

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 153/MP/2012

Subject : Petition under Section 79 (1) of the Electricity Act, 2003 read with Regulation 24 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 read with Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-state Transmission and related matters) Regulations, 2009.

Date of hearing : 16.10.2012

Coram : Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V.S.Verma, Member
Shri M.Deena Dayalan, Member

Petitioner : PPN Power Generating Company Private Limited, Chennai

Respondent : Power Grid Corporation of India Limited, Gurgaon

Parties present : Shri Rahu Balaji, Advocate for the petitioner
Shri Senthil Jagedeasan, Advocate for the petitioner
Shri Krishan Dev, Advocate for the petitioner
Shri Sundararurthy, PPNPGCPL
Shri RVMM Rao, PGCIL

Record of Proceedings

At the outset, learned counsel for the petitioner submitted that the petitioner applied on 7.4.2011 to PGCIL to seek connectivity for one unit of 1x360 MW in terms of Regulation 12 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 (Connectivity Regulations) with requisite application fee and bank guarantee.

2. Learned counsel submitted that in accordance with procedure, the petitioner had also instituted a bank guarantee for ₹ thirty six lakh and validity of the bank guarantee has been subsequently extended till 6.1.2013. The provisions relating to the bank guarantee was also incorporated in the Clause 1 of the draft agreement for long term access which was forwarded to the petitioner by the PGCIL for execution on

24.10.2011. PGCIL vide its letter dated 17.8.2011 conveyed the approval for connectivity and long term access. Meanwhile, Ministry of Power vide its letter dated 14.3.2012 had advised all the developers not to plan projects based on domestic gas. The petitioner vide its letters dated 28.3.2012 and 29.3.2012 requested the PGCIL to cancel the application for long term access and return the bank guarantee due to the advisory issued by the Ministry of Power. In response, no communication has been received from PGCIL till date.

3. Learned counsel submitted that in terms of Regulation 12 (5) of the Connectivity Regulations, bank guarantee may be encashed by the nodal agency if any of the events of default listed therein occur. Learned counsel submitted that PGCIL in its reply has submitted that it would encash the bank guarantee as the Connectivity Regulations provide for the same and regulations do not specify any exceptions. Learned counsel submitted that the withdrawal of the application for long-term access by the petitioner was not deliberate or wanton but was necessitated due to the extraneous and insurmountable circumstances relating to the supplies of the natural gas for the expansion project. The respondent nowhere in its reply has submitted that it has suffered any loss or damage or it would suffer any loss or damage by allowing the petitioner to withdraw the application for long term access. Learned counsel requested the Commission to permit the petitioner to withdraw the application for open access without risk of the bank guarantee being encashed.

4. The representative of the respondent submitted that as per Regulation 12 (5) of the Connectivity Regulations, PGCIL is required to encash the petitioner's bank guarantee of ₹ 36 lakh and the said regulations do not indicate any exemptions/conditions for waiving of encashment of bank guarantee.

5. After hearing the learned counsel and representative of the respondent, Commission reserved the order in the matter.

By order of the Commission,

**(T. Rout)
Joint Chief (Law)**