

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. I.A. No. 1/2018
In Petition No. 246/MP/2016**

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

Date of Order: 1st March, 2018

In the matter of

Petition under Section 94 (2) of the Electricity Act, 2003 seeking interim relief.

**And
In the matter of**

Coastal Energen Pvt. Limited
5th Floor, Buhari Towers,
4 Moores Road,
Chennai-600 006

...Petitioner

Vs.

1. Power Grid Corporation Limited
B-9, Qutab Industrial Area,
Katwaria Sarai, New Delhi 110 016

...Respondents

The Following were present:

1. Shri Sajan Poovayya, Senior Advocate, Coastal Energen
2. Shri MatruGupt Mishar, Coastal Energen
3. Shri Nishant Kumar, Coastal Energen
4. Shri Swapnil Verma, PGCIL

ORDER

The Petitioner, Coastal Energen Pvt. Limited, had filed the original Petition No. 246/MP/2016 with the following prayers:

“(a) Hold and declare that the LTA of 542 MW under BPTA dated 24.2.2010 stands relinquished with effect from 19.11.2016, without any liability to the Petitioner;

(b) Hold and declare that the Petitioner is not liable to pay any relinquishment charges in view of the fact that the Petitioner has relinquished 542 MW LTA on account of Force Majeure reasons;

(c) Direct the Respondent, being PGCIL to defer operationalizing 558 MW LTA, unit the assets to be developed/commissioned by PGCIL, as listed under Annexure-3 to BPTA, are completed in their entirety;

(d) Direct Respondent, being PGCIL, to seek reduction of the bank guarantee bearing No. 999910BG0000152 dated 20.2.2016 for an amount of Rs. 55,00,00,000/- issued by State Bank of India, on behalf of the Petitioner, corresponding to the quantum of 542 MW of LTA relinquished by the said Petitioner;

(e) Quash the letter dated 2.12.2016 and 7.12.2016 issued by PGCIL for opening of letter of credit to the Petitioner'

(f) In the interim, grant prayer (d)."

2. The matter was heard on 2.7.2017 along with other petitions. The Commission directed that all individual petitions pertaining to adjudication of claims of force majeure and determination of relinquishment charges shall be heard after issue of order in Petition No. 92/MP/2015.

3. The Petitioner has filed the present introductory Application with the following prayers:

“(a) Pass an ad interim ex-parte order for restraining PGCIL from taking any coercive actions, whatsoever, against the Petitioner to the letter dated 28.12.2017 and LTA bill dated 5.1.2018 (Annexure C and D of the present application) issued by PGCIL, including but not limited to invocation of the letter of credit (Annexure A) and/or Performance Bank Guarantee (Annexure B), till the pendency of the present petition;

(b) Direct PGCIL to subsume the MTOA of 558 MW within the remaining LTA quantum of 558 MW with effect from 1.10.2017, without any liability upon the Applicant against said MTOA;

(c) Stay the operation of the letter dated 28.12.2017 and LTA bill dated 5.1.2018 till the pendency of the main petition, being Petition No. 246/MP/2017;

(d) Direct PGCIL, or NLDC as the case may be, to allocate the quantum of 542 MW to third parties as per the CERC (Grant of Connectivity, Long Term Access, Medium Term Open Access in inter-State Transmission and Related Matters) Regulations, 2009 and the CERC (Open Access in inter-State Transmission) Regulations, 2008; and

(e) Pursuant to the grant of prayers (a) and (c), quash the letter dated 28.12.2017 and LTA bill dated 5.1.2018 issued by PGCIL.”

4. The Petitioner has submitted that the Petitioner has entered into a BPTA with PGCIL for availing 1100 MW LTA (820 MW for Southern Region and 280 MW for Western Region). However, due to non-availability of long term bids in the target regions qua the BPTA, the Petitioner vide its letter dated 28.11.2016 has relinquished 542 MW LTA. PGCIL vide its letter dated 2.12.2016 directed the Petitioner to open a Letter of Credit for Rs. 63,63,54,155/- towards payment security mechanism for the LTA being availed by the Petitioner which was revised by PGCIL to Rs. 49,80,00,000/- vide its letter dated 7.12.2016. The Petitioner has submitted that since the transmission system was not ready for evacuation of power, the Petitioner was constrained to supply power to the Discoms under MTOA for which the Petitioner has already furnished an LC to the tune of Rs. 25, 89,88,892/- commensurate with the existing MTOA quantum which is being utilized by the Petitioner and is valid till 11.5.2018. The Petitioner has also furnished the bank guarantee of Rs. 55 crore to PGCIL which is alive till 31.3.2018.

5. The Petitioner has submitted that while the main petition is pending adjudication before the Commission, PGCIL vide its letter dated 28.12.2017 informed the Petitioner that LTA of 1100 (including the surrendered/relinquished LTA of 542 MW) is now operationalized w.e.f. 1.10.2017 for transfer of power from scheduled date and directed to open the LC towards payment security mechanism. The Petitioner has submitted that PGCIL in the said letter dated 28.12.2017 also informed the Petitioner that MTOA of 558 MW to TANGEDCO is also being subsumed within the LTA granted under the BPTA and accordingly, the MTOA bill for 558 MW shall be stopped from 1.10.2017. However, till date PGCIL is

continuing to raise MTOA bills even when the existing LTA of 558 MW is ready for operationalization. The Petitioner has submitted that once the LTA is ready for operationalization, the MTOA granted to the LTA customer for supply of power to the same region ought to be subsumed within the LTA granted to the said customer. However, in the present case, PGCIL did not take into account the aforesaid and is continuing to raise MTOA bills for 558 MW rather than raising the LTA bills for the said quantum.

6. The Petitioner has submitted that PGCIL vide letter dated 6.1.2018 was informed that since the LTA of 542 MW has already been relinquished/surrendered by the Petitioner, there cannot be any liability upon the Petitioner to pay any LTA/transmission charges, and consequently, furnish any LC towards the payment security mechanism and LTA invoice dated 5.1.2018 ought to be withdrawn.

7. During the course of hearing, the representative of PGCIL submitted that in terms of Regulation 18 of the Connectivity Regulations, relinquishment would take effect only when the relinquishment charges are paid.

8. We have considered the submissions of the Petitioner and PGCIL. Under Regulation 18 of the Connectivity Regulations, long terms transmission 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 therein. Assessment of stranded capacity on account of relinquishment of LTA and determination of relinquishment charges shall be decided by the Commission in Petition No. 92/MP/2015.

9. In the present case, since, the Petitioner has relinquished 542 MW, the said capacity should be utilized for granting the LTA to the pending applications so that capacity does not remain unutilized. The liability of the relinquishment charges of the Petitioner will be decided in terms of the order in the petition, and if the Petitioner is held liable to pay the relinquished charges, the quantum of relinquishment charges will be decided in the light of the decision taken in Petition No. 92/MP/2015.

10. In view of the relinquishment of the LTA by the Petitioner, there is no requirement for the Petitioner to open the LC and pay transmission charges for the relinquished capacity. However, the Petitioner is directed to keep the Bank Guarantee alive till the decision in Petition No. 92/MP/2015. It is clarified that all other aspects of relinquishment shall be dealt with in the final order.

11. Pending issue of the final order, we direct PGCIL to consider the capacity of 542 MW for calculation of ATC/TTC for allocation of capacity under LTA to the pending applications. Within one week of the decision taken by PGCIL, for allocation of LTA in which the relinquished capacity of 542 MW is considered, PGCIL shall place on record the capacity allocated to new applicants out of the 542 MW relinquished by the Petitioner.

12. I.A.No. 1/2018 is disposed of in terms of the above.

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

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K.Singhal)
Member