

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 44/RP/2017
in Petition No. 103/MP/2017
Alongwith I.A. No. 74/2017**

Coram:

Shri A. K. Singhal, Member

Shri A. S. Bakshi, Member

Dr. M. K. Iyer, Member

Date of order: 21st of May, 2018

In the matter of

Petition under Section 94 of the Electricity Act, 2003 Read with Regulation 103(1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, read with order 47 Rule 1 of the Code of Civil Procedure, 1908 for Review of Order dated 6.7.2017 in Petition No.103/MP/2017.

And

In the matter of

Power Grid Corporation of India Limited
B-9, Qutab Industrial Area,
Katwaria Sarai,
New Delhi- 110016

...Petitioner

Vs.

Simhapuri Energy Limited
Madhucon Greenlands,
6-3-866/2, 3rd Floor,
Begumpet,
Hyderabad- 500016

...Respondent

Parties Present:

Ms. Suparna Srivastava, Advocate, PGCIL

Ms. Jyoti Prasad, PGCIL

Shri Swapnil Verma, PGCIL

Shri Rakesh Prasad, PGCIL



Shri B.Dash, PGCIL
Shri A. Choudhary, PGCIL

ORDER

The Review Petitioner, Power Grid Corporation of India Limited (hereinafter referred to as “the Review Petitioner”) has filed the present Review Petition under Section 94 of the Electricity Act, 2003 Read with Regulation 103 (1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, read with order 47 Rule 1 of the Code of Civil Procedure, 1908 to review the order dated 6.7.2017 in Petition No.103/MP/2017 (hereinafter referred to as the ‘impugned order’) wherein the Commission held that the Review Petitioner should take immediate steps to operationalize the Long Term Access (hereinafter referred to as “LTA”) for the LTA customers after commissioning of the transmission system without waiting for the LTA customers to open the Letter of Credit (LC) in order to operationalize the LTA. The Review Petitioner has made the following prayers:

“(a) Admit the present Review Petition and review and rectify the Order dated 6.7.2017 to the extent it directs/opines that the Review Petitioner should take immediate steps to operationalize the Long-term Access (LTA) after commissioning of the transmission system without waiting for the LTA customer to open the Letter of Credit in order to operationalize the LTA; and

(b) allow the mechanism as proposed in para 20 as an interim measure and pass appropriate directions for Amendments in relevant Regulations in this regard; and

2. The Review Petitioner has sought review of the impugned order on the following grounds:

(a) While passing the impugned order, the Commission observed that though the transmission lines had been ready in February, 2016, the LTA had been



operationalized by the CTU in July, 2016. Having already held that the LTA customers carried with them a statutory as well as a contractual obligation to pay transmission charges after commissioning of the transmission system executed based on the LTA, the Commission held that any delay in LTA operationalization was against the letter and spirit 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 (hereinafter referred to as the "Connectivity Regulations") and therefore, CTU was required to take immediate steps to operationalize the LTA after commissioning of the transmission system even without the LTA customers opening the LC in favour of the CTU in order to operationalize the LTA. The Review Petitioner has submitted that the above finding of the Commission is an error apparent on the face of record since, the applicable Regulations notified by the Commission, which mandates opening of an LC in favour of CTU as a necessary pre-condition for operationalization of the LTA, have inadvertently escaped the attention of the Commission. Consequently, the Review Petitioner is now required to operationalize the LTAs without the statutorily mandated payment security in the form of LC for ensuring payment of transmission charges, thereby causing grave financial prejudice to all the inter-State transmission licences who share the revenue collected by the CTU from the Designated ISTS Customers under the Sharing Regulations. The Review Petitioner has submitted that the Commission has inadvertently omitted to take into account the scheme of establishment of LC laid down under notified Procedure and statutory agreements which require the CTU to operationalize the LTA after the prescribed LC has been



opened. The same has led to an error apparent on the face of the record where the LTA customer can now use the transmission system of the CTU without providing the necessary payment security in the form of an LC which is in violation of the Detailed Procedure. Moreover, operationalization of the LTA without opening of required LC is to leave the CTU with no security for recovery of transmission charges in case the LTA customer subsequently defaults in payment of transmission charges. The Review Petitioner has submitted that the consequences enumerated in Para 16 of the Review Petition are required to take into consideration by the Commission while reviewing the order dated 6.7.2017. The Review Petitioner has submitted that in every possible situation and at every stage of a generator with LTA, operationalization of the LTA without security of payment of transmission charges by way of opening the LC would end up not only in jeopardizing the functions of the CTU to provide open access to its transmission system for use by any licensee or generating company only on payment of transmission charges, but would also have a crippling effect on its financial viability.

(b) The Review Petitioner has sought directions for amendment in the relevant regulations in this regard. The Review Petitioner has submitted that while acknowledging the concerns of the Commission that the LTA customers carry the liability to pay the transmission charges from the date of commissioning of the transmission system, based on which the LTA has been granted, it is clarified that in cases of defaults on part of the generators, proposed mechanism should be allowed for the interim period, until such generators establish the payment security mechanism.



3. The Review Petitioner has filed an Interlocutory Application for condonation of delay in filing the present review Petition and for seeking exemption from filing the certified copy of the impugned order.

4. The matter was heard on 27.2.2018. During the course of hearing, learned counsel for Review Petitioner reiterated the submissions made in the Review Petition and submitted that as per the direction of the Commission, the Review Petitioner had operationalized the LTAs. However, neither LC was opened nor the transmission charges were paid by the LTA customers.

Analysis and Decision:

5. In the present Petition, the Review Petitioner has sought the review of the Commission's order dated 6.7.2017 on the two grounds which have been discussed in the succeeding paragraphs.

6. On the first ground, the Review Petitioner has submitted that the Commission's direction that PGCIL should take immediate steps to operationalize the LTA after commissioning of the transmission system without waiting for the LTA customer to open the LC in order to operationalize the LTA, is an error apparent on the face of the record. The Review Petitioner has submitted that under the TSA and the BCD Procedure, the requirement is to open the LC prior to operationalization of the LTAs and one month prior to the effective date. The Review Petitioner has submitted that as per the statutory scheme laid down by the Commission, prior to the operationalization of the LTA, the payment security mechanism in the form of the prescribed LC is necessarily to be in place so that in



the event of any default in payment of transmission charges by the LTA customer, the LC can be resorted to by CTU for recovering payment of transmission charges and in the event of its encashment, the same is required to be reinstated to continue as a security mechanism available with the CTU for recovery of future transmission charges. However, the Commission has inadvertently omitted to take into account the scheme of establishment of LC laid down under the notified procedure and statutory agreements which require the CTU to operationalize the LTA after the prescribed LC has been opened. The Review Petitioner has submitted that it has filed the Petition No. 229/RC/2015 for issuance of appropriate directions to the LTTCs to open the required the LC in terms of the regulatory provisions. However, without disposing the said Petition, the Commission has erred in passing such directions in the impugned order.

7. We have considered the submissions of the Review Petitioner and perused documents on record. The Review Petitioner has submitted that operationalization of LTA without the adequate payment security mechanism is not only contrary to governing covenants of the applicable Regulations, but also exposes the Review Petitioner to the risk of increasing its Non-Performing Assets. The Review Petitioner had raised similar issue in Petition No. 229/RC/2015. The Commission in its order dated 8.3.2018 in Petition No. 229/RC/2015 has dealt with the issue as under:

“52. CTU has expressed apprehension that if LTA is operationalized in the absence of LC, the Petitioner would not be able to recover the transmission charges in the event of default by the DICs. In our view, though there is provision in the BCD Procedure for opening of LC one month prior to the effective date, LC is not a condition precedent for operationalization of LTA. If LTA is not operationalized pending opening of LCs, this will give perverse incentives to the DICs not to open the LCs to avoid paying the transmission charges. There is therefore a need for prescribing certain deterrent measures against the defaulting DICs. In our view, a DIC who has been granted LTA but does not intend to open the LCs, he shall be debarred from applying for medium term open access and short term open access. As a result, the DIC in order to avail the medium term and short term open access will be forced



to make payment of LTA charges. Accordingly, we direct that if the DIC fails to make payment of the transmission charges or open letter of credit at the end of the month after operationalization of LTA, it shall be denied medium term open access and short term open access till it makes payment of transmission charges and open letter of credit.”

Therefore, non-payment of transmission charges and non-opening of LC under the LTA shall result in the denial of MTOA or STOA.

8. The Commission in the impugned order has decided that opening of LC is not a condition precedent for operationalization of LTA which has also been reiterated in the order dated 8.3.2018 in Petition No. 229/RC/2015. The Commission, in the said order has held also that if a DIC who has been granted LTA but does not intend to open the LCs, then he shall be debarred from applying for MTOA and STOA. Accordingly, there is no error apparent in the impugned order.

8. The Review Petitioner in the second prayer has prayed to allow the mechanism as proposed as an interim measure and pass appropriate directions for amendments in the relevant regulations. The Review Petitioner has submitted that in case of defaults on the part of the generators, a mechanism proposed in para 21 of the Review Petition should be allowed.

9. We have considered the submissions of the Review Petitioner. Since we have held that there is no error apparent in the impugned order, there is no requirement to adopt any interim measure as suggested by the Review Petitioner. It is observed that in the present review petition, the Review Petitioner is seeking amendment of the provisions of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and



losses) Regulations, 2010 and Central Electricity Regulatory Commission (Regulation of Power Supply) Regulations, 2010 in cases of defaults on the part of the generator. Without going into the merit of the issues raised, we intend to clarify that filing of the Petition/Review Petition is not the proper process for initiating the amendment to the existing regulations. The Commission under Section 178 of the Act has been vested with the power to make, amend and repeal the regulations on the subjects which have been authorized under various provisions of the Act. Action to make or amend the regulations is initiated when the Commission is satisfied that there is a need for such regulations or amendment to the existing regulations. The Review Petitioner being a Govt. company and vested with specific statutory functions is at liberty to approach the Commission with concrete proposal for making any regulations or for amendment of any regulation which is considered necessary to enable it to discharge its functions effectively.

10. The Review Petition No. 44/RP/2017 alongwith I.A. No. 74/2017 is disposed of in terms of the above.

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

sd/-
(A. S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

