

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. MP/111/2014  
with I.A. No. 34/2014**

- Subject : Petition under section 79 and 94 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 along with affidavit in support thereof.
- Date of hearing : 22.7.2014
- Coram : Shri Gireesh B. Pradhan, Chairperson  
Shri Deena Dayalan, Member  
Shri A.K. Singhal, Member
- Petitioner : Hindustan Electricity Generation Company Limited
- Respondents : Power Grid Corporation of India Limited  
Oriental Bank of Commerce
- Parties present : Shri Sudhansu Batra, Sr. Advocate, HEGCL  
Shri P.J. Mehta, Advocate, HEGCL  
Shri Vipul Dubey, Advocate, HEGCL  
Shri Sambhav Gupta, Advocate, HEGCL  
Shri Mukesh Naresh, HEGCL  
Ms. Suparna Srivastava, Advocate, PGCIL  
Shri A.M. Pavgi, PGCIL

**Record of Proceedings**

Learned senior counsel for the petitioner submitted that due to following circumstances, the petitioner is not in a position to sign LTA:

- (a) Central Electricity Authority vide its circular dated 19.3.2012 advised developers not to set up domestic gas based projects owing to non-availability of domestic gas till 2015-16.

(b) The High Level Working Group Report on Western Ghats issued under the Chairmanship of Dr. K. Kasturirangan, has treated the proposed power plant being located in close proximity to Ecological Sensitive Areas where there is ban on setting up of thermal power plants and red category projects.

(c) Due to lack of environment clearance, linkage of fuel or award of EPC (for gas project), the provisional/final connectivity/LTA could not be operationalised. Therefore, in the present circumstances, the petitioner is not in a position to go ahead with the project and has sought return of the bank guarantee.

(d) Due to the above circumstances of impossibility of performance of the contract, the petitioner should be allowed refund of the application bank guarantee.

(e) The transmission line has not been stranded and PGCIL has not suffered any loss on account of the petitioner.

2. Learned counsel for the respondent submitted as under:

(a) There are two separate issues i.e. the constraint in commissioning of the generation project and the bank guarantee in the context of LTA. The bank guarantee is related to LTA and not to commissioning of the project.

(b) There are certain obligations under the LTA which have to be performed. If the LTA has not been operationalized for any reason within or beyond the control of the LTA applicant, then the consequence will follow which includes invocation of bank guarantee.

(c) The petitioner submitted a bank guarantee dated 15.12.2010 for a sum of ₹1.5 crore drawn on Oriental Bank in favour of PGCIL and valid for one year from 15.12.2010. Perusal of the said bank guarantee showed that in terms thereof, the petitioner guaranteed and undertook to PGCIL on demand any or all the monies payable by the petitioner to the extent of ₹1.5 crore without any demur or recourse or protest and without any reference to the petitioner. Any such demand made by PGCIL on the Oriental Bank was to be conclusive and binding, notwithstanding any difference between PGCIL and the petitioner.

(d) Thereafter, the petitioner, on 28.2.2011, applied for another LTA for 1000 MW and furnished a bank guarantee dated 28.2.2011 of ₹1 crore effective from 27.2.2012. The bank guarantees were furnished by the petitioner in the context of the above LTAs applied by it and as required under Connectivity Regulations and were thus to be co-extensive with the said LTAs.

(e) The bank guarantee dated 15.12.2010 of ₹1.5 crore was extended upto 14.12.2014 and the correspondences placed on record show that there was no controversy whatsoever surrounding such extension at any point of time. The bank guarantee dated 28.2.2011 of ₹1 crore was also extended upto 27.2.2014 without any contentious issue raised in that behalf and thereafter upto 27.5.2015 “under protest”. It was only with respect to the last extension upto 31.8.2014 that the petitioner raised completely impermissible issues and ultimately filed the present petition before this Commission.

(f) LTA in respect whereof the bank guarantee of ₹1 crore had been furnished by the petitioner, was granted by PGCIL in April, 2012 and modified in June, 2013, the only issue raised was with respect to the modification of the bank guarantee amount in November, 2013 and that too was not tenable as despite having been granted LTA and thus booking the transmission corridor to the extent of granted capacity, the petitioner had failed to sign LTA Agreement and open the necessary Letter of Credit as required under Connectivity Regulations. In the circumstances, the existence of bank guarantee in favour of PGCIL became of utmost importance to secure its financial interests. However, the petitioner failed and refused to extend the bank guarantee which was expiring on 27.5.2014 despite having a valid and subsisting LTA granted in its favour by PGCIL.

(g) As such and by exercising the legal rights available to it under the bank guarantee, PGCIL was constrained to inform the bank vide letter dated 22.4.2014 that in the event the bank guarantee was not extended upon its expiry, the letter was to be treated as a claim letter and the amount under the guarantee was to be remitted to PGCIL.

(h) It is a matter of record that the bank guarantee was thereafter extended by the petitioner to 27.8.2014. That being so, the above claim letter of PGCIL stood discharged. No question of any stay on the operation and effect of the letter dated 22.4.2014 could therefore at all arise.

(i) Prayer (ii) in the petition thus became infructuous and could not now be considered for grant to the petitioner. So far as prayer (i) is concerned, notwithstanding the difficulties pleaded by the petitioner as regards impossibility in implementation of the project, LTA granted to it continued to subsist and was not relinquished at any stage by the petitioner in accordance with the provisions of the Connectivity Regulations upon payment of applicable relinquishment charges. That being so, the bank guarantee was necessarily to also subsist and the petitioner could not claim any stay on invocation/encashment thereof.

(j) There is no merit in the present petition of the petitioner and the same is liable to be dismissed by this Commission. Notwithstanding that the project has

become an impossibility as has been pleaded by the petitioner, the bank guarantees granted for LTAs sought/grant must necessarily continue to subsist till LTAs are withdrawn/relinquished in accordance with the provisions of the Connectivity Regulations upon payment of necessary relinquishment charges. It is prayed accordingly.

3. Learned senior counsel for the petitioner submitted that the transmission line has not been stranded and PGCIL has not suffered any loss due to non-completion of the generation project. He further submitted that PGCIL has not built any new transmission system due to the generation project of HEGCL. PGCIL may therefore bring out the relevant compensation to be paid as per the regulations on account of stranded capacity.

4. In response, the representative of PGCIL clarified that the planning for evacuation of power is done by taking the entire grid into consideration and also the expected generation and transmission system in the given time-frame taken together in totality.

5. The Commission desired to know as to what consideration have gone into evolving this transmission system. The Commission directed PGCIL to submit the comprehensive report regarding planning of the transmission system which included the project to be developed by the petitioner latest by 24.8.2014 with an advanced copy to the petitioner.

6. The Commission directed that due date of filing the information should be strictly complied with.

7. Subject to the above, order in the petition was reserved.

**By order of the Commission**

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