

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 76/MP/2014

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Date of Order: 23rd of March, 2017

In the matter of

Petition for reduction of long term open access from 60 MW to 30 MW (Unit-1, Unit-II 15 MW) and refund of the excess transmission charges paid by the Petitioner as per the bulk power transmission agreement dated 30.4.2009 read with Regulation 32 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long term access and Medium term open access in inter-State Transmission and related matters) Regulations, 2009.

And

In the matter of

Spectrum Coal and Power Limited
18, Vasant Enclave,
Rao Tula Ram Marg,
New Delhi-110 057

....Petitioner

Vs

Power Grid Corporation of India Limited
B-9, Qutub Institutional Area,
Katwaria Sarai, New Delhi- 110016

....Respondent

The following were present:

Shri Sanjey Sen, Senior Advocate, SCPL
Shri Matrugupta Mishra, Advocate, SCPL
Shri Hemant Singh, Advocate, SCPL
Shri Tavrez Malawat, Advocate, SCPL
Shri H.M. Jain, SCPL
Shri Satish Sharma, SCPL
Shri Bhasker Wagh, PGCIL
Ms. Jyoti Prasad, PGCIL

ORDER

The Petitioner, Spectrum Coal and Power Ltd., has filed the present petition under Regulation 32 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Open Access in Inter-State Transmission and Related Matters) Regulations, 2009 (“Connectivity Regulations”) seeking reduction of Long Term Access from 60 MW to 30 MW and refund of excess transmission charges paid by it.

2. The submissions of the Petitioner are as under:

- (a) On 1.2.2008, the Petitioner entered into Memorandum of Understanding (MoU) with PGCIL and Government of Chhattisgarh for setting up of a 100 MW (2 x 50 MW) blended washery reject with raw coal based thermal power plant in the State of Chhattisgarh (the Project) with a proposed investment of approximately Rs. 400 crore. The State Government under Article 4 of the MoU assured to facilitate and assist the Petitioner in obtaining all permissions, approvals, recommendations, etc. through State Investment Promotion Board. The Petitioner was under obligation to provide 5% of the net power generated from the project to the State Government or its nominated agency on an annualized basis at the energy (variable) charges. The State Government reserved its first right of purchase of power up to 30% of the aggregate capacity of the generating units for a period of 20 years through its nominated agency at the tariff approved by the Appropriate Commission.

(b) On 15.2.2008, the Petitioner made an application to CTU for grant of Long Term Access for 60 MW (Unit-I 30 MW and Unit-II 30 MW) and in the said application pooling station was indicated at Sipat Pooling Station of PGCIL. CTU vide its letter dated 16.3.2009 granted LTA to the Petitioner for 100 MW though the Petitioner had consciously applied for 60 MWs only. The date of commencement of open access was contingent upon fulfillment of the following conditions:

(i) Availability of dedicated transmission line, which is inter-connection of the Petitioner's Project with M/s Aryan Coal Generation Project (270 MWs) (to be developed by the Petitioner), which in turn shall be connected at WR pooling station near Sipat through 400 kV D/C (to be developed by Aryan Coal).

(ii) Availability of transmission system of various strengthening projects viz. Western Region system strengthening scheme-X/XI comprising the following elements:

a. establishment of 400 x 765 kV, 3 x 1500 MVA WR pooling station (near Sipat)

b. LILO of 765 kV Sipat-Seoni 2 x S/C at WR pooling station.

(iii) Signing of Bulk Power Transmission Agreement with PGCIL by the Petitioner for sharing of Western Regional transmission charges corresponding to 100 MW.

(iv) Necessary action to be taken by the Petitioner to fulfill the terms and conditions of open access application.

(c) On 30.4.2009, the Petitioner entered into the Bulk Power Transmission Agreement (“BPTA”) with PGCIL in accordance with the provisions of the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2004 (“2004 Open Access Regulations”). On 31.3.1999, PGCIL had executed a BPTA with bulk power beneficiaries of Western Region which was made part and parcel of the BPTA executed between the Petitioner with applicability of the terms and conditions of the previous BPTA to the Petitioner on *mutatis mutandis* basis. On 1.8.2009, the Petitioner entered into an Implementation Agreement with the State Government in replacement of the MoU. The Implementation Agreement is exhaustive in nature. As per Article 3.1 of the Implementation Agreement (IA), the Petitioner is under obligation to make an offer to the State Government for purchase of 30% of the aggregate capacity of the project and corresponding energy for at least 6 months before the schedule date of the PPA. IA also provides that a PPA shall be entered into between the Petitioner and the purchasing entity to sell such power. Accordingly, on 4.1.2011, the Petitioner entered into a Power Purchase Agreement with Chhattisgarh State Power Trading Corporation Ltd. (“CSPTCL”) for sale of 5% net power at variable cost and 30% of the aggregate capacity of the generating station and the corresponding electrical energy at the bus bar of the generating station at the rate to be determined by the Appropriate Commission, if required. The State Government agreed to purchase the power from the Petitioner’s

generating station on Round The Clock (RTC) basis through CSPTCL. The State Government further agreed to purchase power upto the contracted capacity for a period of 20 years. However, CSPTCL vide its letter dated 14.2.2012 conveyed its inability to purchase 30% of power as agreed under the PPA. CSPTCL further informed that it would consider buying the said power in the event, the Petitioner becomes successful and bringing down the cost of generation thereby matching its cost of generation with the cost of generation of projects having captive coal blocks or coal linkages. Though CSPTCL conveyed its concurrence to purchase 5% of the total power produced from the project as agreed at variable cost. Accordingly, CSPTCL suggested the Petitioner to sign a fresh PPA with regard to purchase of 5% power only. The PPA for 5 MW power from the first unit which is operational was signed.

(d) Pursuant to the coming into force of the Connectivity Regulations, on 24.2.2012, the Petitioner entered into a tripartite connection agreement with PGCIL and the Facilitator (ACB India Ltd.) for connecting the generation facility of the Petitioner to PGCIL's transmission system through Facilitator's dedicated transmission system.

(e) The 1st unit of 50 MW was commissioned in March, 2013. However, the construction work for the 2nd unit of 50 MW could not be started due to non-availability of environment clearances. PGCIL declared the commissioning of its transmission system through which the Petitioner's power was to be evacuated w.e.f. 12.9.2012. Accordingly, PGCIL raised invoice of Rs. 1,20,33,333/- of LTA

charges for 100 MW to the Petitioner for the period from 1.9.2012 to 30.9.2012. Being aggrieved by the invoice, the Petitioner vide its letter dated 11.10.2012 informed PGCIL that no communication had been made by PGCIL with regard to the commencement of LTA for the project. The Petitioner, in the said letter, further informed that the work on erection of 1st unit is in progress and is likely to be synchronized in October, 2012. The Petitioner also informed that the work of 2nd unit cannot be commenced due to non-clearance of environment clearance from the State Committee on Environment and Forest. Therefore, the Petitioner informed PGCIL that such delay in commencement of the construction work of 2nd unit is a force majeure event. Accordingly, the Petitioner requested to limit the effective date of LTA as 12.9.2012 for 1st unit only and for 2nd unit the same may be granted after firming of the construction schedule upon receiving environment clearance. Accordingly, the Petitioner requested PGCIL to send the revised invoice only for 50 MW to make due payment.

(f) Subsequently, the Petitioner vide its letter dated 6.11.2012 informed PGCIL that with the change in the regulatory regime, the transmission charges are to be levied on the basis of the power evacuated and requested PGCIL to revise the commencement date of 2nd unit to be effective from June 2014 and to carry out necessary changes in the BPTA and Connectivity Agreement.

(g) In the 17th meeting of WR Constituents held on 3.1.2013 regarding connectivity and open access applications, after deliberation on the issues put forth by the Petitioner, PGCIL reduced the LTA from 100 MWs to 88 MWs and also agreed

for change in beneficiaries as Chhattisgarh-4.5 MWs and WR-83.5 MWs. However, PGCIL did not pay heed to the deliberations made by the Petitioner towards reduction of LTA pertaining to refusal of CSPTCL for taking supply of power and non-commencement of construction of the 2nd unit of the project due to inordinate delay in obtaining environment clearance. PGCIL had only taken into consideration the auxiliary consumption while reducing the total quantum from 100 MW to 88 MW.

(h) The Petitioner, vide its letter dated 13.6.2013 brought to the notice of PGCIL, the particulars of the application for grant of LTOA made by it, the agreement signed and communications being made from time to time, and the Petitioner's application dated 15.2.2008 in which the Petitioner had applied for connectivity and LTA for 100 MW and 60 MW respectively. The above issue was discussed during 10th meeting of Standing Committee. Under the 2004 Open Access Regulations, the tariff for wheeling charges were fixed on the basis of total installed capacity. However, after the advent of the Connectivity Regulations, the tariff is fixed on the quantum of power evacuated and connectivity is granted separately for the full capacity or such capacity which is equal to or more than the LTA capacity. Accordingly, the transmission charges could only be made applicable for the quantum for which LTA was asked i.e. 60 MW, but not the total installed capacity of 100 MW. Out of the 60 MW, 35 MW (5% + 30% for each unit of 50 MW i.e. 35% of 100 MW) was taken on behalf of the State of Chhattisgarh as a beneficiary. However, the State of Chhattisgarh, vide its letters dated

14.2.2012 and 29.9.2012, decided not to avail 30% of electricity and committed to avail only 5% of power to be generated from the project.

(i) In the 17th Standing Committee meeting held on 3.1.2013, the issues regarding reduction of LTA due to auxiliary consumption, reduction due to refusal to purchase of 30% share by CSPTCL and non-commencement of construction work of 2nd units were discussed. However, PGCIL decided to reduce the LTA from 100 MW to 88 MW after considering the auxiliary consumption only. Accordingly, the Petitioner requested PGCIL to reduce LTA from 60 MW to 30 MW and refund/adjustment in the future bills the amount already paid for 100 MW from 12.9.2012 to 2.1.2013 and for 88 MW from 3.1.2013.

(j) In the 18th Standing Committee meeting of WR constituents held on 29.8.2013 regarding connectivity and open access, the issues raised by the Petitioner were deliberated upon and PGCIL allowed for reduction of LTA from 88 MW to 60 MW, and the Petitioner claimed LTA charges for 60 MW w.e.f. 29.8.2013. Being aggrieved by such inaction of PGCIL, the Petitioner has filed the present petition seeking direction to PGCIL to reduce the LTA from 60 MW to 30 MW and to refund excess transmission charges paid by it.

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

“(a) Direct the Respondent to reduce Long Term Open Access granted to Petitioner from 60 MWs to 30 MWs under the Bulk Power Transmission Agreement dated 30.04.2009 executed between the Petitioner and the Respondent;

(b) Direct the Respondent to refund all the amount which it has received from the Petitioner towards transmission charges in excess of 60 MW from 12.09.2012 till

28.08.2013 i.e. an amount of Rs. 6,22,34,019/- be refunded to the Petitioner along with interest; and

(c) Pass such other and further order or orders as this Hon'ble Commission may deem fit and proper under the facts and circumstances of the present case and in the interest of justice.”

4. The notice was issued to the respondent to file its reply.

5. PGCIL, vide its affidavit dated 9.7.2014, has submitted as under:

(a) The Petitioner had made an application for grant of LTA for 60 MW on 15.2.2008.

The Petitioner's application was discussed in the 10th Open Access Meeting of WR constituents held on 6.12.2008 in which it was deliberated that as the entire capacity would be connected to the grid and there is no other drawl arrangement from the generation switchyard, it is necessary that sharing of regional transmission charges would be corresponding to entire gross capacity of the project. Accordingly, LTA of 100 MW was issued to the Petitioner.

(b) The Petitioner's request to reduce auxiliary consumption from LTA quantum was discussed in 17th Open Access Meeting of WR constituents held on 3.1.2013 in which LTA quantum was reduced from 100 MW to 88 MW by reducing auxiliary power consumption.

(c) The Petitioner vide letter dated 13.6.2013 requested PGCIL to reduce the LTA quantum to 60 MW as it has applied for 60 MW only. The Petitioner further informed that its generating station is delayed considerably due to non-availability of forest clearance and requested to commence LTA as per commissioning of the unit i.e. 30 MW with Unit-1 and 30 MW with Unit-2. In the 18th Open Access

Meeting of WR constituents held on 19.8.2013, the issue was discussed and LTA was reduced from 88 MW to 60 MW. However, in the payment of transmission charges based on unit segregation was not agreed to.

6. The Petitioner, vide its rejoinder dated 22.9.2014, has reiterated the submissions made in the petition and has submitted as under:

(a) The reduction of LTA by the Petitioner has two basis to stand on. Firstly, the Petitioner is vested with a statutory remedy as provided under Regulation 18 of the Connectivity Regulations, under which the Petitioner is entitled to relinquish the long term access rights fully or partly before the expiry of the full term of long term access, by making payment of compensation for stranded capacity in the manner prescribed under the Connectivity Regulations. In this basis, PGCIL is obliged to calculate as to whether due to relinquishment of 30 MW from the granted LTA of 60 MW, any transmission system is getting stranded or not.

(b) The second basis available to the Petitioner is contractual in nature wherein the Petitioner is entitled to be discharged its obligations under the BPTA whenever there is an emergence of any force majeure events as provided under Article 12 of the BPTA. The denial of CSPTCL to purchase power of 30 MW from the Petitioner and non-commencement of construction of Unit-II of the project of the Petitioner due to delay in grant of environmental clearance, are force majeure events, which discharge the Petitioner from performing its obligations under the BPTA to the extent applicable.

(c) The averment made by PGCIL that the Petitioner vide letter dated 6.12.2012 requested to reduce auxiliary consumption from its LTA quantum. The Petitioner vide its letter dated 6.11.2012 requested the Petitioner to reduce LTA to 88 MW and revise the quantum of LTA with the target beneficiaries mentioned in the letter. The Petitioner further requested PGCIL to revise the date of commissioning of Unit II as June, 2014 and to make suitable amendment to the BPTA accordingly.

(d) PGCIL made a deliberate effort to represent distorted facts before the Commission. The Petitioner vide its letter dated 13.6.2013 categorically requested PGCIL to reduce LTA from 60 MW to 30 MW and refund excess billing made by it in respect of 100 MW from 12.9.2012 to 2.1.2013 and for 88 MW from 3.1.2012 to 13.6.2013. Despite repeated requests, PGCIL deliberately neglected and derelicted in reducing the LTA from 60 MW to 30 MW.

7. The Central Electricity Authority vide ROP dated 11.7.2014 was advised to submit its views on the Petitioner`s request to reduce LTA from 60 MW to 30 MW (Unit-I, Unit-12 15 MW), particularly from the angle whether such reduction of LTA would result in stranded capacity.

8. CEA, vide letter dated 12.1.2015, has submitted as under:

(a) As per the discussion in the 28th Standing Committee meeting on Power System Planning in WR and 10th meeting of WR constituents regarding LTA held on 6.12.2008, the Petitioner was granted LTA of 100 MW with the target beneficiaries in Western Region.

- (b) The date of commencement of open access was subject to the availability of Inter-State Transmission System namely, 3X1500, 765/400 kV WR (Sipat) pooling station along with LILO of 765 kV Sipat-Seoni 2xS/C at WR pooling station. At Sipat pooling station, open access was granted to other IPPs also namely, Maruti Clean Coal and Power Limited, Aryan Coal Beneficiations India Limited, Lanco-I and II at Pathadi, Dheeru Powergen and (Mahan) Essar Power Limited. The power from the Petitioner's generating station is injected in the generation switchyard of Aryan Coal Beneficiation India Ltd. (ACB(I)) at 132 kV level and is stepped up at 400 kV level. ACB (I) generation switchyard is connected to WR/pooling station through a dedicated 400 kV D/C transmission line of ACB (I).
- (c) In the 17th meeting of WR constituents regarding connectivity/open access applications held on 29.8.2013, LTA of the Petitioner was reduced from 100 MW to 88 MW on its request after taking into account the auxiliary consumption of 12 MW. Subsequently, in the 18th meeting of WR constituents regarding connectivity/ open access applications held on 29.8.2013, reduction of LTA of 88 MW to 60 MW was agreed as the Petitioner had originally applied for LTA for 60MW only whereas the LTA granted was for full capacity i.e. 100 MW (2x50 MW).
- (d) The inter-State transmission system strengthening associated with LTA granted to the Petitioner and other IPPs namely, establishment of 3x1500, 765/400 kV WR pooling station along with LILO of 765 kV Sipat -Seoni 2xS/C at WR

pooling station has already been commissioned and is operationalized.

- (e) If the LTA for the Petitioner is reduced from 60 MW to 30 MW, an additional margin of 30 MW would become available on long term basis in the transmission system created for LTA. This additional margin would remain unused till allotted to other IPPs/ generators in future.
- (f) Regulation 18 of the Connectivity Regulations provides for payment of compensation for stranded capacity in case of relinquishment of long-term access rights fully or partly before the expiry of the full term of long-term access. The stranded capacity in the Connectivity Regulations has been defined as the transmission capacity in the inter-state transmission system which is likely to remain unutilized due to relinquishment of access rights by a long term customer. As per the Connectivity Regulations, CTU is the nodal agency for connectivity, long term access and medium term access and as such should specify the stranded capacity which may be created due to relinquishment of access rights before the expiry of the full term of long-term access.
- (g) CEA is of the view that in case if a long term customer needs to pay compensation for relinquishment of access rights as per Regulation 18 of the Connectivity Regulations, then the quantum of long-term access relinquished, may be used for calculation of compensation. In these calculations, the transmission charges based on PoC mechanism, instead of earlier pool based transmission charges mechanism may be used.

9. CTU, vide ROP dated 19.5.2015, was directed to submit the following information/ clarification:

(a) Under which Regulations, LTOA of 100 MW was granted instead of 60 MW, as the Petitioner had applied for only 60 MW and further revised it to 88 MW and then to 60 MW.

(b) Whether the CTU has considered the stranded capacity while revising the LTOA quantum from 100 MW to 88 MW and then to 60 MW and clarify the issue of stranded capacity in Western Region and also the congestion, if so, at Sipat Pooling Station or in evacuation of power by ACB.

(c) Reasons for not indicating date while granting LTA to the Petitioner on 16.3.2009?

10. The Petitioner was directed to clarify whether necessary notification under Force Majeure clause of the BPTA was issued by it to CTU within stipulated time of 30 days.

11. PGCIL, vide its affidavit dated 26.6.2015, has submitted as under:

(a) With regard to Regulations under which LTA of 100 MW was granted instead of 60 MW, as the Petitioner had applied for only 60 MW and further revised it to 88 MW and then to 60 MW, PGCIL has submitted that the Petitioner made an application for grant LTA of 60 MW on 15.2.2008 from its proposed 2x50MW generation project in Korba, Chhattisgarh. The Petitioner's application was discussed in the 10th Open Access meeting of Western Region constituents held

on 6.12.2008 at Aurangabad wherein CEA indicated that as the entire capacity would be connected to the grid and there is no other drawl arrangement from the generation switchyard, as is evident from the enclosed schematic diagram, it is necessary that sharing of regional transmission charges would be corresponding to entire gross capacity of the project. The Petitioner agreed for the same. Accordingly, the Petitioner was granted LTA of 100 MW. Subsequently, on 30.4.2009, the Petitioner entered into the BPTA with PGCIL for 100 MW. However, the Petitioner never raised any objection for grant of LTA of 100 MW and neither it contested the same. Therefore, a presumption was drawn that the Petitioner had acquiesced to the grant of 100 MW.

(b) With regard to second point as to whether the CTU has considered the stranded capacity while revising the LTA quantum from 100 MW to 88 MW and then to 60 MW and clarify the issue of stranded capacity in Western Region and the congestion, if so, at Sipat Pooling Station or in evacuation of power by ACB, PGCIL has submitted that in Western Region, strengthening scheme (WRSS-X and XI) were evolved in 2007-08, comprising of establishment of 765/400 kV 3x1500 MVA WR Pooling Station near Sipat and LILO of both the circuits of Sipat-Seoni 765 kV 2xS/C at the above pooling station. These strengthening were aimed at serving evacuation requirement of generation projects likely to materialize in the Korba/Sipat complex in Chhattisgarh. The LTA was granted to the Petitioner to utilize the margins available in the above strengthening schemes. In this regard, no new transmission elements were planned for enhanced capacity from 60 MW to 100 MW as the same was to be

accommodated in the aforesaid margins only. Therefore, while revising the LTA quantum from 100 MW to 88 MW and then to 60 MW, the specific issue of stranded capacity was not discussed in the 17th and 18th meetings of WR constituents regarding connectivity and open access applications held on 3.1.2013 and 29.8.2013 respectively where decision for revision of LTA quantum were taken.

(c) In regard to reasons for not indicating date while granting LTA to the Petitioner on 16.3.2009, PGCIL has submitted that date of commencement of open access was stated as commissioning of identified transmission elements of LTA intimation issued to SCPL for 100 MW dated 16.3.2009. As per the intimation, LTA could only have commenced subsequent to date of commissioning of all the identified associated transmission elements.

12. With regard to necessary notification issued under Force Majeure clause, the Petitioner, vide affidavit dated 5.8.2015, has submitted that as per Clause 12 of the BPTA the parties are under the obligation to notify the other party regarding existence of the force majeure event within a period of 30 days. The Petitioner has submitted that the 1st Unit was commissioned in March 2013 and the construction work for the 2nd Unit could not be started due to non-availability of environmental clearance. PGCIL declared the commissioning of the PGCIL's system through which the Petitioner's power was to be evacuated from 12.9.2012. Accordingly, PGCIL raised an invoice of Rs. 1,20,33,333/- towards LTOA charges for 100 MW w.e.f. 1.9.2012 to 30.9.2012, whereas admittedly the Petitioner had only applied for transmission of 60 MW (30 MW from 1st

unit and 30 MW from 2nd Unit) of power from its generating station through PGCIL's transmission system. Being aggrieved by such invoice, the Petitioner vide its letter dated 11.10.2012 informed PGCIL that no communication had been made on the part of PGCIL regarding commencement of LTA for the Project. The work on erection of the 1st Unit was in progress and which was likely to be synchronized in October 2012. The Petitioner further informed PGCIL that the work of the 2nd Unit could not be commenced due to non-availability of environmental clearance, therefore, is a force majeure event. The Petitioner has further submitted that the Petitioner brought to the notice of PGCIL the connectivity agreement executed on 24.2.2012 wherein the Petitioner had given the date of commissioning as 1st Unit and 2nd Unit in April 2012 and June 2014 respectively. Therefore, the Petitioner requested to limit the effective date of LTA as 12.9.2012 for 1st Unit only and to grant LTA for the 2nd Unit after firming up the construction schedule upon receiving the environmental clearance. Accordingly, the Petitioner requested PGCIL to send revised invoice only for 50 MW to enable it to make due payments.

13. The Petitioner, vide its letter dated 6.11.2012, informed PGCIL that on 16.3.2009, the LTA was granted for total capacity of 100 MW, which was also the installed capacity of the Project. The tentative beneficiaries were indicated as WR constituents (50 MW) and CSEB (50 MW). With the change in the regulatory regime, the transmission charges are to be levied on the basis of power evacuated and accordingly, the quantum of transmission capacity permitted vide granting LTA was required to be revised from 100 MW to 88 MW (after reducing the auxiliary consumption). The Petitioner further informed PGCIL that the State of Chhattisgarh had revised purchase of power from 35%

to only 5%. In the given facts and also in the light of the letter dated 11.10.2012, the Petitioner requested PGCIL to revise LTA with the target beneficiaries and revise the date for the 2nd Unit by bringing amendment to the BPTA and the Connectivity Agreement. The above facts had also been brought to the notice of PGCIL and the same was recorded at Para K of the Minutes of 17th meeting of Western Region constituents held on 3.1.2013. The existence of the Force Majeure event due to non-availability of environmental clearance was further acknowledged by PGCIL while recording the same in Para C5 of the Minutes of 18th meeting of WR Constituents held on 29.8.2013. Accordingly, the Petitioner as required under the BPTA, had always intimated the existence of force majeure to PGCIL within the time stipulated and the manner provided in the BPTA.

Analysis and Decision:

14. We have heard the learned senior counsel of the Petitioner and learned counsel for the respondent and perused documents on record. The following issues arise for our consideration.

(a) Whether PGCIL was correct in granting LTA for 100 MW (installed capacity) whereas the Petitioner had applied for LTA of 60 MW?

(b) Whether the LTA granted to the Petitioner should be reduced from 60 MW to 30 MW on account of the force majeure pleaded by the Petitioner?

(c) If not, whether the Petitioner is required to pay the relinquishment charges for reduction of LTA from 60 MW to 30 MW?

These issues have been discussed in the succeeding paragraphs.

Issue No.1: Whether PGCIL was correct in granting LTA for 100 MW (installed capacity) whereas the Petitioner had applied for LTA of 60 MW?

15. The Petitioner made an application for grant of LTA of 60 MW on 15.2.2008 which was discussed in the 10th Open Access meeting of WR constituents held on 6.12.2008. The relevant portion of the minutes of 10th Open Access meeting of WR Constituents held on 6.12.2008 is extracted as under:

“2.5 CEA indicated that as the entire capacity would be connected to the grid, and there is no other drawal arrangement from the generation switchyard, it is necessary that sharing of regional transmission charges would be corresponding to entire gross capacity of the project. In the specific case M/s Spectrum need to share the WR tr. Charges corresponding to 100 MW capacity. M/s Spectrum agreed for the same.”

Perusal of the minutes of the above meeting reveals that the Petitioner was granted LTA corresponding to 100 MW after deliberation in the 10th Open Access Meeting to which the Petitioner agreed and signed the BPTA for the said quantum. Accordingly, PGCIL went ahead with execution of the transmission assets which were commissioned on 12.9.2012. PGCIL raised an invoice for transmission charges corresponding to the LTA quantum of 100 MW. The Petitioner vide its letters dated 11.10.2012 and 6.11.2012 requested PGCIL to revise the LTA quantum and consider 12.9.2012 as the effective date to start the LTA in view of the fact that execution of only the 1st unit of its generating station is in progress. The Petitioner further informed that due to non-availability of the environmental clearance, work on the 2nd unit of the generating station could not be started and accordingly, requested PGCIL to grant LTA for 2nd unit after firming up the construction schedule once the environmental clearance is obtained. The Petitioner further requested for reduction of LTOA from 100 MW to 88

MW after adjusting the auxiliary power consumption which was discussed in the 17th Open Access Meeting of the WR constituents held on 3.1.2013 and was agreed to.

Relevant extract of the minutes is extracted as under:-

“M/s SCPL stated that LTOA was granted to M/s SCPL as per the CERC (Open Access in ISTS) Regulations, 2004, for the total installed capacity and the transmission charges were based on pooled capacity of all the generation plants in the region. Further, as per the new CERC Regulations, 2009, transmission charges were to be levied on the basis of power evacuated. Therefore, M/s SCPL requested to revise the quantum of LTOA from 100 MW to 88 MW, after taking the auxiliary consumption of 12 MW.

Further, M/s SCPL requested to revise the LTOA commencement schedule of 2nd unit as June, 2014 because work for 2nd unit of 50 MW is yet to commence as environmental clearance for their 2nd unit is still awaited. Moreover, M/s SCPL informed POWERGRID that Govt. of Chhattisgarh has conveyed its acceptance for purchase of only 5% of net power as against 35% earlier.

Thus, SCPL requested for following revision in LTOA:-

Unit-1 (existing)	Unit-II (June, 2014)
Chhattisgarh : 2.25 MW	Chhattisgarh : 2.25 MW
WR : 41.75 MW	WR : 41.75 MW
Total : 44 MW	Total : 44 MW

After deliberations, the reduction in LTOA from 100 MW to 88 MW was agreed with change in beneficiaries as Chhattisgarh-4.5 MW, WR-83.5 MW.”

16. The Petitioner further took up the matter for reduction of the LTA quantum to 60 MW in line with its original application made on 15.2.2008. The constituents of the Western Region discussed the issue in the Open Access Meeting of WR held on 19.8.2013 and agreed to reduce the LTA quantum from 100 MW to 60 MW. Relevant portion of the minutes is extracted as under:-

“Revision of LTOA of 2X50 MW Spectrum Coal & Power Ltd

POWERGRID informed that M/s Spectrum Coal & Power Ltd. (SCPL) had applied for LTOA for 60 MW as per CERC Regulations, 2004. However, they were granted LTOA

for full capacity i.e. 100 MW and BPTA was also signed accordingly. In the 17th meeting of LTA/ Connectivity the LTOA quantum was reduced to 88 MW considering auxiliary consumption by the plant.

Now, M/s SCPL have requested that since they had applied for LTOA for only 60 MW, their LTOA quantum may be reduced to 60 Mw. Further, they have stated that Unit-II of their plant is delayed considerably due to non-availability of Environmental Clearance. Hence, they requested that LTA from M/s SCPL may be scheduled as per unit commissioning i.e. 30 MW with Unit-I and 60 MW with Unit-II.

After deliberations, it was agreed that M/s SPCL may be allowed for reduction of LTOA quantum from 88 MW to 60 MW. However, payment of transmission charges based on unit segregation was not agreed to.”

17. On perusal of the minutes dated 6.12.2008 quoted in Para 15 above, we notice that even though the Petitioner applied for LTA of 60 MW vide its application dated 15.2.2008 in accordance with the Open Access Regulations, 2004, the Petitioner was granted LTA for 100 MW on the suggestion of CEA that the sharing of the transmission charges should correspond to the gross capacity of the project. Accordingly, the Petitioner signed BPTA for 100 MW on 30.4.2009. On perusal of the Open Access Regulations, 2004, we do not find any provision which requires an Open Access Customer to take LTOA for a quantum which is more than the quantum applied for. However, the Petitioner signed the BPTA for 100 MW without any protest and has been paying the transmission charges accordingly. With the understanding that the LTOA would correspond to the installed capacity, the Petitioner applied for reduction of the LTA quantum from 100 MW to 88 MW after accounting for the auxiliary power consumption. The said request was agreed to and LTA quantum was reduced to 88 MW. The Petitioner subsequently, pursued the matter for reduction of LTA quantum from 88 MW to 60 MW in line with its request in its application for LTOA. This was discussed in the 18th meeting of the Open Access held on 19.8.2013 and it was agreed

by the constituents of the Western Region to reduce the LTA to 60 MW. In our view, the LTOA/LTA granted to the petitioner shall be treated as 60 MW from the date of operationalization of the LTA from 12.9.2012 and the relevant provisions of the BPTA/TSA shall be deemed to be amended accordingly. The Petitioner has been paying transmission charges corresponding to 100 MW till implementation of the decision in the 17th Open Access Meeting held on 3.1.2013 and corresponding to 88 MW thereafter. The Petitioner shall be entitled to refund of LTA charges in excess of 60 MW w.e.f. operationalization of LTA on 12.9.2012 till the actual date of reduction of LTA.

Issue No. 2: Whether the LTA granted to the Petitioner should be reduced from 60 MW to 30 MW on account of the force majeure pleaded by the Petitioner?

18. The Petitioner has contended that on 1.2.2008, MoU was entered into with the Government of Chhattisgarh for setting up of a 100 MW (2 x 50 MW) blended washery reject with raw coal based thermal power plant in the State of Chhattisgarh with a proposed investment of approximately of Rs. 400 crore. Under Article 4 of the MoU, the State Government assured to facilitate and assist the Petitioner to obtain all permissions, approvals, recommendations, etc., through State Investment Promotion Board. The Petitioner was obliged to provide 5% of the net power generated from the generating station to the State Government or its nominated agency on an annualised basis at the energy (variable) charges. The State Government though did not guarantee purchase from the generating station but it provided that the State Government or its nominated agency shall have the first right to purchase of power up to 30% of the aggregate capacity of the generating units for a period of 20 years through its nominated agency at the rate to be approved by the Appropriate Commission.

19. The Petitioner has submitted that in furtherance to the fulfillment of its obligations under MOU, it entered into an Implementation Agreement with the Government of Chhattisgarh on 1.8.2009 in replacement of the MOU. Pursuant to the MOU and the Implementation Agreement, the Petitioner entered into the PPA with CSPTCL on 4.1.2011 for sale of 5% net power at variable cost and 30% of the aggregate capacity of the generating station and the State Government had agreed to purchase power from the Petitioner on RTC basis through CSPTadeco, which is a deemed trading licensee. The State Government further agreed to purchase power up to the contracted capacity for a period of 20 years. The Petitioner has submitted that CSPTadeco vide its letter dated 14.2.2012 conveyed its inability to the Petitioner for purchase of 30% of power available to it under the first right of purchase agreement in view of the uncertainty of supply of raw coal for the Project. However, CSPTadeco conveyed its concurrence to purchase 5% of the total power as agreed at variable cost as per the terms and conditions of the MOU and the Implementation Agreement. Accordingly, CSPTadeco suggested for signing of a fresh PPA for purchase of 5% power only. Accordingly, the PPA for 5% power from the first unit, which is operational, was signed.

20. The Petitioner has contended that the 1st Unit of 50 MW was commissioned in March, 2013 and the construction work for the 2nd Unit of 50 MW could not be started due to non-availability of environmental clearance. On 12.9.2012, PGCIL declared the commissioning of the transmission system through which the Petitioner's power was to be evacuated. Accordingly, PGCIL raised an invoice of LTA charges for 100 MW to the Petitioner w.e.f. 12.9.2012. In response, the Petitioner vide its letter dated 11.10.2012 informed PGCIL that no communication had been made by PGCIL with regard to the

commencement of LTA for the Project and requested PGCIL that since in accordance with Connectivity Agreement dated 24.2.2012, the date of commissioning of 1st and 2nd Unit is April, 2012 and June 2014 respectively, the effective date of LTA as 12.9.2012 should be limited for 1st Unit only. The Petitioner vide its letter dated 6.11.2012 informed PGCIL that the LTA was granted on 16.3.2009 for total installed capacity of 100 MW and the tentative beneficiaries were indicated as WR constituents (50 MW) and CSEB (50 MW). Accordingly, with the change in the regulatory regime, the transmission charges are to be levied on the basis of power evacuated and the quantum of transmission capacity permitted while granting LTA was required to be revised from 100 MW to 88 MW (after reducing the auxiliary power consumption). The Petitioner further informed PGCIL that the State of Chhattisgarh had revised purchase of power from 35% to 5%. Accordingly, the Petitioner requested PGCIL to approve the revised quantum of LTOA with the target beneficiaries and revise the date for the 2nd Unit by bringing amendment to the BPTA and the Connectivity Agreement. The above facts were also recorded at Para K of the Minutes of 17th meeting of Western Region constituents held on 3.1.2013. The Petitioner has submitted that the existence of the Force Majeure event due to non-availability of environmental clearance was further acknowledged by PGCIL while recording the same in the Minutes of 18th meeting of WR Constituents held on 29.8.2013.

21. The Petitioner has sought relief under Clause 12 of the BPTA for reduction of its LTA from 60 MW to 30 MW on the ground that it was affected by force majeure. Clause 12 of the BPTA is extracted below:

“12.0 Force majeure: The parties shall ensure due compliance with the terms of this Agreement. However, no party shall be liable to claim any loss or damage whatsoever arising out of failure to carry out terms of the Agreement to the extent that such a failure is due to force majeure events such as fire, rebellion, mutiny, civil commotion, riot, strike, lock-out, forces of nature, accident, act of god and any other reason beyond the control of concerned party. But any party claiming the benefit of the clause shall notify the other party of the existence of such an event promptly and give written notice within 30 days time to the other party to this effect. Transmission/drawal of power shall be started as soon as possible practicable by the parties concerned after such eventuality has come to an end or ceased to exist.”

22. The above clause provides for the following:

- (a) The parties to the BPTA shall ensure due compliance with the terms of the said agreement.
- (b) No party shall be liable to claim any loss or damage arising out of the failure to carry out the terms of the agreement to the extent such a failure is due to force majeure events and any other event beyond the control of the concerned party. Force majeure events have been enumerated as fire, rebellion, mutiny, civil commotion, riot, strike, lock-out, forces of nature and acts of god.
- (c) A party claiming the benefit of the clause shall notify the other party of the existence of such an event promptly and give a written notice of 30 days to the other party.
- (d) Transmission/drawal of power shall be started as soon as possible/practicable by the parties concerned after such eventuality has come to an end or ceased to exist.

23. As per the first part of clause 12, both the Petitioner and PGCIL have to ensure due compliance with the terms of the BPTA. As per the terms of the BPTA, certain

transmission systems are to be constructed and commissioned by the Generation Project Developer and certain transmission assets have to be developed and commissioned by PGCIL. Timelines have been specified for the commissioning of the transmission assets developed by the Generation Project Developer and PGCIL. On the commercial operation of the transmission lines developed by PGCIL, the Generation Project Developer shall pay the transmission charges as determined by the Commission for such assets. PGCIL shall make its transmission lines available for evacuation of power for the terms of the agreement. If the Generation Project Developer intends to relinquish the BPTA, it has to pay the compensation as determined by the Commission. The BPTA further provides that the regulations issued by the Commission from time to time shall be binding on the parties.

24. Next part of clause 12 says that no party shall be liable to claim any loss or damages on account of its failure to carry out the terms of the agreement which is attributable to any of the enumerated force majeure events or any other event beyond the control of the concerned party. The use of the words “no party shall be liable to claim any loss or damage” relieves both the parties from claiming any loss or damage arising out of the failure to carry out the terms of the agreement by concerned party. The words “concerned party” refers to a party who is unable to carry out its obligations under the BPTA on account of being affected by force majeure or any other reason beyond its control. In other words, if either the Petitioner or PGCIL is affected by force majeure or reason beyond its control which results in its failure to carry out the terms of the agreement, then neither party is liable to claim or pay any loss or damages to the other party.

25. Next important thing to consider is the “loss or damage on account of the failure to carry out the terms of the agreement”. Failure to carry out the terms of the agreement needs to be considered in the light of the fourth part of clause 12 which says that “Transmission/drawal of power shall be started as soon as possible/practicable by the parties concerned after such eventuality has come to an end or ceased to exist”. It means that in terms of the agreement, PGCIL has to make its transmission system available to the Petitioner who shall use it for drawal or transmission of power from its generating station, drawal or transmission of power shall take place only after the commercial operation of the generating station. Drawal of power may be by the Petitioner or the beneficiaries of the generating station. Transmission of power will take place for conveyance of the power from the bus bar of the generating station to the destination of sale by use of ISTS lines of PGCIL. Therefore, the force majeure situation or situation beyond control has been envisaged after commercial operation of both generating station and transmission system and is not applicable in a case where either the generation or the transmission system is not ready. In such cases, the provisions of the BPTA are clear that the LTTC shall not relinquish or transfer his rights and obligations specified in the BPTA without prior approval of the Commission and CTU.

26. Therefore, from the analysis of Clause 12, it clearly emerges that the said clause is for providing temporary amnesty to the parties affected by force majeure in order to make the agreement work. The provision cannot be used to abdicate the BPTA. The Petitioner has claimed that on account of the reasons beyond its control due to non-availability of environment clearance and reduction of PPA quantum from 30 MW to 5 MW by CStradeco, it cannot set up the Unit 2 of the generating station and accordingly

has sought reduction of LTA from 60 MW to 30 MW. As we have discussed, the force majeure provision provided in clause 12 of BPTA is applicable in a case where the generation and transmission projects have been commissioned and not to a case where either generation or transmission has not been commissioned. Therefore, the Petitioner cannot take advantage of clause 12 of the BPTA to seek reduction of LTA on account of non-commissioning of the Unit 2 of its project and consequently the liability for the transmission charges under the BPTA and the Open Access Regulations, 2004/Connectivity Regulations.

Issue No. 3: If not, whether the Petitioner is required to pay the relinquishment charges for reduction of LTA from 60 MW to 30 MW?

27. The Petitioner has submitted that as per Regulation 18 of the Connectivity Regulations, the Petitioner has a legal right to relinquish the long term access rights fully or partly before the expiry of the full term of long term access, by making payment of compensation for stranded capacity in the manner prescribed under the Regulation. On this basis, PGCIL is obliged to calculate as to whether due to relinquishment of 30 MW from the granted LTA of 60 MW, any transmission system is getting stranded or not. The Petitioner has further submitted that since there is no stranded capacity, the provision of compensation does not apply to the Petitioner and the Petitioner is entitled for reduction of LTA from 60 MW to 30MW without paying any relinquishment charges.

28. CEA, vide letter dated 12.1.2015, has submitted that LTA granted to the Petitioner was subject to the availability of Inter-State Transmission System, namely 3x1500, 765/400 kV WR (Sipat) pooling station along with LILO of 765 kV Sipat -Seoni

2XS/C at WR pooling station. CEA has further submitted that at Sipat pooling station open access has been granted to other IPPs also namely, Maruti Clean Coal and Power Limited, Aryan Coal Beneficiations India Limited, Lanco-I and II at Pathadi, Dheeru Powergen and (Mahan) Essar Power Limited. The power from the Petitioner's generating station is injected in the generation switchyard of Aryan Coal Beneficiation India Ltd. (ACB (I)) at 132 kV level and is stepped up at 400 kV level. CEA has submitted that ACB (I) generation switchyard is connected to WR pooling station through a dedicated 400 kV D/C transmission line of M/s ACB (I). CEA has further submitted that the ISTS associated with LTA granted to the Petitioner and other IPPs namely, establishment of 3x1500, 765/400 kV WR pooling station along with LILO of 765 kV Sipat -Seoni 2xS/C at WR pooling station has already been commissioned and is under operation.

29. We have considered the submissions of the Petitioner, CEA and PGCIL. Regulation 18 of the Connectivity Regulations provides for the relinquishment of long term access right as under:

“18. Relinquishment of access rights

(1) A long-term customer may relinquish the long-term access rights fully or partly before the expiry of the full term of long-term access, by making payment of compensation for stranded capacity as follows:-

(a) Long-term customer who has availed access rights for atleast 12 years

(i) **Notice of one (1) year** – If such a customer submits an application to the Central Transmission Utility at least 1 (one) year prior to the date from which such customer desires to relinquish the access rights, there shall be no charges.

(ii) **Notice of less than one (1) year** – If such a customer submits an application to the Central Transmission Utility at any time lesser than a period of 1 (one) year prior to the date from which such customer desires to relinquish the access rights, such customer shall pay an amount equal to 66% of the estimated

transmission charges (net present value) for the stranded transmission capacity for the period falling short of a notice period of one (1) year.

(b) Long-term customer who has not availed access rights for at least 12 (twelve) years – such customer shall pay an amount equal to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of 12 (twelve) years of access rights:

Provided that such a customer shall submit an application to the Central Transmission Utility at least 1 (one) year prior to the date from which such customer desires to relinquish the access rights;

Provided further that in case a customer submits an application for relinquishment of long-term access rights at any time at a notice period of less than one year, then such customer shall pay an amount equal to 66% of the estimated transmission charges (net present value) for the period falling short of a notice period of one (1) year, in addition to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of 12 (twelve) years of access rights.

(2) The discount rate that shall be applicable for computing the net present value as referred to in sub-clause (a) and (b) of clause (1) above shall be the discount rate to be used for bid evaluation in the Commission's Notification issued from time to time in accordance with the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees issued by the Ministry of Power.

(3) The compensation paid by the long-term customer for the stranded transmission capacity shall be used for reducing transmission charges payable by other long-term customers and medium-term customers in the year in which such compensation payment is due in the ratio of transmission charges payable for that year by such long term customers and medium-term customers.”

30. Under the above provisions, long term customer has the right to relinquish long term access rights fully or partly, before the expiry of full term of long term access, by making payment of compensation for stranded capacity as provided herein. The Petitioner has submitted that since there is no stranded capacity, it is not liable to pay any relinquishment charges. According to CEA, if the LTA granted to the Petitioner is allowed to be reduced from 60 MW to 30 MW, an additional margin of 30 MW would be available on long term basis in the transmission system created for LTA.

31. The Commission is of the view that since the Petitioner has prayed for relinquishment of LTA from 60 MW to 30 MW, the request should be considered by PGCIL and the LTA capacity be reduced to 30 MW from the date of relinquishment; subject to the condition that the Petitioner shall be liable to pay the relinquishment charges in terms of Regulation 18 of the Connectivity Regulations. The Commission vide order dated 28.8.2015 in Petition No. 92/MP/2015 has constituted a Committee for assessment/determination of stranded transmission capacity with regard to relinquishment of LTA right by a long term customer and relinquishment charges in terms of the provisions of the Connectivity Regulations. Assessment of stranded capacity on account of relinquishment of LTA and determination of relinquishment charges shall be decided by the Commission after considering the recommendations of the Committee. If on the basis of the recommendations of the Committee, the Commission decides that there is no stranded capacity, the Petitioner would not be liable to pay the relinquishment charges. However, if the Commission decides that there is stranded capacity, the Petitioner would be liable to pay the relinquishment charge as directed above. The amount of LTA charges directed to be refunded vide para 17 of this order shall be adjusted against the relinquishment charges, if any. If there is a shortfall to meet the entire demand of relinquishment charges, the Petitioner shall be liable for payment of the same. If the refunded amount is more than the relinquishment charges, the same shall be refunded to the Petitioner from the amount collected through Short Term Open Access and offsetting the benefits of STOA charges received by the Petitioner for the corresponding capacity, if any.

32. The petition is disposed of in terms of the above directions.

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson