HSPL despite repeated notices. We express our displeasure at the conduct of the HSPL to ignore our notices. The Petitioner, vide Record of Proceedings for hearing dated 25.4.2017, was directed to confirm whether HSPL is generating and supplying power under any form of access. The Petitioner has submitted that as per the information received from NRLDC, HSPL has injected infirm power into the regional grid upto 18.11.2015 and there is no injection by HSPL thereafter. As per Regulation 12 of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010, CTU is empowered to enforce regulation of power supply against defaulting DICs for non-payment of transmission charges and non-compliance of LC. Therefore, a statutory

mechanism is available to the Petitioner to invoke the regulation of power supply in case of non-payment of transmission charges and non-opening of LC. Since, the generating station of HSPL is not generating the power, the Petitioner cannot invoke provisions of regulations of power supply against HSPL. As HSPL has been granted LTA and the said LTA has been operationalised from April 2012 onwards, the liability of transmission charges shall accrue to HSPL. The Petitioner shall continue to raise the bills for the LTA on HSPL. If HSPL has been taken over by another company as informed during the hearing, the said company shall be liable to pay the transmission charges as per the terms of the BPTA dated 24.10.2009 which provides that HSPL includes its successors and assignees. Accordingly, it is directed that HSPL or its successor or assignee shall be liable for the payment of all outstanding dues towards transmission charges along with surcharge and to open the LC. Since, the payments are overdue, it is directed that HSPL or its successor or assignee shall be permitted to inject power under LTA/MTOA/STOA only after they make the payment of outstanding transmission charges.

11. The petition is disposed of in terms of the above.

Sd/-
(Dr. M.K.Iyer)
Member

sd/-
(A.S.Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson