

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 41/MP/2016

- Subject : Petition seeking modification in the quantum of Long Term Access granted under the Bulk Power Transmission Agreement dated 24.2.2010 from 800 MW to 647 MW in the light of the discussions recorded in the Minutes of the Meetings held with Eastern Region Constituents on 5.1.2013 and 27.8.2013 read with Sections 38 and 79(1) (c) of the Electricity Act, 2003.
- Date of hearing : 19.1.2017
- Coram : Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member
- Petitioner : GMR Kamalanga Energy Limited.
- Respondents : 1. Power Grid Corporation of India Limited.
2. Central Electricity Authority
- Parties present : Shri Ramji Srinivasan, Senior Advocate, GMRKEL
Shri Matrugupta Mishra, Advocate, GMRKEL
Shri Nimesh Jha, Advocate, GMRKEL
Shri Ajaya Kumar Nathini, GMRKEL
Ms. Suparna Srivastava, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL
Shri Swapnil Verma, PGCIL

Record of Proceedings

Learned senior counsel for the petitioner submitted that the present petition has been filed inter-alia seeking modification of the BPTA dated 24.2.2010 entered into between the petitioner and CTU and grant of LTA for 260 MW in the Eastern Region for supply of power to the distribution companies of Bihar. Learned senior counsel further submitted as under:

- (a) The petitioner has set up a 1050 MW (3X350 MW) (Phase-I) coal based thermal power plant (generating station) at Village Kamalanga in Dhenkanal District, Odisha.

(b) On 12.3.2009, the petitioner entered into the PPA with PTC India Ltd. for supply of 300 MW power to Haryana Discoms on long term basis for a period of 25 years.

(c) On 24.2.2010, the petitioner entered into the BPTA with CTU for grant of LTA of 800 MW. As per the BPTA, the petitioner was to evacuate 600 MW to utilities in Northern Region and 200 MW to Southern Region's utilities.

(d) The petitioner entered into the PPA with erstwhile Bihar State Electricity Board on 9.11.2011 for supply of 260 MW with delivery point as Bihar STU bus-bar interconnection point.

(e) In terms of the meetings of constituents of ER held on 5.1.2013 and 27.8.2013 and the GRIDCO's letter dated 3.8.2014, PGCIL knew all along that one unit of the petitioner's generating station was being connected to the STU grid and the petitioner would not be in a position to utilize the entire 800 MW allocated to it. The said meetings were held as per the mandate provided under Section 38 (2) of the Electricity Act, 2003 for proper planning and coordination in developing the transmission network/system for grant of LTA to the long term customers situated in the Eastern Region. In the said meeting dated 5.1.2013, it was recorded that for availing 350 MW of power by Odisha from GMR, the same would be availed through isolation of one unit of the project of GMR (3X350+1X350 MW) and connecting it through LILLO of one circuit of Talcher-Meramundali D/C line or through GMR-Meramundali 400 kV D/C line. OPTCL further requested for connection of one unit of GMR Phase-I (3x350 MW) to its grid.

(f) As a result of change in connectivity of 350 MW power to STU, Odisha, the total connectivity of the petitioner with CTU was reduced to 700 MW, while the BPTA was executed for 800 MW. The same resulted in an incongruous situation as the petitioner can never completely utilize the LTA when the connectivity became lower, which all along was known to CTU.

(g) The petitioner is not supposed to give any intimation or make any request to PGCIL for discharge of the latter's statutory obligations. PGCIL cannot blame the petitioner for its own failure to perform its obligations. However, the petitioner vide its letter dated 30.9.2015 requested PGCIL for revision of 800 MW LTA to 647 MW LTA under the BPTA pursuant to the decision made vide minutes of Meeting dated 5.1.2013 and 27.8.2013.

(h) PGCIL in terms of the meetings dated 5.1.2013, 27.8.2013 and GRIDCO's letter dated 23.8.2014 ought to have modified the original BPTA dated 24.2.2010 in order to make the same in line with the net exportable quantum of

power from the petitioner's two units, which remain connected to the CTU network.

(i) For the purposes of securing its rights qua fulfillment of the obligations of the petitioner for supply of power to BSEB, the petitioner vide its letter dated 22.4.2016 proceeded to relinquish 413 MW out of the original BPTA quantum of 800 MW subject to the outcome of decision in Petition No. 92/MP/2015. However, for the remaining 260 MW out of the 413 MW of the relinquished quantum, the petitioner is not liable to make payment of any relinquishment charges as there is no stranded capacity in the system which is attributable to the said relinquishment. The contents of the letter dated 24.6.2016 of PGCIL are misplaced qua the issue of relinquishment charges. The existence of stranded capacity is a sine qua non in terms of Regulation 18 of the CERC Grant of connectivity Regulations, 2009.

(j) PGCIL being 'State' within the meaning of Article 12 of the Constitution of India must act in a fair and reasonable manner not just in public law but also in private law. This principle has been upheld by the apex court in a plethora of judgments.

2. Learned counsel for PGCIL referred to the Minutes of Meeting dated 17.4.2009 and 15.9.2009 and the petitioner's letter dated 22.4.2015 seeking relinquishment of 413 MW LTA and submitted as under:

(a) Out of the 1050 MW installed capacity for Phase-I units, the petitioner sought LTA of 800 MW with a clear no-objection from GRIDCO for supply of power to various beneficiaries. The petitioner has now earmarked unit for supply of power to Odisha and is claiming that it has LTA for the below 700 MW.

(b) GRIDCO had categorically informed in the Regional Constituents Meeting that the transmission system planning of PGCIL could proceed with the LTA quantum of 800 MW while GRIDCO and the petitioner resolved their inter-se issue as regards 25% of share to Odisha from power generated from the project.

(c) Even when the LTA was applied for and granted without any reference to auxiliary consumption and more so, when the LTA quantum was less than the installed capacity of the generation project, the petitioner sought to unilaterally deduct 53 MW towards auxiliary consumption, which clearly could not be the case.

(d) In this manner, by creating an artificial underutilized LTA capacity of 153 MW i.e 100 MW towards reduction in installed capacity and 53 MW towards auxiliary consumption, the petitioner requested for revision in LTA and "reduction"

in LTA quantum by 153 MW. The ingenious request of the petitioner had been made to avoid payment of relinquishment charges for the LTA quantum which the petitioner no longer intended to use.

(e) PGCIL informed the petitioner that till a formal request for relinquishment of LTA quantum was received, the grant of 800 MW LTA was to stand and the petitioner was liable to bear the transmission charges and all other liabilities of a long term customer. There was thus no question of the said LTA being rendered infructuous.

(f) As per the Commission's direction dated 12.4.2016 and 26.5.2016, the petitioner opened letters of credit for 647 MW. Thereafter, the petitioner vide its letter dated 21.6.2016 accepted and agreed that the LTA quantum was 800 MW and informed to retain out of 540 MW in Northern Region, 387 MW in Northern region and surrendered the remaining 153 MW. Owing to the said surrender, the LTA granted in favour of the petitioner stands at 647 MW for which the necessary letter of credit has been opened by the petitioner.

(g) In view of the relinquishment of 153 MW power in Northern Region and grant of 260 MW LTA in Eastern Region, the prayers of the petitioner stand disposed off and as such, the present petition has become infructuous.

3. After hearing the learned senior counsel for the petitioner and learned counsel for PGCIL, the Commission directed the petitioner and the respondent to file their written submissions by 10.2.2017 with copy to each other failing which order would be passed based on documents available on record.

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

By order of the Commission
Sd/-
(T. Rout)
Chief (Legal)