

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 98/MP/2015

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

Date of Order: 27th of April, 2017

In the matter of

Petition under Section 79 (1) (c) of the Electricity Act, 2003 read with Regulations 18 and 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 for relinquishment of long term open access from 265.35 MW to 0 MW.

And

In the matter of

Jaiprakash Power Ventures Limited
Sector-128, District Gautam Budh Nagar,
Noida - 201304

..... **Petitioner**

Versus

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

..... **Respondent**

Parties Present:

Shri Vishal Gupta, Advocate, JPVL
Shri Kumar Mihir, Advocate, JPVL
Shri Sitesh Mukherjee, Advocate, PGCIL
Ms. Akanksha Tyagi, Advocate, PGCIL

ORDER

The Petitioner, Jaiprakash Power Ventures Limited (JPVL), has filed the present petition seeking directions to Power Grid Corporation of India Limited (PGCIL) to permit it to relinquish/surrender the Long Term Access (LTA) granted by PGCIL from 265.35 MW to 0 MW and not to levy any compensation in terms of Regulation 18 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).

2. The Petitioner has set up a 500 MW (2 x 250 MW) coal based power plant (hereinafter referred to the 'project') in the State of Madhya Pradesh. The Petitioner's project is a revival project wherein erstwhile Bina Power Supply Company Ltd. (BPSCL) was taken over by Jaypee Group from Aditya Birla Group in May, 2008. BPSCL merged with Jaipraksah Power Ventures Ltd. (JPVL) pursuant to the judgment of the Hon`ble Himachal Pradesh High Court dated 25.7.2011.

3. The Petitioner has submitted that the following facts have led to the filing of the present petition:

(a) At the time of conceptualization of the project, the Petitioner had planned to supply gross power of 210 MW (42% of the installed capacity) from the said project [25 MW i.e. 5% of the net generation to Government of Madhya Pradesh (GoMP) at variable cost and 185 MW i.e. 37% to MP Power Management Company Limited (MPPMCL), erstwhile MP Tradeco on two part regulated tariff]. The balance 290 MW power was planned to be sold under Open Access regime to the beneficiaries of Northern and Western Regions in 50:50 ratio.

(b) The Letter of Assurance (LOA) for 0.926 MTPA dated 1.6.2009 was issued by the Central Coalfields Limited (CCL) and for 1.084 MTPA dated 6.6.2009 by the South Eastern Coalfields Limited (SECL) to Erstwhile BPSCL.

The said coal linkage of 2.01 MPTA was sufficient to run the Petitioner's project on its full installed capacity.

(c) On the basis of the above understanding and assurance, the Petitioner made an application to CTU on 23.7.2009 for grant of 290 MW Long Term Open Access (LTA) for inter-State transmission of electricity in accordance with the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2004 (2004 Open Access Regulations). The sub-station of PGCIL at Bina in Western Region was identified as the point of injection of power. The Petitioner proposed to carry power up to Bina sub-station of PGCIL through a 400 KV D/C dedicated transmission line. Since, there was no identified buyer of power for which LTA was sought, the Petitioner identified Western and Northern Regions as the target regions for supply of power in 50:50 ratio.

(d) PGCIL communicated LTA to the Petitioner on 1.10.2009. As per the letter, LTA was permitted with requirement of additional transmission system strengthening which was to be shared by Maruti Clean Coal & Power Ltd (300 MW), PTC India (600 MW), Dheeru Powergen (450 MW), Jaiprakash Power Ventures Ltd (1320 MW), Aryan Coal Beneficiation Pvt. Ltd (1200 MW), Bina Power (290 MW) and Indiabulls Power (390 MW) along with IPPs in the State of Odisha (6080 MW) in proportion to allocation to Northern Region. For this purpose, PGCIL had identified three lines namely: (i) Bina-Gwalior 765 kV S/c (3rd); (ii) Gwalior-Jaipur 765 kV S/C (2nd); (iii) Jaipur- Bhiwani 765 kV S/C.

(e) Similarly, for Western Region, PGCIL was required to strengthen common transmission system which was to be shared by Maruti Clean Coal &

Power Ltd (300 MW), PTC India (600 MW), Dheeru Powergen (450 MW), Jaiprakash Power Ventures Ltd (1320 MW), Aryan Coal Beneficiation Ltd. (1200 MW), Bina Power (290 MW) in proportion to allocation to Western Region. For this purpose, PGCIL had identified three lines, namely (i) Indore-Vadodara 765 kV S/C; (ii) Vadodara-Pirana 400 kV D/C (Quad); and (iii) Establishment of 765 / 400 kV 2x1500 MVA pooling station at Vadodara.

(f) The Petitioner entered into a LTA Agreement with PGCIL along with six long term transmission customers, namely Maruti Clean Coal & Power Ltd, Dheeru Powergen Pvt. Ltd., Aryan MP Power Generation Pvt. Ltd., Jaiprakash Power Ventures Ltd, Bina Power Supply Company Ltd. and Chhattisgarh State Power Trading Co. Ltd. on 24.2.2010. As per the LTA Agreement, the Petitioner was granted 265.35 MW LTA (i.e. 290 MW less Auxiliaries) out of which, 132.68 MW LTA was granted for Western Region and 132.67 MW LTA was for Northern Region.

(g) The Petitioner vide its letter dated 31.5.2011 requested PGCIL to reduce the quantum of LTA from 265.35 MW to 137.5 MW due to renewed agreement with Government of Madhya Pradesh and MPPMCL under which the Petitioner has to supply 70% (including quantum for which reduction in above LTA was sought) of the gross power directly to them through a dedicated 400 kV circuit terminating in MPPTCL Bina sub-station. The Petitioner further informed PGCIL that the Petitioner entered into a Power Purchase Agreement (PPA) with MPPMCL (erstwhile MP Tradeco) on 5.1.2011 for 65% i.e. gross 325 MW and with the Government of Madhya

Pradesh on 20.7.2011 for 5% i.e. gross 25 MW. However, no response was received from PGCIL in this regard.

(h) The Petitioner vide its letter dated 2.8.2011 reiterated the submissions made in letter dated 31.5.2011 and requested PGCIL to explain the status of system up-gradation work undertaken by it and intimated that there would be delay in commissioning of its power project. The Petitioner vide its letter dated 9.5.2012 further informed PGCIL that there can be delay in commissioning of its power project and requested to reduce the LTA from 265.35 MW to 137.5 MW.

(i) On 17.2.2012, Government of India, Ministry of Coal informed that Coal India Limited (CIL) will sign FSAs with power plants who have entered into long term PPAs with the Distribution companies and have been commissioned/would get commissioned after 31.3.2009 and on or before 31.3.2015. Accordingly, the Petitioner entered into FSAs on 10.7.2012 15.2.2013 with the Central Coalfields Limited and the South Eastern Coalfields Limited respectively.

(j) Since, the Petitioner's project had a long term PPA for 70% of the total installed capacity, the LOA, which were in place for 2.01 MTPA, got converted into FSAs for a total quantity of 1.3528 MTPA. Accordingly, LOA for CCL and SECL got reduced to 0.6482 MTPA from 0.926 MPTA and 0.7046 MTPA from 1.084 MPTA respectively thereby leaving no coal linkage for generation of balance 30% of power.

(k) The Petitioner by invoking the Force Majeure clause vide its letter dated 16.4.2014 informed PGCIL that due to unforeseen/Force Majeure event (due to Change in Law resultant of GoI Policy), 30% capacity of Jaypee Bina TPP is lying idle and requested PGCIL to cancel 137.5 MW LTA granted to Jaypee Bina TPP. However, no response was received from PGCIL in this regard.

(l) The provisions of Electricity Act, 2003 provides that the Electricity Regulatory Commissions are to ensure that the generation of power is done on commercial principles and the generator of electricity gets adequate and reasonable returns on its investments. Section 61 of the Act expressly embodies such objective. In order to achieve this objective, the Petitioner be allowed to surrender the LTA granted to it so that it does not suffer further loss on this count.

(m) The Petitioner is not in position to use the transmission capacity granted to it under the LTA Agreement. PGCIL despite being informed and notified of such events has chosen not to respond to the genuine requests of the Petitioner to revise the said LTA. Since, no resolution appears in sight and the Petitioner is constrained to file the present petition seeking regulatory intervention of this Commission.

4. Against the above background, the Petitioner has filed the present petition with the following prayers:

“(a) Declare that the change in policy of the Government of India regarding fuel linkages to the power plants wherein fuel linkage has been allowed only to the extent of long term power purchase agreements for supply power to the distribution licensees of a State, is a change in law and consequently a force

majeure condition affecting the performance of the Petitioner under the LTA Agreement; and

(b) Direct PGCIL to permit the Petitioner to relinquish/surrender the long term open access granted to it from 265.35 MW to 0.00 MW;

(c) Direct PGCIL not to levy any compensation in terms of Regulation 18 of the Connectivity Regulations; and

(d) Restrain PGCIL from raising bills/demands of any nature on the Petitioner with regard to the LTOA granted to it under LTA Agreement during the pendency of the instant Petition; and

(e) Pass any other or further order/s as this Hon'ble Commission may deem fit and proper in facts and circumstances of the present case.”

5. Notice was issued to the respondent to file its reply. Reply to the petition has been filed by Power Grid Corporation of India Limited (PGCIL).

6. PGCIL, vide its reply dated 18.11.2015, has submitted as under:

(a) The present petition is an abuse of process of law, in as much as the Petitioner is seeking approval for relinquishment of LTA in complete disregard of Regulation 18 of the Connectivity Regulations. Regulation 18 of the Connectivity Regulations nowhere mandates the Petitioner to obtain direction or approval from the Commission for relinquishment of LTA. Further, the Petitioner is seeking relief from the Commission without even stating whether it is willing to relinquish or not and, instead of giving notice under Regulation 18 of the Connectivity Regulations, it has filed the present petition.

(b) The process and charges for relinquishment of LTA is a regulatory process provided under Regulation 18 of the Connectivity Regulations. As per Regulation 18, the compensatory charges payable by the Petitioner will be utilized to reduce the additional burden on balance Designated ISTS Customer (DIC). The alleged force majeure cannot override the Regulations

and exempt the Petitioner from payment of relinquishment charges under the Regulations. Even Clauses 5 and 6 of the LTA Agreement provide for payment of compensation in case of relinquishment by the Petitioner.

(c) Clause 9 of the LTA Agreement provides for force majeure which relieves the parties from any liability arising out of failure to comply with the terms of the agreement to the extent such failure is caused by events that include strikes, act of God, change in law and any other reasons beyond the control of the concerned party. The Petitioner is alleging force majeure on the grounds of change in fuel linkage Policy.

(d) In terms of Clause 9 of the LTA Agreement, the Petitioner can claim force majeure only if there is an event or combination of events that wholly or partly prevents the Petitioner from carrying out its obligation under the LTA Agreement as provided in Clause 9.

(e) Force Majeure is a contractual mechanism *inter se* between the parties. In the present case, there is no provision in the LTA Agreement to cover the change in procurement of fuel as an event of force majeure. Sourcing of coal as per the Fuel Supply Agreement (FSA) is a decision between the Petitioner and the South Eastern Coalfields Limited, and the Petitioner and the Central Coalfields Limited. Therefore, the fuel linkage Policy affecting the supply of coal under the FSA cannot be said to be a force majeure under the LTA Agreement.

(f) The Connectivity Regulations does not prohibit an LTC to relinquish its LTA in case the LTA is not required in the light of the subsequent

developments. In such a case, the LTC will be required to pay the relinquishment charges in accordance with the Connectivity Regulations. Therefore, the grievance of the Petitioner that it should not be liable to pay for the relinquishment charges is not maintainable and is against the principle of compensatory payment under Regulation 18 of the Connectivity Regulations.

(g) In order to claim any relief under the LTA Agreement, the service of the notice is a mandatory condition. The event of alleged force majeure occurred on or around 17.2.2012 and the affected party has to give notice to the other party of any event of force majeure as soon as reasonably practicable, but not later than thirty days after the date of the event of force majeure as per clause 9 of the LTA. However, the Petitioner vide its letter dated 16.4.2014 informed PGCIL regarding force majeure event and therefore, strictly in legal sense cannot be treated as notice of force majeure event especially when serving the notice to claim relief within 30 days is a mandatory condition under the LTA Agreement.

(h) Clause 2 of the LTA Agreement provides that the Petitioner is required to open an LC for 105% of estimated average monthly billing for charges and would provide security in the form of irrevocable bank guarantee in favour of PGCIL. Clause 12.1 of the TSA provides that the Petitioner shall abide by the BCD Procedure, and such procedure shall be construed as part of the TSA. There has been a default on the part of the Petitioner in complying with the express terms of the BCD Procedure, Sharing Regulations and resultantly a breach of the TSA, in as much as it has not yet opened the LC. The Petitioner

in order to escape its obligation under the LTA Agreement with regards to opening the LC has filed the present petition alleging force majeure.

7. The Petitioner, vide its rejoinder has submitted as under:

(a) The entire basis of the petition is seeking exemption from payment of compensation as provided in Regulation 18 due to force majeure event i.e. change in the fuel linkage Policy by the Government of India, which has made it impossible for the Petitioner to comply with the terms of the LTA Agreement with PGCIL. It is a settled position of law that no person can be put to loss or subjected to damages for non- performance of its obligations under a contract if the said person's performance has been adversely affected due to reasons beyond its control.

(b) As per Clause 9 of the LTA Agreement, the definition of force majeure event includes Change in Law as a force majeure event which relieves the Petitioner against any liability towards any claim for any loss or damage whatsoever, arisen out of failure to carry out the terms of the LTA Agreement. The fuel linkage Policy, which was framed by the Government of India under its executive power, is required to be mandatorily followed and complied with by all the relevant authorities including the Petitioner dealing with the aspect of fuel linkage for the power plant. The compliance of the Policy being mandatory it clearly falls within the purview of the term "law" mentioned in Clause 9. Perusal of Clause 9 of the LTA Agreement reveals that the definition of force majeure event is very wide and provides "...any other causes beyond the control of the defaulting party".

(c) PGCIL has failed to appreciate that the performance of the Petitioner due to change in fuel linkage Policy has got adversely affected to the extent that it is not in a position to generate such quantum of power which can be supplied by it outside the State of MP using the inter-State Transmission System for which LTA has been granted to it by PGCIL. This is so because even if the Petitioner procures coal from other sources including imported coal, the cost of generation becomes too high consequently increasing the tariff to an extent that it is not possible to sell the power at such high rate in view of the prevailing scenario of power market.

(d) The Commission vide order dated 21.2.2014 in Petition No. 63/2013 has recognised on similar facts that non-availability of fuel due to change in Policy adversely affects the generating capacity of the generating plant due to reasons beyond its control.

(e) Section 61 of the Electricity Act, 2003 provides for generation of electricity to be done on commercial principles. If the Petitioner is made to pay compensation for relinquishment of LTA, then it will result in huge loss to the Petitioner making its power plant unviable which will be against the said principles of generation to be done on commercial principles.

Analysis and Decision:

8. We have heard the learned counsels for the parties at length. From the facts of the case and the submissions made on behalf of the parties, the following issues arise for our consideration:

- (A) Whether the Change in Policy of Government of India regarding grant of fuel linkage to power plants limited to the extent of long term PPA is a force majeure event in terms of Clause 9 of the LTA Agreement relieving the Petitioner from the obligations under the LTA Agreement?
- (B) Whether in the facts and circumstances of the case, any direction is required to be issued to PGCIL to permit the Petitioner to relinquish its LTA?
- (C) Whether the Petitioner is required to pay the relinquishment charges for relinquishment of LTA?

These issues have been discussed in the succeeding paragraphs.

Issue No. A : Whether the Change in Policy of Government of India regarding grant of fuel linkage to power plants limited to the extent of long term PPA is a force majeure event in terms of Clause 9 of the LTA Agreement relieving the Petitioner from the obligations under the LTA Agreement?

9. The Petitioner made an application to CTU for grant of LTA on 23.7.2009 for 290 MW. CTU vide its letter dated 1.10.2009 communicated to the Petitioner regarding grant of LTA. PGCIL after carrying out system studies granted LTA to the Petitioner and entered into a Long Term Access Agreement on 24.2.2010 with the Petitioner along with six other long term transmission customers. As per the LTA Agreement, the Petitioner was granted 265.35 MW LTA out of which, 132.68 MW LTA was granted for Western Region and 132.67 MW LTA was granted for Northern Region. The Petitioner vide its letter dated 31.5.2011 requested PGCIL to reduce the capacity of LTA from 265.35 MW to 137.5 MW due to non-renewal of the agreement by the Government of Madhya Pradesh. Subsequently, the Petitioner vide its letters dated 2.8.2011 and 9.5.2012 informed PGCIL that due to unavoidable circumstances and adverse weather conditions, the commissioning schedules of unit I and II had

been estimated as July 2012 and October, 2012 and the Petitioner requested to consider the commissioning of the Schedule I and II to 10.7.2012 and 15.2.2013 respectively. The Petitioner entered into FSAs with the Central Coalfields Limited and the South Eastern Coalfields Limited and the conditions precedent for operationalization of FSA is that the Petitioner would enter into PPA with the distribution companies. The Petitioner has submitted that it realized that it is virtually impossible for it to enter into PPAs for the remaining capacity of the plant on the basis of the coal to be procured from other sources including imported coal as the rate of such power was coming out to be very high and was not attractive to the buyers. The Petitioner vide its letter dated 16.4.2014 by invoking Clause 9 of the LTA Agreement sought relinquishment of the 137.5 MW LTA granted by PGCIL due to idle lying of 30% capacity.

10. The Petitioner has submitted that the change in the Policy of Government of India on fuel linkage has completely resulted in a situation where the Petitioner, due to change in law and reasons beyond its control, is not in a position to generate adequate power from its generating station to utilize the LTA granted to it since earlier, the Petitioner had Letter of Assurance (LOA) for coal linkage of 2.01 MTPA which was awarded for the full capacity of the Plant but after change in Policy of fuel linkage by Government of India resulted in partial coal linkage to the Petitioner to the extent of long term PPA with DISCOMs. Therefore, for the purpose of interpretation of Clause 9 of the LTA Agreement, it will cover within the purview of change in law. The Petitioner has submitted that at the time of conceptualization of the project, the then prevailing fuel linkage Policy of the Government of India permitted the Petitioner to use the entire fuel equivalent to 100% capacity of the project without any restriction i.e. no pre-condition /linkage to PPAs. Accordingly, the Petitioner sought

LTA from PGCIL with clear understanding that it would be in a position to generate power to the extent that it would use the inter-State transmission system for evacuation of the power from its project. However, the change in the fuel linkage Policy of the Government of India restricting the fuel linkage from the coal mines of CIL only to the extent the generating companies have long term PPAs with the distribution licensees have resulted in the reduction of the quantum of coal which can be supplied from the mines of CIL. This clearly has prejudicial effect on the power generating capacity of the Petitioner.

11. PGCIL has submitted that LTA Agreement for evacuation of power is not a contingent contract on fuel linkage contract and therefore, the LTA Agreement cannot be said to be frustrated on account of change in fuel linkage Policy on 17.2.2017. Thus, there is no force majeure effecting the performance of the Petitioner's obligations assumed under the LTA Agreement. PGCIL has submitted that the performance may become onerous or difficult to perform for the Petitioner due to change in Policy, but is not an impossibility to perform, particularly, in the context of Section 56 of the Indian Contract Act, 1857 or within the meaning of force majeure under Clause 9 of the LTA Agreement. PGCIL has submitted that alleged force majeure event occurred on 17.2.2012. However, the Petitioner informed PGCIL on 16.4.2014 in this regard, which is more than two years.

12. Let us consider the provisions of Clause 9 of the LTA Agreement with regard to force majeure event which provides as under:

"9. Force Majeure: The parties shall ensure due compliance with the terms of this Agreement. However, no party shall be liable for any claim for any loss or damage whatsoever arising out of failure to carry out the terms of this Agreement to the extent that such a failure is due to force majeure events such as war, rebellion, mutiny, civil commotion riot, strike, lock out, fire, flood, forces of nature, major accident, act of

God, change of law and any other causes beyond the control of the defaulting party. But the party claiming the benefit of this clause shall satisfy the other party of the existence of such an event and give written notice of 30 days to the other party to this effect. Transmission/drawal of power shall be started as soon as practicable by the parties concerned after such eventuality has come to an end or ceased to exist.”

13. From the analysis of Clause 9 of the LTA Agreement, it clearly emerges that the said clause is for providing temporary amnesty available to the parties affected by force majeure in order to make the agreement work. The provision cannot be used to abdicate the LTA Agreement. This is evident from the last sentence of the LTA Agreement which states that transmission or drawal of power shall be started as soon as possible or practicable by the parties concerned after the eventuality has come to an end or ceased to exist. The Petitioner has submitted that the change in fuel linkage Policy limiting the grant of fuel to the extent of long term PPA is a change in law event and force majeure event which is beyond its control as the Petitioner cannot generate adequate power from the generating station to utilize the LTA. In our view, change in Policy of Coal India Ltd to restrict the coal allocation in proportion to the long term PPA cannot be considered as force majeure event in terms of Clause 9 of the LTA Agreement. Availability of fuel commensurate with the full capacity of the power plant was never the basis for LTA Agreement between the Petitioner and PGCIL and therefore, non-availability of fuel for the full plant capacity cannot be considered as an event of force majeure as per Clause 9 of the LTA Agreement. Moreover, the Petitioner had other avenues to procure the shortfall of fuel namely, e-auction coal and imported coal and run the plant at full capacity and utilize fully the LTA granted to it. It is a commercial decision of the Petitioner not to go for other sources of coal and this cannot be treated as a cause beyond the control of the Petitioner. LTA Agreement is a contractual mechanism *inter se* between the parties. There is no provision in the LTA Agreement to cover the change in

procurement of fuel as an event of force majeure. Sourcing of fuel as per the Fuel Supply Agreement is a decision between the Petitioner and the Coal Mining Companies and cannot bind on the PGCIL who is neither a party to the FSA nor the LTA Agreement was premised on the basis of the said FSA. In our view, the Petitioner cannot take recourse to Clause 9 of the LTA Agreement to wriggle out of LTA Agreement on the grant of non-availability of linkage fuel commensurate with the full capacity of plant and consequent non-utilization of the LTA.

Issue No. B: Whether any direction is required to be issued to PGCIL to permit the Petitioner to relinquish its LTA?

14. The Petitioner has argued that due to reasons beyond its control, it is not able to utilize the LTA granted under LTA Agreement. Therefore, the Petitioner is seeking permission for relinquishment of 265.35 MW LTA and has sought exemption from payment of compensation as provided in Regulation 18 of the Connectivity Regulations due to force majeure event i.e. change in the fuel linkage Policy by the Government of India which has made it impossible for the Petitioner to comply with the provisions of the LTA Agreement.

15. PGCIL has submitted that the Connectivity Regulations does not prohibit an LTTC to relinquish its LTA in case the LTA is not required in the light of the subsequent developments. In such cases, the LTTC is required to pay the relinquishment charges in accordance with the Connectivity Regulations. Therefore, the grievance of the Petitioner that it should not be liable to pay for the relinquishment charges is not maintainable and is against the principle of compensatory payment under Regulation 18 of the Connectivity Regulations.

16. Regulation 18 of the Connectivity Regulation provides 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 at least 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.”

Under the above provisions, long term customer may 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.

Therefore, the LTA customer has the right to relinquish the LTA subject to payment of relinquishment charges towards stranded capacity. In fact, the Commission in a number of Petitions has directed PGCIL to consider the relinquished capacity for allocation to the pending LTA applicants, subject to decision in Petition No. 92/MP/2015 regarding relinquishment charges. PGCIL in its report dated 9.5.2016 with regard to the reallocation of relinquished LTA capacity has shown that 265.35 MW has been relinquished by the Petitioner. In the light of the above development, there is no requirement to issue specific direction to PGCIL to accept the relinquishment of the capacity of the Petitioner.

Issue No. C: Whether the Petitioner is required to pay the relinquishment charges for relinquishment of LTA?

17. The Petitioner has submitted that it is not required to pay the relinquishment charges as it has been affected by force majeure. We have already held that non-availability of full fuel linkage cannot be considered as force majeure in terms of Clause 9 of the BPTA. Therefore, the Petitioner is liable to pay the relinquishment charges for the capacity recovery unutilised out of the LTA relinquished.

18. PGCIL has submitted that the purpose of relinquishment charges is to ensure commitment of the project developer to use the transmission line for which LTA has been sought and to give comfort to the Respondent that the transmission line shall be optimally used after it is built. PGCIL has submitted that the system to which LTA was sought was a part of the common transmission system. Therefore, if the project developers are allowed to relinquish their LTAs in this manner, then the transmission planning cannot be effectively done and the transmission capacity would remain underutilized thus leading to under-recovery of the project cost.

19. We have considered the submission of the Petitioner and PGCIL. The relinquishment charges shall be determined by the Commission in the light of the recommendation of the Committee formed by the Commission vide order dated 28.8.2015 in Petition No. 92/MP/2015 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.

20. The petition is disposed of with the above.

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

sd/-
(A.S. Bakshi)
Member

sd/-
(A. K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson