

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 60/RP/2016 in
10/SM/2014**

- Subject : Petition under Section 94 (1)(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for review of order dated 30.6.2016 in Petition no. 10/SM/2014 along with I.A. for condonation of delay.
- Date of hearing : 6.7.2017
- Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member
- Petitioners : Power Company of Karnataka Limited (PCKL) and others.
- Respondents : SRLDC and others.
- Parties present : Ms. Swapna Seshadri, Advocate, PCKL
Ms. Suparna Srivastava, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL

Record of Proceedings

At the outset, learned counsel for the review petitioner submitted that the present review petition has been filed by PCKL seeking review of the Commission's order dated 30.6.2016 in Petition No. 10/SM/2014 wherein the Commission held that the review petitioner is liable to pay transmission charges for the period from 1.7.2011 to 30.4.2015 for deemed operationalization of long term open access to the extent of 939 MW, despite the fact that no LTA was ever given to the review Petitioner. Learned counsel further submitted as under:

- a). The Commission's order dated 30.6.2016 is against the provisions of the Sharing Regulations and also there are several errors apparent on the face of record in computing the LTA quantum, date of levy of charges, etc.
- b). The Commission in para 4 (d) of the order has noted the submissions of KSEB wherein it is clearly stated that since there is no power allocated to KSEB as a pre-

condition for its consent, Mysore-Hassan line as Regional Strengthening Scheme is no more valid. The fact is that on 18.10.2009, the review petitioners had clarified that they did not require to apply for LTA since the power from the Udupi Power Corporation Limited (UPCL) would be evacuated from the 400 KV lines being constructed by KPTCL and that the Hassan-Mysore line is also catering the needs of Kerala through 400 KV D/C Kozhikode lines and 220 KV S/C Mysore-Kaniyampet line. As per Regulations 4.1 and 4.3 of the CERC (Indian Electricity Grid Code) Regulations, 2010 LTA was not required by the review petitioners.

c). The charges ought not to be levied at all on the review petitioners as out of the total quantum of 939 MW, about 424 MW is being evacuated through 2X220 KV UPCL-Kemar line which is owned by the review petitioners. Therefore, effective power being transmitted through the 400 KV Hassan-Mysore line is only 515 MW out of which, 94 MW is the share of power of PSPCL and the share of the review petitioners works out to 421 MW.

d). PGCIL has taken the position that LTA was required by the review petitioners for the entire 939 MW and without such LTA, the review petitioners could not have drawn their share of electricity from UPCL whereas in the case of the review petitioners, there was no signing of BPTA and no operationalization of LTA either. It is not understood as to how such an LTA can be deemed to be granted from a prior date and the charges for the same be recovered from the review petitioners.

e). At para 7 of the order dated 30.6.2016, the Commission has noted the submissions of PGCIL regarding the details of the LTA wherein it has clearly stated that the power was to be evacuated through the Kemar line of KPTCL and that the Hasan-Mysore 400 KV D/C line is under the regional system strengthening scheme. The fact is that UPCL sought LTA for 939 MW out of which the share of review petitioners i.e 845 MW is being evacuated through the UPCL-Hassan and UPCL-Kemar lines and the LTA only required to give 94 MW by UPCL to PSPCL. The review petitioners did not require LTA.

f). There is no provision in the Sharing Regulations or the Connectivity Regulations which provide for the concept of deemed open access. It cannot be that open access is deemed to be operationalized without signing of BPTA specific to such a corridor and without following the other procedures provided in the Connectivity Regulations. Therefore, the levy of charges on the petitioners is against the provisions of the Regulations and is bad in law.

g). As per Regulation 8(6) of CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 (Sharing Regulations), the PoC charges cannot be levied prior to commissioning of the generating station on the review petitioners and charges for the period 1.7.2011 to 19.8.2012 have to be paid by UPCL.

h). In para 11 of the order dated 30.6.2016, the Commission has noted the submissions of PSPCL that since no power is flowing to PSPCL, no charges should be

levied on PSPCL. However, Regulation 8(6) of the 2010 Sharing Regulations states that the charges payable by such generators for such long term supply shall be billed directly to the respective long term customers on their share of capacity in such generating stations. Therefore, qua the 94 MW which is the share of PSPCL, there can be no question of levying the charges on the review petitioners. These charges need to be paid either by UPCL or by PSPCL and this is also fortified by Article 4.9 of the PPA.

i). At para 14 of the order dated 30.6.2016, the Commission has noted the submissions of CTU that the Hassan-Mysore 400 KV D/C transmission line has been commissioned as a regional strengthening scheme. This has been agreed to by all the beneficiaries on the 24th Standing Committee Meeting of SR on 18.6.2007 and the 6th meeting of SRPC on 15.2.2008. None of the beneficiaries have challenged this position. Sharing Regulations clearly provides that the YTC for system strengthening schemes shall be billed through PoC mechanism. Therefore, the SRPC minutes cannot be ignored and levy the entire charges on the petitioner.

j). The transmission charges approved by the Commission for the Mysore-Hasan transmission line in Petition No. 492/TT/2014 are Rs. 75.60 crore for a period of 45 months. However, as a result of calculation and imposition of PoC charges on the review petitioners, the review petitioners have to pay Rs. 298.76 crore as per SRPC letter dated 20.10.2016 to PGCIL for 46 months for the use of the same assets, which is exorbitantly high and will lead to unjust enrichment at the cost of the consumers in the State of Karnataka. The transmission charges cannot be more than the cost of the asset itself.

k). If the Regulations have been notified, they are binding on all. Therefore, if the statutory Regulations provide for a particular manner of recovery, the same should be followed and is binding on all including the Commission. In support of this contention, learned counsel placed reliance on the Hon'ble Supreme Court's judgment in PTC India Limited Vs. CERC [(2010) 4 SCC 603].

2. In its rebuttal, learned counsel for PGCIL submitted as under:

a). The nature of grievance's raised in the present petition do not show any error apparent on the face of the record within the meaning of Order 47 Rule 1 of the Code of Civil Procedure, 1908. The present petition raises grievances instead of "errors apparent". It is an appeal in disguise of a review where the order of the Commission has been challenged on merits.

b). It is a settled principle of law that the power of review can be exercised for correction of a mistake and not to substantiate a view. It cannot be permitted on the ground that the Court has proceeded on wrong proposition of law. The present review petition is thus not maintainable and is liable to be dismissed by the Commission.

c). The review petitioner has wrongly contended that the 400 kV Hassan-Mysore D/c line was not related to Hubli Electricity Supply company Limited (HESCL) project and

that no LTA was required for power evacuation to Karnataka. The same is contrary to the statutory scheme laid down in the applicable Regulations of the Commission for evacuation of power from inter-State generating stations to its identified beneficiaries and as such, cannot be accepted.

d). The review petitioners cannot now contend that they did not require any LTA and that the LTA was required only to transfer 94 MW power to Punjab. Such a contention is incomprehensible and proceeds on an assumption that the entire 845 MW power was being consumed at Hassan only and further that the entire Hassan load was being met from HESCL's generating plant only. The fact is that LTA had been granted to Karnataka as a whole. The review petitioners were aware that the substation at Hassan through which the 845 MW was to be evacuated, was not a local sub-station but was that of PGCIL with a transformation capacity of 2X315 MVA and as such, any power flow through it was necessarily through ISTS.

e). LTA was granted to HESCL subject to the system strengthening i.e. Hassan-Mysore 400 kV D/c line and construction of dedicated transmission line i.e. UPCL-Hassan 400 kV D/c line. The dedicated transmission line was constructed by KPTCL in terms of its obligation under the PPA signed with the distribution companies of Karnataka. As per the applicable Regulations of the Commission, if the ISTS identified for the grant of LTA is commissioned and the generation project is delayed, then the liability for payment of LTA charges lies squarely on the LTA customer. The identified system strengthening i.e. Hassan-Mysore 400 kV D/c line was commissioned on 1.7.2011 and Unit-I and Unit-II of KPTCL were commissioned on 11.4.2010 and 19.8.2012 respectively whereas the dedicated line was commissioned on 25.8.2012. Therefore, it is clear that there is delay in construction of dedicated transmission line as well as the system strengthening. Accordingly, the liability of payment of LTA charges started from the date of commissioning of system strengthening. As per the recommendation of SRPC Secretariat, the LTA was required to be operationalized w.e.f. 1.7.2011.

3. After hearing the learned counsels for the parties at length, the Commission directed the petitioner to file written submissions on the maintainability of the Review petition.

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

By order of the Commission

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