

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 28/MP/2017
alongwith I.A. No.12/2017**

Subject : Petition under Section 79(1)(c) and Section 79(1)(k) read alongwith Section 79(1)(f) of the of the Electricity Act, 2003 read with Regulations 18 and 32 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long Term and Medium Term Open Access in inter-State transmission and related matters) Regulations, 2009 alongwith Regulations 111 and 115 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations,1999 read with Regulation 2(l)(i) of the Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012.

Date of hearing : 16.5.2017

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Petitioner : Maruti Clean Coal and Power Limited (MCCPL)

Respondent : Power Grid Corporation of India Ltd. (PGCIL)

Parties present : Shri Sumit Goel, Advocate, MCCPL
Ms. Sonal Gupta, Advocate, MCCPL
Shri Ishan Nagar, Advocate, MCPPL
Ms. Akansha Tyagi, Advocate, MCPPL
Shri Sitiesh Mukherjee, Advocate, PGCIL
Shri Harshit Gupta, Advocate, PGCIL

Record of Proceedings

At the outset, learned counsel for the petitioner submitted that the petitioner is not liable to pay PoC charges to PGCIL w.e.f. 25.2.2016 under Regulation 18 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long Term and Medium Term Open Access in inter-State transmission and related matters) Regulations, 2009 (Connectivity Regulations) on account of 126 MW LTA from Western Region (WR) due to change in target region from WR to NR. Learned counsel for the petitioner further submitted as under:

- (a) The petitioner has set up a 300 MW power plant at village Bandhakhar, District Korba in the State of Chhattisgarh. The petitioner made an application for grant of LTA to CTU on 24.12.2007 for transfer of 300 MW power. CTU granted LTA to the petitioner on 29.7.2009 for a period of 25 years with requirement of additional system strengthening.

- (b) On 24.2.2010, BPTA was executed between the petitioner and other generators with CTU. As per the BPTA, LTA was granted to the petitioner for 171 MW (126 MW for WR and 45 MW for NR).
- (c) The generating plant was commissioned on 31.7.2015. The petitioner vide its letter dated 3.2.2016 intimated PGCIL that the petitioner has signed long term PPA with Rajasthan Discoms for sale of 250 MW w.e.f. 30.11.2016 and requested not to operationalize the LTA. However, despite the notice the same was operationalized on 4.2.2016. Subsequently, the petitioner after receiving the NoC from Rajasthan DISCOMs, made an application to CTU on 29.2.2016 for grant of 205 MW LTA for evacuation of power from its generating plant (WR) to Rajasthan DISCOMs (NR) from 30.11.2016. On 29.7.2016, CTU granted 205 MW LTA to the petitioner subject to the payment of relinquishment charges as may be decided by the Commission in Petition No. 92/MP/2015. The petitioner relinquished the LTOA of 126 MW from WR, which changed the beneficiary region from WR to NR.
- (d) CTU has raised bills for PoC charges for the months commencing from March, 2016 till December 2016 with respect to 126 MW LTA to WR which has already been relinquished by the petitioner.
- (e) Since, the generating station of the petitioner was not operational from 28.10.2015 till 31.5.2016 due to accident occurred on 28.10.2015 which was a *Force Majeure* event under Clause 9 of the BPTA, the petitioner is not liable to pay PoC bills for the said period as it was never been used. However, PGCIL raised bills for PoC charges from February, 2016.
- (f) Proviso to the Regulation 15A and Regulation 18 of Central Electricity Regulatory Commission (Grant of Connectivity, Long Term and Medium Term Open Access in inter-State transmission and related matters) Regulations, 2009 (Connectivity Regulations), provides that on termination of PPA or surrender of LTA, the long term access customer shall be liable to pay the transmission charges and if the application for relinquishment has been made at a notice period or less than a year then such customer shall pay an amount of 66% of the estimated transmission charges for the stranded transmission capacity for the period falling short of 12 years of access rights. Since, there is no stranded capacity on account of 126 MW LTA from WR by the petitioner as it is a case of change of target region from WR to NR, there would not be any change in total long term access. In the present case, the injection point remains the same and only drawal of power changes.
- (g) The petitioner had relinquished the 126 MW LTA from the date of application i.e. 3.2.2016 read with application dated 25.2.2016. In spite of 126 MW LTA to WR already reduced to 0 MW- WR, PGCIL has been illegally raising invoice of PoC charges for 126 MW LTA to WR on the petitioner.
- (h) Learned counsel for the petitioner relied upon the Commission's order dated 23.3.2017 in Petition No. 76/MP/2014 and submitted that LTA capacity stands reduced from the date of relinquishment and not from any subsequent date as

alleged by PGCIL. Therefore, no PoC charges are payable from the date the LTA rights are relinquished.

- (i) Since, the petitioner has paid the PoC bills from the months of June, 2016 till October, 2016, it is entitled to refund same.
- (j) The petitioner has filed an Interlocutory Application for seeking interim relief to restrain PGCIL from taking any coercive steps to recover the amounts demanded from the petitioner under PoC bills for the months of March, 2016 to May, 2016 and November, 2016 to December, 2016 in respect of 126 MW LTA to WR.

2. Learned counsel for PGCIL submitted that no notice for relinquishment was served by the petitioner on PGCIL. Learned counsel for PGCIL further submitted as under:

(a) Since the letter dated 3.2.2016 and application dated 25.2.2016 does not amount to a notice for relinquishment of the access right as required under Regulation 18 of the Connectivity Regulations, the PoC charges are payable for 126 MW to WR till 205 MW LTA to NR was made operational on 1.4.2017.

(b) Learned counsel for PGCIL referred to the letter dated 29.7.2016 and submitted that LTA for NR was granted from 1.4.2017 and therefore till that date PoC charges are leviable on 126 MW to WR and the beneficiaries from WR shall become 0 MW only with effect from 1.4.2017.

(c) Clause 5.0 of BPTA provides that the long term customer shall not relinquish or transfer its rights and obligations specified in BPTA without prior approval of PGCIL and CERC and subject to payment of compensation in accordance with the CERC regulations issued from time to time. Therefore, prior approval with a one year notice period is required for reduction of PoC charges.

(d) The Hon'ble Appellate Tribunal for Electricity vide interim order dated 31.8.2016 in Appeal No. 212 of 2016 has directed the petitioner to continue to pay the dues from the month of June, 2016 onwards.

3. After hearing the learned counsel for the petitioner and learned counsel for PGCIL the Commission directed PGCIL to file its written submissions by 31.5.2017 failing which order would be passed based on the documents available on record.

4. Subject to above, the Commission reserved order in the petition.

By order of the Commission

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