

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 198/MP/2016

Coram:

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

Date of Order : 07.02.2018

In the matter of:

Petition under Section 79 of the Electricity Act, 2003 and provisions 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 the provisions of Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 for revising the date of operationalisation of LTA granted to Singrauli Small Hydro Power Station (2X4MW) to 31.3.2017 or the actual COD whichever is later.

And in the matter of:

NTPC
NTPC Bhawan
Core-7, Scope Complex
7, Institutional Area, Lodi Road
New Delhi-110003.

..... **Petitioner**

Vs

1. Power Grid Corporation of India Limited,
'Saudamini', Plot No.2,
Sector -29, New Delhi -110 037

2. Uttar Pradesh Power Corporation Limited
Shakti Bhawan
14, Ashok Marg
Lucknow-226001

3. Ajmer Vidyut Vitran Nigam Limited
Old Power House, Hathi Bhata
Jaipur Road, Ajmer, Rajasthan

4. Jaipur Vidyut Vitran Nigam Limited
New Power House, Industrial Area,
Jaipur, Rajasthan



5. Jodhpur Vidyut Vitran Nigam Limited
New Power House, Industrial Area,
Jodhpur, Rajasthan

6. Tata Power Delhi Distribution Ltd.
33 kV Sub-stations, Hudson Lines,
Kingsway Camp, Delhi-110009

..... **Respondent**

For Petitioner : Ms. Swapna Seshadri, Advocate, NTPC
Shri Nitesh Khandelwal, NTPC
Shri I. Uppal, NTPC
Shri Manoj Kumar Sharma, NTPC
Shri Nishant Gupta, NTPC

For Respondent : Ms. Suparna Srivastava, Advocate, PGCIL
Ms. Sreenita Ghosh, Advocate, TPDDL
Ms. Vasudha Sen, Advocate, TPDDL
Shri Dilip Rozekar, PGCIL
Ms. Jyoti Prasad, PGCIL

ORDER

NTPC has filed the instant petition under Section 79 of the Electricity Act, 2003 ('the Act') and provisions 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 the provisions of Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 for revising the date of operationalisation of LTA granted to Singrauli Small Hydro Power Station (2X4MW) from the scheduled date of 30.9.2016 to 31.3.2017 or the actual COD whichever is later.

Brief facts

2. The Petitioner has set up Singrauli Super Thermal Power Station of 2000 MW capacity (hereinafter referred to as "Singrauli STPP") in the State of Uttar Pradesh, which is having cooling infrastructure through Rihand reservoir. The Petitioner



proposed to set up a small hydro project of 8 MW (2X4 MW) at the cooling water discharge of Singrauli STPP. The power generated from the Singrauli SHP (Singrauli SHP) was to be supplied to Uttar Pradesh Power Corporation Limited (UPPCL), Ajmer Vidyut Vitran Nigam Limited (AVVNL), Jaipur Vidyut Vitran Nigam Limited (JVVNL), Jodhpur Vidyut Vitran Nigam Limited (JdVVNL) and Tata Power Delhi Distribution Limited (TPDDL) as per the Ministry of Power's allocation dated 31.10.2013. The Unit I and Unit II of the Singrauli SHP were scheduled to be put under commercial operation on 30.9.2016 and 15.10.2016 respectively. The power from the Singrauli SHP was envisaged to be evacuated through the existing 400 kV transmission lines emanating from Singrauli STPP and no new transmission capacity was required to be built. The CTU granted the LTA to the Petitioner vide order dated 10.12.2015. As per the LTA, the access was to be operationalised on 30.9.2016.

3. The Petitioner has submitted that the data communication was proposed by the Petitioner from the existing switchyard control room of Singrauli STPP to optimize the cost and time. Since CTU did not agree to the proposal, the Petitioner could not sign the Connection Agreement with CTU. The Petitioner has submitted that CODs of Unit I and II of the Singrauli SHP were delayed due to heavy rains in Chhattisgarh and Madhya Pradesh on 13.8.2016 which resulted in the sudden increase in the reservoir level and flooding of Turbine-Generator floor and HT room. Since these natural factors were beyond the control of the Petitioner, the COD of Unit I and II of the Singrauli SHP were postponed to March, 2017. The Petitioner has submitted that in view of these *force majeure* events, the CTU was requested to revise the commencement of LTA from 30.9.2016 to 31.3.2017 vide letter dated 16.9.2016 which was rejected by the CTU vide letter dated 29.9.2016.



4. The Petitioner has submitted that no new transmission system was built by CTU for evacuation of the power from Singrauli SHP and the power was to be evacuated through the available margins in the existing transmission system. The Petitioner has further submitted that none of the MTOA/LTA beneficiaries are affected by the LTA granted to the Petitioner as both the generation and the beneficiaries are located in the same region.

5. The Petitioner has submitted that it has entered into a TSA with the CTU on 4.4.2014 as required under the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 (hereinafter referred to as "2010 Sharing Regulations"). As per Regulation 13(f) of the 2010 Sharing Regulations, delay in injection and withdrawal by Designated ISTS Customers (DICs) shall be governed by the TSA. Further, the reasons for delay in the instant case fall under the *force majeure* conditions specified in Clause 14.2.1(a) of the TSA. As the delay is due to *force majeure* conditions which are beyond the control of the Petitioner, the Petitioner is not liable to pay any transmission charges till March 2017 or actual COD whichever is later.

6. The CTU in its reply dated 20.12.2016 has submitted that the Petitioner is obliged to facilitate the signing of the LTA by the beneficiaries or sign the LTA by itself in case the beneficiaries fail to sign the LTA. However, the Petitioner has not signed the LTA not only in the instant case but also in other projects of NTPC. CTU has submitted that *force majeure* claim is contractual in nature and it will come into effect only after an agreement providing for *force majeure* comes into effect. As the Petitioner has failed to sign the LTA Agreement, the Petitioner cannot claim a remedy under an unexecuted agreement. CTU has submitted that the Petitioner's claim of



force majeure cannot be said to arise under the TSA between the Petitioner and CTU as the TSA has not been brought into effect because of the deferment of operationalisation of the LTA by the Petitioner. CTU has further submitted that the Petitioner has not established the voice and data communication facilities as required under the regulations of the Commission and CEA. CTU has also submitted that 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 (2009 Connectivity Regulations) or the Detailed Procedure issued under the said Regulations do not provide for deferment of the LTA and the Petitioner is liable to pay the LTA charges with effect from 30.9.2016.

7. In response, the Petitioner in its rejoinder dated 2.2.2017 to the reply filed by CTU, while reiterating the submissions made in the petition, has submitted that the Petitioner has invoked the *force majeure* clause provided in the TSA between the Petitioner and the CTU. The CTU has raised the issue of signing of the LTA/TSA by the beneficiaries which are not related to the Petitioner's claim for deferment of the LTA because of the *force majeure* issues. As regards the voice and data communication, the Petitioner has submitted that Singrauli SHP is an embedded generation of Singrauli STPP and the voice and data can be communicated through the existing system of Singrauli STPP.

8. The Petitioner in its Written Submissions dated 9.1.2018 has submitted that the petition was filed for deferring the operationalisation of the LTA due to *force majeure* conditions. The Petitioner has submitted that heavy rainfall in Chhattisgarh and Madhya Pradesh from 13.8.2016 to 16.8.2016 led to flooding of the turbine-generator floor, HT room and other equipment and delayed the execution of the project. During



the process of inspection and repair of the turbine gear box, it was observed that repair cannot be done on site and gear box and the Oil Pressurizing Unit were shifted to the sub-vendor at Pune for inspection and were finally repaired by November, 2016. After the system was ready, it was found that sufficient head difference was not available for commissioning activity and after sufficient head was available on 30.11.2017, the commissioning activity was started. Unit I was trial synchronized on 24.11.2017 and Unit II on 2.1.2018 and they are anticipated to be declared commercial by January end.

Analysis and Decision

9. We have considered the submissions of the Petitioner and CTU. The Petitioner has prayed for deferment of the operationalisation of the LTA granted by the CTU on 10.12.2015 for evacuation of 8 MW from the Singrauli SHP through the existing 400 kV transmission lines from Singrauli STPP due to *force majeure* events. The CTU has objected to the deferment of the operationalisation of the LTA on the ground that there is no provision for deferment in the 2009 Connectivity Regulations. CTU has raised the issues of non-signing of the LTA by the Petitioner or by the beneficiaries and non-establishment of the voice and data communication by the Petitioner as per the Commission's and CEA's regulations.

10. It is observed that the Petitioner applied for LTA to the CTU for 8 MW for supply to UPPCL (3.40 MW), Rajasthan Distribution Companies (1.87 MW), Tata Power Delhi Distribution Ltd. (1.53 MW). The Petitioner had entered into PPAs with these distribution companies. CTU granted LTA to the Petitioner for 8 MW vide letter dated 10.12.2015. As per the Detailed Procedure issued under 2009 Connectivity Regulations, the inter-State generating stations owned by Central Government where



allocation of power to various beneficiaries has been notified and PPAs have been signed, the Long Term Access Agreements in such cases are to be directly signed by the beneficiaries with the CTU. Tata Power Delhi Distribution Ltd., Rajasthan Discoms and UPPCL have signed LTA Agreements dated 23.8.2016, 30.9.2016 and 7.2.2017 respectively. The para 1.0 (b) of the LTA Agreements further provides that the Long Term Customers (LTCs) shall have to sign the TSA in accordance with the 2010 Sharing Regulations if not already signed. However, the LTA Agreements mentions that Tata Power Delhi Distribution Ltd., Rajasthan Discoms and UPPCL have signed the TSA on 25.7.2011, 30.6.2011 and 18.7.2011.

11. It is pertinent to note that there is no provision in the 2009 Connectivity Regulations or Detailed Procedures and LTA Agreements between CTU and the distribution companies or in the TSA between them for deferment of the operationalisation of the LTA. As per para 1.0 (d) of the LTA Agreement, the LTCs shall share and pay all the applicable transmission charges of the total transmission system indicated in Attachment I, from the date of commencement of the long terms access. Perusal of the LTA information letter dated 10.12.2015 shows that the LTA has been granted with effect from 30.9.2016 as informed by NTPC vide its letter dated 2.12.2015 to CTU. Therefore, in terms of the LTA Agreements with the beneficiaries, the LTA has to be operationalised with effect from 30.9.2016.

12. The issue that remains to be decided is the Petitioner's prayer for deferment of operationalisation of the LTA from 30.9.2016 till 31.3.2017 or the actual COD of the Singrauli SHP whichever is later. The Petitioner has submitted that the scheduled COD of Unit I of Singrauli SHP was 30.9.2016. However, due to heavy rains in August and September, 2016 in Chhattisgarh and Madhya Pradesh which damaged



the equipment, the project could not achieve COD on time. The petitioner has submitted that the said events are in the nature of *force majeure* as per the TSA between the Petitioner and the CTU and accordingly, the petitioner has sought deferment of the operationalisation of the LTA and the liability of the transmission charges. The Petitioner has submitted that the Petitioner was granted LTA on the existing margins and there was no system strengthening undertaken for evacuation of power from Singrauli SHP. The Petitioner has also submitted that no loss is caused to CTU on account of deferment of the operationalisation of the LTA. The CTU has objected to the deferment of the LTA on the ground that the 2009 Connectivity Regulations or the “Detailed Procedure” made thereunder do not provide for deferment of LTA.

13. The Petitioner has contended that as per the TSA between the Petitioner and the CTU ‘flood’ is covered as a *force majeure* event. The Petitioner has submitted that since the delay in commercial operation of the Singrauli SHP is attributable to ‘floods’, the Petitioner is eligible for deferment of the operationalisation of the LTA as during the period of *force majeure*, the party affected by *force majeure* is relieved from all obligations including the obligation for payment of transmission charges. In response, the CTU has submitted that as the Petitioner has not executed the LTA Agreement, the Petitioner cannot claim any remedy under the unexecuted agreement. CTU has further submitted that the Petitioner cannot claim *force majeure* as per the TSA as the TSA has not been brought into operation due to non-operationalisation of the LTA.

14. Regulation 13(1) of the 2010 Sharing Regulations provides that the DICs and CTU shall enter into new Transmission Service Agreement or modify the earlier



BPTA to incorporate new tariff and related conditions. Such Agreement shall govern the provisions of transmission services and charging of the same and shall be called Transmission Service Agreements (TSA). A generating company or generating station is also a DIC as per the 2010 Sharing Regulations. However, in so far as the payment of transmission charges for particular transmission system is concerned, the generating station needs to sign the LTA Agreement as well as the TSA Agreement. In the present case, the Petitioner as a generating company has not signed the LTA Agreement or the TSA in so far as evacuation of power from Singrauli SHP is concerned. As already noted, the distribution companies such as UPPCL, Tata Power Delhi Distribution Ltd. and Rajasthan Discoms have signed the LTA Agreements as well as TSA. Therefore, the TSA signed by the Petitioner with CTU is not applicable in case of the LTA for evacuation of power from Singrauli SHP. Accordingly, we reject the prayer of the Petitioner that in terms of the TSA signed by it with CTU, it is entitled for relief under *force majeure*.

15. Since the Petitioner had sought commencement of LTA with effect from 30.9.2016 and the same date has been included in the LTA Agreements between the CTU and the beneficiaries, in the event of the failure of the Petitioner to achieve the commercial operation of Singrauli SHP by the scheduled date, the Petitioner shall be liable to pay the transmission charges for the LTA granted till the commercial operation of the generating station and therefore, the LTCs shall be liable to pay in terms of the LTA Agreements and TSAs between the CTU and LTCs.

16. In the present case, the Petitioner has submitted that no separate line has been built for the Petitioner who has been allowed LTA on the margins available and hence, PGCIL is not incurring any losses if the operationalisation of LTA is deferred.



We are of the view that once the LTA has been granted on the existing margins, the said capacity has been reserved for evacuation of power from Singrauli SHP to the identified beneficiaries and has not been allocated to anybody else. Therefore, the Petitioner carries the liability to pay the transmission charges from the scheduled date of commissioning of generating station. Further, deferment of the LTA operationalisation does not allow the CTU to allot the capacity of 8 MW to any other entity. The Petitioner is under the statutory and contractual obligation to pay the transmission charges from 30.9.2016 and deferment of the operationalisation of the LTA would result in burdening the other DICs with the transmission charges for the capacity in ISTS which was reserved for the evacuation of power from the Petitioner's generating station. As such, we are not inclined to agree with the Petitioner's prayer for deferment of operationalisation of LTA to March, 2017 or actual COD.

17. As regards the establishment of voice and data communication, the Commissions directed Chief (Engg.) of the Commission to arrange a meeting to sort out the issue. In the meeting held by the Chief (Engg.) of the Commission, the representatives of NTPC and CTU agreed to integrate the internal SCADA system of the Singrauli SHP with the existing communication of Singrauli STPP within three days and facilitate signing of the Connection Agreement within a week thereafter. We expect that the issue of voice and data communication has been settled between the CTU and the Petitioner as agreed in the meeting held under the aegis of Chief (Engg.).

18. Accordingly, the Petition No.198/MP/2016 is disposed of.

sd/-
(M. K. Iyer)
Member

sd/-
(A. S. Bakshi)
Member

sd/-
(A. K. Singhal)
Member

