

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 73/MP/2017
alongwith I.A. Nos. 75, 76, 77 and 78/2017**

Subject : Petition under Section 79 (1) (c) and 79 (1)(d) of the Electricity Act, 2003 read with the directions given in the order dated 16.2.2017 of the Commission in 24/RP/2015 for appropriate orders.

Petitioner : Power Grid Corporation of India Limited.

Respondents : GMR Kamalanga Energy Limited (GKEL) and Others.

Date of hearing : 11.1.2018

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

Parties present : Shri Sajan Poovayya, Senior Advocate, GMR, Vedanta & IBEUL
Ms. Swapna Seshadri, Advocate, PGCIL
Shri Matrugupta Mishra, Advocate, JITPL
Shri Nishant Kumar, Advocate, JITPL
Shri R.P. Padhi, PGCIL
Shri V. Srinivas, PGCIL
Shri Ajaya Kumar Nathini, GKEL
Shri Manish Tyagi, JITPL
Shri Neelesh Verma, JITPL

Record of Proceedings

At the outset, learned counsel for the petitioner submitted that the present petition relates to the issue on determination of the liability on part of the Designated Inter-State Transmission Customers (DICs) to pay the transmission charges under the Point of Connection (PoC) mechanism and has been filed seeking permission for recovery of transmission charges of assets under the transmission system for Phase-I Generation Projects in Odisha in Eastern Region covered in Petition No. 112/TT/2013. Learned counsel further submitted as under:

a. The Commission vide order dated 15.7.2015 held that PGCIL has already commissioned its transmission system and the generators have not performed its part of the obligations under BPTA. Therefore, it is upon the defaulting generators to bear the transmission charges till the operationalization of LTA, as provided in Clause 2.0(a) and 2.0 (c) of the BPTA and transmission charges for such period shall not be included in the PoC charges.

b. Aggrieved by the said order, PGCIL filed a Review Petition No. 24/RP/2015 seeking review on the finding of recovery and sharing of transmission charges from the generators

until operationalization of LTA under the bilateral billing before the Commission which was dismissed vide order dated 16.2.2017 with the liberty to the petitioner to file a separate application alongwith certain details.

c. Pursuant to the liberty given in the order dated 16.2.2017, the petitioner has filed the present petition and placed on record the details of the generators whose dedicated transmission lines in the corridor have either been commissioned or not commissioned, generators whose LTAs have been operationalized, all LILOs by the generators that have been replaced as per the directions in the order dated 7.10.2015 in Petition No. 112/TT/2013.

d. In compliance with the Commission's directions dated 15.7.2015 in Petition No. 112/TT/2013, the petitioner raised invoices on the generators on 22.8.2017 for recovery of transmission charges under the bilateral billing for the period from April 2013 to December 2015. The said transmission charges were being claimed in respect of the transmission assets covered under the petition.

e. Subsequently, the respondents namely, GMR Kamalanga Energy Limited (GKEL), Jindal India Thermal Power Limited (JITPL), M/s Vedanta Limited and Ind Barath Energy (Utkal) Limited (IBEUL) filed Interlocutory Applications (IAs) seeking stay of the said invoice dated 22.8.2017 and for seeking directions to the petitioner to not take any coercive actions against the respondents. However, the petitioner was not served with the IAs since the filing was done via e-filing and the IAs filed were not mapped or visible to the petitioner. Thereafter, on non-recovery of the transmission charges, the petitioner vide letter dated 20.12.2017 requested the respondents to make payment of bills immediately to avoid regulatory action including curtailment of Short term Open Access (STOA).

f. Subsequently, on 5.1.2018, M/s Vedanta Limited filed a Writ Petition, W.P. (C) No. 105 of 2018 before the Hon'ble High Court of Delhi on the basis that the Commission has not heard their IAs and they apprehend coercive action in the meantime and prayed for a declaration that the letter dated 20.12.2017 is illegal and non-est on the ground that Petition No. 73/MP/2017 filed before the Commission for determination of liability of the generators in respect of payment of transmission charges is still pending adjudication. During the hearing of the said Writ Petition on 8.1.2018, the petitioner had undertaken not to take any coercive steps against Vedanta till the instant matter is disposed of by the Commission.

g. In absence of the Commission's directions in the present matter, the respondents have approached the High Court to restrain it from taking any coercive action on non-payment of transmission charges for the assets and the petitioner is unable to recover the billed amount either through PoC or from the generators. Accordingly, the Commission may allow the recovery of transmission charges of assets under Petition No. 112/TT/2013 through PoC mechanism.

2. In her rebuttal, learned senior counsel for GWEL, Vedanta and IBEUL submitted as under:

a. The petitioner has raised invoices dated 22.8.2017 upon the respondents towards the transmission charges under the non-PoC mechanism which is contrary to its own stand in Petition No. 112/TT/2013 that recovery of transmission charges can only be through PoC mechanism. Also, the recovery of transmission charges of the Subject Transmission Asset is only permissible under the PoC regime as per the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 (Sharing Regulations) and not otherwise. There cannot be any charges other than through PoC mechanism, otherwise a separate mechanism has to be devised for recovery of transmission charges.

b. The Commission vide order dated 16.2.2017 has specifically observed that the liability of generators towards the payment of transmission charges can only be determined after the submission of additional information as stated therein. The petitioner by way of the present petition has placed on record the said additional information and as such without analyzing the said information, no liability can be ascertained which is allegedly payable by the generators and as such no invoices could have been raised. By raising the invoices without awaiting the adjudication in the present petition, the petitioner has acted contrary to the procedure established by law, thereby prejudging the outcome of the present matter.

c. The respondents would be subjected to undue financial hardship and grave prejudice if they would be compelled to make payment of transmission charges without the actual assessment of the respondent's liability to bear the transmission cost qua subject transmission assets. Therefore, the petitioner's impugned invoices may be stayed till the adjudication of the present proceedings and the petitioner be directed not to take any coercive actions till the final disposal of the matter as undertaken by it before the Delhi High Court during the hearing on 8.1.2018 in W.P. (C) No. 105 of 2018.

3. After hearing the learned counsel for the petitioner and learned senior counsel for the respondents, the Commission directed the respondents to serve the copy of their IAs on the petitioner immediately. The Commission directed the petitioner to file its reply to the IAs by 19.1.2018 with an advance copy to the respondents, who may file their rejoinder, if any, by 26.1.2018. The Commission directed the parties that due date of filing the replies and rejoinders should be strictly complied with. Since the parties have argued on merits and at length, there need not be any further hearing. If the parties fail to complete the pleadings as on due date, the order shall be passed on the basis of the documents available on record and the oral submissions of the parties.

4. The Commission directed the petitioner not to take any coercive action against the respondents for non-payment of the bills in line with the order dated 8.1.2018 of the Hon'ble High Court of Delhi in W.P (C) No. 105 of 2018 till the disposal of the petition.

5. Subject to the above, the Commission reserved the order in the petition and the IAs.

By order of the Commission
Sd/-
(T. Rout)
Chief (Legal)