

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 140/MP/2012 with I.A. No. 27/2012

Subject : Petition under Section 79 (1) (c) of the Electricity Act, 2003 read with section 79 (1) (f) of the Electricity Act, 2003 read with Regulation 21 of Central Electricity Regulatory Commission (Sharing of Inter-state Transmission Charges and Losses) Regulations, 2010 read with Regulation 32 of Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-state Transmission and related matters) Regulations, 2009 read with Bulk Power Transmission Agreement between Power grid Corporation of India Limited read with Regulation 113 of Central Electricity Regulatory Commission (Conduct of Business Regulations), 1999.

Date of hearing : 28.6.2012

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

Petitioner : PTC India Limited

Respondents : PGCIL and 6 others

Parties present : Shri Parag Tripathi, PTC
Shri Varun Pathak, PTC
Shri Shadan, PTC
SHRI S.S. Sharma, PTC
Shri Rajesh Prasad, PGCIL
Shri Mahender Singh, PGCIL
Shri U.K. Tyagi, PGCIL

Record of Proceedings

Learned senior counsel for the petitioner submitted that PTC entered into a Power Purchase Agreement with Jaypee Karcham Hydro Corporation Ltd on 21.3.2006 for onward sale of 704 MW power to the distribution licensees of Punjab, Haryana, UP and Rajasthan. Pursuant to the entire transaction of supply of power from Jaypee's project under the PPA, Bulk Power Transmission Agreement was executed between the petitioner and Power Grid Corporation of India Limited on 20.7.2007.

2. Learned senior counsel further submitted that Jaypee vide its letter dated 17.12.2009 informed the petitioner that PPA had become void. The said letter dated 17.12.2009 has been the subject matter of arbitration proceedings wherein the learned Arbitral Tribunal agreed with the view of Jaypee that the PPA had become void. However, the arbitral award dated 28.4.2011 was challenged by the petitioner before Hon`ble High Court of Delhi in OPM No. 677 of 2011 (PTC India Ltd Vs. Jaiprakash Power Ventures Ltd.) and the learned Single Judge in its order dated 15.5.2012 has set aside the arbitral award and directed the Jaypee to approach the CERC for determination of tariff. Against said judgment dated 15.5.2012, Jaypee has filed an appeal before the Division Bench of Delhi High Court, which is pending. However, till date the supply of electricity has not commenced in accordance with PPA. As the PPA was declared to be void by the Arbitral Tribunal, the BPTA dated 12.7.2007 has become frustrated. The petitioner approached the Delhi High Court in WP(C) 3627/2012 and CM No. 7615/2012 and the High Court in its order dated 4.6.2012 observed that the dispute between the petitioner and PGCIL can be raised before the Central Commission under the Open Access Regulations and directed the petitioner to approach the Commission within one week. Accordingly, the petitioner has filed its present petition seeking direction to exempt PTC from payment of long term open access charges under BPTA and exempt the petitioner from any penalty / compensation and to direct JP to pay the LTOA charges for evacuation of power from the project.

3. Learned senior counsel submitted that Regulation 18 (1) (b) of the CERC (Grant of Connectivity, Long Term Access and Medium Term Open Access and Related Matters) Regulations, 2009 provides for relinquishment of the access right which pre-supposes willful abandonment. In this case, there is no relinquishment of access right by the petitioner and the BPTA has been frustrated due to reasons beyond the control of the petitioner. Learned counsel further submitted that the Commission may consider to issue appropriate interim directions to Power Grid not to take any coercive steps against the petitioner towards recovery of the bills dated 4.5.2012 and 5.6.2012.

4. The Commission directed to admit the matter and issue notice to the respondents. The Commission declined to grant any ad-interim directions in the matter and directed to post the matter for early hearing.

5. Accordingly the petitioner was directed to serve the copy of the petition on the respondents immediately who may file its response by 16.7.2012 and the petitioner may file its rejoinder, if any, by 23.7.2012.

6. The petition shall be listed for hearing on 26.7.2012

By the order of the Commission,

**Sd/-
(T. Rout)
Joint Chief (Law)**