

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.61/MP/2017

Subject : Petition under Section 79(1)(f) of the Electricity Act, 2003 read with Regulations 18 of the CERC (Grant of Connectivity, Long Term Access and Medium-term Open Access in Inter-State Transmission and related matters) Regulations, 2009.

Date of Hearing : 11.1.2018

Coram : Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Petitioner : VISA Power Limited (VPL).

Respondent : Power Grid Corporation of India Limited (PGCIL).

Parties present : Ms. Swapna Seshadri, Advocate, VPL
Shri Sitesh Mukherjee, Advocate, PGCIL
Shri Deep Rao, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL
Shri Swapnil Verma, PGCIL
Shri Dilip Rozekar, PGCIL

Record of Proceedings

At the outset, learned counsel for the petitioner submitted that the present petition has been filed inter alia seeking permission to extend the start date of the LTA and for directions to PGCIL to allot this capacity to other IPPs on short term basis till the start date of the LTA and to retain the bank guarantee. Learned counsel for the petitioner further submitted as under:

a) The issue of cancellation of coal block allotted to the petitioner by the Hon'ble Supreme Court has led to the project coming to an absolute stand still. Therefore, the petitioner has invoked the Force Majeure clause under the BPTA. In view of the same, the petitioner has been compelled to wait for alternate fuel security and linkage mechanism and once the same is made available, the petitioner will be in a position to complete the project for which revised date of commencement of commercial operation will be intimated in due course subject to exemption from payment of transmission charges for such period. This does not, however, mean that for the present, the petitioner is not affected by Force Majeure.

b). The petitioner is not in a position to utilize the open access unless and until the start date of open access is extended to match with the revised date of commissioning of the generating station. In the alternative, the petitioner is seeking to relinquish the LTA without any liability of paying the transmission charges since immediate implementation of the project is not feasible due to reasons beyond the control of the petitioner and covered by the Force Majeure clause in the BPTA. Until the LTA granted in favour of the petitioner pursuant to the BPTA is relinquished or the start date of open access is suitably extended to match with the revised date of commercial operation of the generating station, the petitioner will be unduly subjected to payment of charges.

c). There is no specific provision dealing with the extension of commencement of LTA. However, it is a settled principle of law that what is not prohibited is permitted. Therefore, by extending the start date of commencement of LTA, PGCIL will not violate any of the provisions of the Connectivity Regulations. In Petition No. 43/MP/2012 (Himachal Sorang Case), PGCIL itself had allowed the extension of LTA to Himachal Sorang Power Ltd. by one year and this fact is also recorded in the Commission's order dated 31.1.2013 in the said petition. Accordingly, PGCIL cannot be permitted to take a different stand in the present matter.

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

a) The facts in Petition No. 43/MP/2012 are different from the facts in the present petition as in the said petition, the open access included Karcham-Wangtoo transmission line and that was not ready until 1.4.2012 and when the same was ready, the LTA date was shifted as the part of network formed part of open access. There is no other precedent with regard to postponement of the start date of LTA.

b) PGCIL convened various JCC meetings at periodic intervals which were also attended by the petitioner. The petitioner's request for extension of commissioning schedule of the generating station had started to come from a very early stage, dating back to the 4th JCC for Western Region conducted in July, 2012. In subsequent JCC meetings, the petitioner kept on extending the generation commissioning schedule without giving any substantial reason. The petitioner kept seeking extensions for operational date of its LTA much prior to cancellation of its coal block. Therefore, the arguments now being advanced by the petitioner with respect to force majeure are mere after-thought and un-substantiated in facts and in law.

c) The cancellation of coal block does not in any manner wholly or partly prevent the petitioner in the performance of its obligation under the BPTA. Moreover, the petitioner has other avenues to procure the coal namely, e-auction coal and imported coal and run the plant at full capacity and utilize fully the LTA granted to it. The cancellation was succeeded by successive rounds of re-allocation of coal blocks apart from various other options available to ensure its fuel supply arrangements.

d) In terms of the Connectivity Regulations, Detailed Procedure and BPTA, the construction phase bank guarantee is an instrument that is utilized for recovery of transmission charges or to partially balance-off the effect of generation project's adverse progress from the timeline in the LTA arrangement.

3. After hearing the learned counsels for the parties, the Commission directed the parties to file their written submissions by 29.1.2018 with an advance copy to each other, failing which the order shall be passed on the basis of documents available on record.

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

By order of the Commission

Sd/-

(T. Rout)

Chief (Legal)