

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**I.A. No. 62 of 2016 in  
Petition No. 190/MP/2016**

- Subject : Petition under Section 79 (1)(c) and (f) of the Electricity Act, 2003 read with CERC (Grant of Connectivity, Long Term Access and Medium Term Open Access in inter-State Transmission and related matters) Regulations, 2009 seeking directions in respect of LTA granted for Budhil Hydro Electric Project in terms thereof.
- Applicant : Greenco Budhil Hydro Power Pvt. Limited (GBHPPL).
- Respondents : Power Grid Corporation of India Limited and Others
- 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
- Parties present : Shri Sanjay Sen, Senior Advocate, GBHPPL  
Shri Hemant Singh, Advocate, GBHPPL  
Shri Nishant Singh, Advocate, GBHPPL  
Shri Nimesh Jha, Advocate, GBHPPL  
Ms. Suparna Srivastava, Advocate, PGCIL  
Ms. Manju Gupta, PGCIL  
Ms. Jyoti Prasad, PGCIL  
Shri Dilip Rozekar, PGCIL  
Shri A.M. PAvgi, PGCIL  
Shri Swapnil Verma, PGCIL

**Record of Proceedings**

At the outset, learned senior counsel for the petitioner submitted that the present IA has been filed seeking directions to PTC India Ltd. to surrender its Long Term Access from Budhil Hydro Electric Project to the Haryana State and directions to PGCIL to modify the existing BPTA for a change in the drawee and drawal locations. Learned senior counsel further submitted as under:

- a). In the last hearing dated 14.12.2016, PGCIL expressly stated that it is willing to consider a fresh application on behalf of the petitioner for grant of LTA, provided the petitioner furnishes an undertaking with respect to indemnification of PGCIL based upon

any decision which may be taken by the Hon'ble Supreme Court. Accordingly, the petitioner vide its letter dated 17.5.2016 provided the said indemnification.

b). On 27.3.2017, the petitioner made an application to PGCIL for grant of fresh LTA for supply of power to UPCL on a long-term basis. However, during the meeting dated 5.4.2017 convened by PGCIL for grant of fresh LTA, instead of discussing the way forward qua grant of fresh LTA to the petitioner, went ahead and offered to provide an MTOA to the petitioner until the issue regarding the terminated PTC PPA was settled by the Supreme Court.

c). The appeals pending before the Supreme Court are filed by HPGCL and are with regard to the jurisdiction of the State Commission to adjudicate the issues raised by the petitioner therein. The issue of termination of PPA is not at all sub-judice before the Supreme Court. The Supreme Court has not passed any interim orders for staying the operation of the order of the APTEL which is impugned in the above appeals. Under the said circumstances, the act of termination of the PPA has attained finality. PGCIL cannot withhold grant of LTA to the petitioner on the pretext of pending litigation before the Hon'ble Supreme Court.

d). The petitioner already has a firm Power Purchase Agreement (PPA) for supply of long term power tied up with UPCL and as such its application for grant of LTA cannot be denied in case there is availability of transmission capacity in the grid qua grant of LTA applications. Further, the petitioner cannot be compelled to opt for MTOA instead of the already applied LTA.

e). As per BPTA dated 18.10.2007, the LTA was granted to PTC and not to the petitioner and therefore, liability to pay transmission charges shall be of PTC only and cannot be of the petitioner under any circumstances. This position was further corroborated in the meeting held on 25.4.2012 wherein PGCIL had clearly stated that LTA under BPTA was granted to PTC and not to the petitioner. Under the circumstances, it was agreed by all the parties that the petitioner will only reimburse PTC for transmission charges as an interim arrangement.

f). Such interim arrangement was for a limited purpose. The petitioner is no more liable to pay any transmission charges qua the PTC LTA on account of the fact that the petitioner has identified a new beneficiary in the same Northern region, being UPCL and the petitioner has been requesting PGCIL for change of drawee or for grant of fresh LTA. The petitioner's request in this regard has not been accepted by the respondents despite being statutorily and contractually liable to act upon pursuant to the termination of PPA. Therefore, the petitioner is not liable to pay transmission charges as claimed by PGCIL.

g). The petitioner has paid the transmission charges from May 2012 to March 2016 at the rate of approximately Rs. 1.35 crore per month to PGCIL even though the petitioner is not using the Long Term Access to the transmission of power to HPGCL due to the termination of its PPA with PTC. The petitioner's liability to pay transmission charges ceased to exist when the petitioner executed a fresh long-term agreement with UPCL.

h). The petitioner has been availing Short Term Open Access (STOA) since commissioning of its plant and has been making payments of all charges as demanded by PGCIL in this regard. Therefore, there cannot be any valid reason for PGCIL for resorting to extreme action of curtailment of STOA which was granted to the petitioner as per the Regulations and after receiving all payments towards transmission charges in this regard.

2. In its rebuttal, learned counsel for PGCIL submitted that in the meeting convened on 5.4.2017 between the petitioner, PGCIL and PTC, CTU suggested the petitioner that in case PTC does not surrender the LTA for its own reasons, it can apply for MTOA for transfer of power to Uttarakhand which can be presently granted upto 5 years during which time the disputes between the petitioner and PTC may come to a logical conclusion. CTU had also suggested that the petitioner should pay the dues pending since March 2016 and consider submission of MTOA application at the earliest so that the issue could be amicably resolved. Learned counsel further submitted that the issue of surrender of LTA rights by PTC needs to be resolved between the petitioner and PTC and conveyed to CTU for further course of action.

3. Learned counsel for PTC India Ltd. submitted as under:

a). On 26.12.2009, the petitioner terminated the PPA with PTC without any intimation to Haryana. Aggrieved by the illegal termination of the PPA by the petitioner herein, Haryana filed a petition in HERC challenging the termination of PPA by the petitioner. HERC vide its order dated 25.8.2011 held that it has no jurisdiction to hear the matter.

b). Aggrieved by HERC's order dated 25.8.2011, the petitioner filed an appeal before APTEL challenging the jurisdiction of HERC wherein it was held that HERC does not have jurisdiction over the matter. Aggrieved by the APTEL order dated 25.8.2011, Haryana filed a Civil Appeal bearing No. 9218/2012 and PTC also filed a Civil Appeal No. 1054/2013 before the Hon'ble Supreme Court.

c). Subsequently, on 25.4.2012, a meeting was held in CEA, POSOCO, NRLDC, HPSLDC, petitioner, PGCIL and PTC regarding commissioning of 70 MW Budhil HEP. In the said meeting, the petitioner agreed for change of subject LTA in the name of petitioner from PTC. Therefore, the issue of the alleged termination of PPA by the petitioner is still sub-judice as the matter is pending before the Supreme Court including the sale of power by the petitioner. Accordingly, PTC has no objection for transfer of LTA in the name of the petitioner during the pendency of the case before the Supreme Court subject to the condition that there is no liability on PTC.

4. Learned senior counsel for the petitioner and learned counsel for PGCIL sought permission to file written submissions. The petitioner and respondents were granted permission to file their written submissions by 16.6.2017 with an advance copy to each other.

5 Subject to the above, the Commission reserved the order in the IA.

**By order of the Commission**

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