

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 278/MP/2018

Subject : Petition under Section 79(1)(b), 79(1)(c) and 79(1)(f) of the Electricity Act, 2003 read with Regulation 32 and the detailed procedure as envisaged under the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access, Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009.

Petitioner : Jindal India Thermal Power Limited (JITPL)

Respondents : Indian Railways and Anr.

Petition No. 303/MP/2018

Subject : Petition under Section 79(1)(c) and 79(1)(f) of the Electricity Act, 2003 read with Regulation 32 and the detailed procedure as envisaged under the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access, Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009.

Petitioner : Jindal India Thermal Power Limited (JITPL)

Respondents : Indian Railways and Anr.

Petition No. 304/MP/2018

Subject : Petition under Section 79(1)(b), 79(1)(c) and 79(1)(f) of the Electricity Act, 2003 read with Regulation 32 and the detailed procedure as envisaged under the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access, Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 .

Petitioner : Jindal India Thermal Power Limited (JITPL)

Respondents : Indian Railways and Anr.

Petition No. 339/MP/2018

Subject : Petition under Section 79(1)(b), 79(1)(c) and 79(1)(f) of the Electricity Act, 2003 read with Regulation 32 and the detailed procedure as envisaged under the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access, Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009.



Petitioner : Jindal India Thermal Power Limited (JITPL)

Respondents : Indian Railways and Anr.

Date of Hearing : 31.10.2019

Coram : Shri P. K. Pujari, Chairperson
Dr. M. K. Iyer, Member
Shri I. S. Jha, Member

Parties Present : Shri Sanjay Sen, Senior Advocate, JITPL
Shri Pradeep Dahiya, Advocate, JITPL
Shri M. G. Ramachandran, Senior Advocate, Indian Railways
and REMCL
Shri Pulkit Agarwal, Advocate, Indian Railways and REMCL

Record of Proceedings

Learned senior counsel for the Petitioner submitted that the Petitioner had entered into medium-term PPAs with the Respondent, Indian Railways for its 9 Divisions located in nine different States for total capacity of 585 MW. Out of these, the Petitioner has terminated the four PPAs due to non-grant of open access by concerned State authority. Accordingly, the instant Petitions have been filed seeking, *inter alia*, declaration that the PPAs stand terminated by virtue of Article 4.4 of the PPAs, return of Bank Guarantee and compensation to the Petitioner. Learned senior counsel referred the Petition No. 278/MP/2018 and submitted that the Respondent had even filed Petition before the Chhattisgarh State Electricity Regulatory Commission (CSERC) seeking direction to the Chhattisgarh State Power Transmission Co. Ltd. (CSPTCL) and Chhattisgarh State Power Distribution Co. Ltd. (CSPDCL) for issuance of No Objection Certificate for open access. However, since certain amount was due to the Indian Railways and the matter was pending before Arbitral Tribunal, the matter could not be resolved. In such circumstances, the Petitioner had no option but to terminate the PPA.

2. Learned senior counsel for the Respondents submitted that as far as the Petition No. 278/MP/2018 is concerned, the Respondent had approached CSERC seeking direction to CSPTCL and CSPDCL for issuance of NOC. However, CSERC did not allow the Petition due to pendency of matter before Arbitral Tribunal. Therefore, the Respondent has agreed to return the Bank Guarantee and the Earnest Money in the instant case subject to the Petitioner agreeing to accept the same in full and to final settlement of all claims. Learned senior counsel submitted that the Petitioner is not entitled for compensation since as per the PPAs, the Petitioner is obligated to apply and obtain the open access. Learned senior counsel submitted that the matter before Arbitral Tribunal has been decided in favour of the Indian Railways and NOC for open access is expected to be received shortly. Learned senior counsel further submitted that PPAs provide for commencement of supply only after the receipt of open access, and once the open access is granted the PPAs can be implemented and enforced.

3. In response to the Commission`s query as to whether the parties intend to operationalize the PPAs after receiving the open access or to terminate the same,



learned senior counsels requested the Commission to allow the parties to mutually discuss the issues involved in the Petitions. Request was allowed by the Commission. The Commission directed the Petitioner to convene a meeting with the Respondents to resolve the issues and to file outcome of the meeting, on or before, 6.12.2019.

4. The Petitions shall be listed for hearing after receipt of minutes of the meeting for which separate notices shall be issued.

By order of the Commission

**sd/-
(T.D. Pant)
Deputy Chief (Law)**

