

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**I.A. No. 96 of 2018
in
Petition No. 122/MP/2017**

**Coram:
Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member**

Date of Order: 15th of October, 2018

In the matter of

Essar Power Gujarat Limited

..... **Petitioner**

Vs.

Power Grid Corporation of India Limited and others

.....**Respondents**

And

In the matter of

Interlocutory Application for seeking impleadment of Gujarat Urja Vikas Nigam Limited as Respondent.

The following were present:

Shri Venkat Poonia, Advocate, ESGL
Ms. Keitika Angirish, Advocate, ESGL
Shri Sumant Nayak, Advocate, EPGL
Shri M.G.Ramachandran, Advocate, GUVNL
Ms. Anushree Bardhan, Advocate, GUVNL
Ms. Ranjita Ramachandra, Advocate, GUVNL
Ms. Suparna Srivastava, Advocate, PGCIL
Ms. Joyti Prasad, PGCIL
Shri Swapnil Verma, PGCIL

ORDER

The Petitioner, Essar Power Gujarat Limited has filed the present Petition for relinquishment of 250 MW of LTA granted to its generating station without any liability for payment of relinquishment charges under Regulation 18 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.

2. Gujarat Urja Vikas Nigam Limited has filed the present Interlocutory Application (IA) for seeking impleadment of Gujarat Urja Vikas Nigam Limited as party to the present Petition. Learned counsel for GUVNL mentioned the matter on 28.9.2017 and submitted that if the Petitioner would not be held liable for payment of relinquishment charges, then the burden to pay the same would fall on all the beneficiaries. Therefore, being a beneficiary, GUVNL should be allowed to participate in the proceedings. Learned counsel for GUVNL sought permission to file an IA for impleadment of GUVNL as party to the Petition which was allowed by the Commission.

3. GUVNL in the IA has submitted that GUVNL is vitally interested in the outcome of the proceedings in the present petition as any decision taken on the relinquishment sought for by the Petitioner should not result in the increase in the charges payable by GUVNL or otherwise any monetary or technical implication to GUVNL. GUVNL has further submitted that it is also participating in Petition No. 92/MP/2015 regarding relinquishment charges and implications of surrender of LTA taken by any person.

4. GUVNL has submitted that impleadment of GUVNL is necessary and proper as it would facilitate the adjudication of the issues involved in the relinquishment of LTA by the Petitioner and GUVNL wants to place its submission on the aspect that such relinquishment should not have any financial, technical or otherwise any adverse implication on GUVNL.

5. The Petitioner in its reply to IA has opposed the impleadment of GUVNL as party in the Petition and has submitted that as under:

(a) The present application is a complete abuse of the process of law and has been preferred on unsubstantiated grounds. The IA completely fails to substantiate the 'necessary and proper party' and fails to substantiate as to how the impleadment would facilitate in the adjudication on the issues involved in the present relinquishment petition.

(b) The present dispute pertains to the contractual arrangements between the Petitioner and PGCIL and is to be determined on the facts and circumstances of the case, and GUVNL not being a party to such arrangement cannot be heard for the purposes of deciding the same. Further, the said determination qua stranded capacity and the subsequent liability of the Petitioner to pay the relinquishment charges does not make GUVNL, either a necessary or proper party.

(c) For a party to be a proper party, it must be shown that the presence of such a party is necessary and cannot be dispensed with for a complete and final decision on the question involved in the proceedings. None of the aforesaid legal parameters are met by GUVNL in the present case, which in any event proceeds on a mere hypothesis. The Petitioner being the *dominus litis* of its petition, is entitled to decide the parties to its petition and cannot be forced to implead GUVNL as party, particularly, when GUVNL is neither necessary nor proper for adjudicating the disputes *inter se* the Petitioner and PGCIL and the reliefs prayed for in the petition.

- (d) For a party to be impleaded, a distinction between legal and commercial interest has to be shown. However, in the present case, GUVNL not being a party to the agreement between the Petitioner and PGCIL, no such legal rights of the applicant is being affected, nor has GUVNL pleaded the same. GUVNL has simply averred its case on assumptions and presumptions of increased monetary (commercial) liability, which in no way entitles it to seek impleadment.
- (e) The application for impleadment under reply is clearly sans merit and therefore, is not maintainable. Accordingly, the present application deserves to be dismissed with exemplary costs.

Analysis and Decision

6. GUVNL has submitted that the Petitioner has sought relinquishment for the identified transmission system related to the evacuation of power from its generating station at district Jamnagar in the State of Gujarat. If in the Petition, the Petitioner would not be held liable for payment of relinquishment charges, then the burden to pay the same would fall on the beneficiaries. According to the Petitioner, it has entered into LTA Agreement with PGCIL and no agreement has been entered into with GUVNL with regard to transmission system and therefore, GUVNL is neither a necessary party nor a proper party to the dispute. Therefore, GUVNL should be made party to the Petition as according to the Petitioner, there is no direct contractual relationship between the Petitioner and GUVNL

7. The Petitioner was granted LTA in terms of the Connectivity Regulations by CTU. At the time of the signing of the LTA Agreement, there were no identified beneficiaries. Consequently, the Petitioner entered into LTA Agreement with CTU. According to Clause I) of the LTA Agreement, the Petitioner is liable to pay the transmission charges from the date of grant of LTA. Further, Regulation 18 of the Connectivity Regulations provides for relinquishment of LTA. The said regulation is extracted as under:

“18. Relinquishment of access rights

(1) A long-term customer may relinquish the long-term access rights fully or partly before the expiry of the full term of long-term access, by making payment of compensation for stranded capacity as follows:-

(a) Long-term customer who has availed access rights for at least 12 years

(i) Notice of one (1) year – If such a customer submits an application to the Central Transmission Utility at least 1 (one) year prior to the date from which such customer desires to relinquish the access rights, there shall be no charges.

(ii) **Notice of less than one (1) year** – If such a customer submits an application to the Central Transmission Utility at any time lesser than a period of 1 (one) year prior to the date from which such customer desires to relinquish the access rights, such customer shall pay an amount equal to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of a notice period of one (1) year.

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Provided that such a customer shall submit an application to the Central Transmission Utility at least 1 (one) year prior to the date from which such customer desires to relinquish the access rights;

Provided further that in case a customer submits an application for relinquishment of long-term access rights at any time at a notice period of less than one year, then such customer shall pay an amount equal to 66% of the estimated transmission charges (net present value) for the period falling short of a notice period of one (1) year, in addition to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of 12 (twelve) years of access rights.

(2) The discount rate that shall be applicable for computing the net present value as referred to in sub-clause (a) and (b) of clause (1) above shall be the discount rate to be used for bid evaluation in the Commission's Notification issued from time to time in accordance with the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees issued by the Ministry of Power.

(3) The compensation paid by the long-term customer for the stranded transmission capacity shall be used for reducing transmission charges payable by other long-term customers and medium-term customers in the year in which such compensation payment is due in the ratio of transmission charges payable for that year by such long term customers and medium-term customers.”

8. As per the above provisions, an LTA customer has the right to relinquish the LTA either fully or partly before expiry of the full term of the LTA by making payment of compensation for stranded capacity as per the formula given in the said regulations. The compensation shall be paid to the CTU which shall be used for reducing the transmission charges payable by other long term and medium term customers in the ratio of transmission charges payable by such long term and medium term customer during the year when such compensation is due. Therefore, DICs under the Sharing Regulations, which are the long term and medium term customers of ISTS have a direct stake in the outcome of the proceedings for relinquishment as the compensation amount will decide to what extent their liability for transmission charges shall be reduced. It is however to be noted that in the present proceedings, the Petitioner is seeking relinquishment of LTA on the ground of being affected by force majeure. If it is held that the Petitioner is liable to pay the relinquishment charges, then the quantum of relinquishment charges would be determined in the light of the decision in Petition No.92/MP/2015. GUVNL is on record that it is participating in the proceedings in Petition No.92/MP/2015. However, if on the basis of the present proceedings, it is held that the Petitioner is not liable to pay the relinquishment charges, in that event the transmission

charges covered under the LTA would be shared by the DICs. Therefore, the DICs who would ultimately bear the burden of transmission charges if the prayers of the Petitioner are allowed by permitting to relinquish the LTA without relinquishment charges are considered necessary and proper parties.

9. Accordingly, we allow the IA and direct that GUVNL shall be arrayed as a respondent to the petition. The Petitioner is directed to serve copy of the petition on GUVNL, if not already served, by 20.10.2018 who shall file the reply by 30.10.2018 and the Petitioner to file rejoinder by 9.11.2018.

10. Final hearing of the petition will be notified in due course.

11. The IA. No.96/2018 in Petition No.122/MP/2018 is disposed of in terms of the above.

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

sd/-
(P.K. Pujari)
Chairperson