

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 153/MP/2016

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Dr. M.K. Iyer, Member

Date of Order : 17th of October, 2017

In the matter of:

Petition seeking declaration that no relinquishment charges are payable for surrendering the MTOA dated 22.7.2015 granted to the Petitioner by PGCIL

In the matter of:

GMR Warora Energy Limited
701/704, 7th Floor, Naman Centre,
A Wing, BKC (BandraKurla Complex),
Bandra, Mumbai 400 051

....Petitioner

Vs

1. M/s Power Grid Corporation of India Limited
B - 9, Qutab Industrial Area, I
Katwaria Sarai,
New Delhi – 110016
2. Central Electricity Authority
Sewa Bhawan,
Rama Krishna Puram,
New Delhi – 110066

....Respondents

Parties Present:

Shri Matrugupta Mishra, Advocate, GMRWEL
Shri Nishant Kumar, Advocate, GMRWEL
Shri Ajaya Kumar Nathini, GMRWEL
Ms. Suprna Srivastava, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL
Shri Dilip Rozekar, PGCIL
Shri Swapnil Verma, PGCIL



ORDER

The Petitioner, GMR Warora Energy Limited (GWEL), has filed the present petition under Sections 38 (2) (c) , 79 (1) (c), (f) and (k) of the Electricity Act, 2003 for seeking declaration that no relinquishment charges are payable for surrendering the MTOA dated 22.7.2015 granted to the Petitioner by Power Grid Corporation of India Limited (PGCIL/CTU) in terms of Regulation 24 of Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in Inter-State Transmission and related matters) Regulations, 2009, as amended from time to time (hereinafter referred to as 'Connectivity Regulations').

2. The Petitioner has submitted that the following facts have led to the filing of the present petition:

(a) The Petitioner has set up a 600 MW (2x300MW) coal based thermal power plant (hereinafter referred to as the 'project') at Warora, district Chandrapur in the State of Maharashtra. The project was earlier owned by EMCO Energy Limited which was subsequently acquired by GMR Energy during the year 2009. On such acquisition, the project was named from EMCO Energy Limited to GMR Warora Energy Limited.

(b) Pursuant to the bidding undertaken by Tamil Nadu Generation and Distribution Company Limited (TANGEDCO) for procurement of power on long term basis, the Petitioner emerged as the successful bidder. Accordingly, TANGEDCO executed a Power Purchase Agreement (PPA) dated 27.11.2013 with the Petitioner for supply of 150 MW power.

(c) The Petitioner applied to CTU on 27.11.2013 for grant of 150 MW Medium

Term Open Access (MTOA) for supply of power to TANGEDCO. The Petitioner also applied to CTU on 18.12.2013 for grant of 150 MW Long Term Access (LTA).

- (d) The Petitioner vide its letters dated 30.3.2015, 8.4.2015 and 12.6.2015 requested PGCIL to process its application dated 27.11.2013 for grant of 150 MW MTOA. Subsequently, the Petitioner vide its letter dated 10.7.2015 requested PGCIL to process both its MTOA and LTA applications.
- (e) On 15.7.2015, a special meeting was held by PGCIL with the constituents of Western Region and Southern Region for grant of LTA and MTOA in the wake of the Commission's order dated 16.2.2015 in Petition No. 92/MP/2014 and the orders of Hon'ble Madras High Court in Civil Appeal Nos. 923 of 2015 and 705 of 2015 wherein it was decided to grant notional LTA to the applicants who had applied for grant of LTA and MTOA between November, 2013 and December, 2013. Accordingly, PGCIL vide its letter dated 22.7.2015 intimated the Petitioner for grant of 150 MW MTOA for supply of power to TANGEDCO from 1.8.2014 to 31.5.2017. Similarly, on 22.7.2015, the Petitioner was also granted notional 150 MW LTA for the period from 1.4.2015 to 30.9.2018 subject to the condition that the Petitioner shall pay relinquishment charges as may be decided by the Commission in Petition No.92/MP/2015.
- (f) On 4.8.2015, the Petitioner opened LC of Rs. 901.03 lakh with respect to the MTOA dated 22.7.2015 and executed an Agreement for MTOA with PGCIL. Subsequently, on 11.8.2015, the Petitioner entered into LTA Agreement with PGCIL pursuant to grant of LTA dated 22.7.2015.

- (g) PGCIL vide its letter dated 18.8.2015 informed the Petitioner that its LTA dated 22.7.2015 was expected to be operationalized by October, 2015 subject to the fulfilment of the condition that the Petitioner has to relinquish the MTOA dated 22.7.2015 and to open an LC of Rs.901.03 lakh. The Petitioner vide its letter dated 24.8.2014 requested PGCIL to modify the terms regarding opening of LC, as the Petitioner had already opened LC for the same amount qua the MTOA dated 22.7.2015. PGCIL vide its letter dated 28.8.2015 accepted the above request of the Petitioner.
- (h) The Petitioner vide its letter dated 13.10.2015 requested PGCIL to operationalize the MTOA dated 22.7.2015 for onwards supply of 150 MW of power to TANGEDCO. PGCIL vide its letter dated 19.10.2015 permitted the Petitioner part operationalization of the MTOA dated 22.7.2015 with immediate effect for evacuation of 56 MW of power to be supplied to TANGEDCO. Based on the request of the Petitioner dated 30.10.2015, CTU vide its letter dated 30.11.2015 informed the Petitioner that the said MTOA has been enhanced from 56 MW to 121 MW and eventually on 14.12.2015 CTU permitted complete operationalization of the said MTOA of 150 MW against the application made in November, 2013.
- (i) The Petitioner vide its letter dated 17.12.2015 informed PGCIL that the issue of relinquishment of MTOA was intimated to PGCIL vide letter dated 30.10.2015 requesting for closure of MTOA for the balance period of grant of availability of ATC for fully operationalizing all the LTA applicants of December, 2013. The Petitioner further informed that its LTA is only replacing its MTOA and does not interfere with the ATC availability for any of the other

customers and requested to waive off the relinquishment charges to be levied as it is only a replacement of the same quantity of LTA for the same transaction between the GMR and TANGEDCO against the same PPA of 150 MW. In response, PGCIL vide its letter dated 30.12.2015 informed the Petitioner that there is no provision in the Connectivity Regulations for exemption from payment of relinquishment of MTOA.

- (j) Subsequently, the Petitioner vide its letter dated 13.1.2016 informed PGCIL that PGCIL's reliance on Regulation 24 of the Connectivity Regulations is not applicable as there is neither any relinquishment of the capacity allocated to it nor will PGCIL suffer any loss as the Petitioner would continue to avail 150 MW open access, and requested PGCIL to operationalize 150 MW LTA by closing the corresponding 150 MW MTOA. PGCIL vide its letter dated 15.1.2016 informed the Petitioner that the 150 MW LTA granted to the Petitioner is to be operationalized w.e.f. 22.1.2016 and rejected the request of the Petitioner for not claiming relinquishment charges towards stoppage of MTOA dated 22.7.2015 informing that the grant of MTOA to November, 2013 application and grant of LTA to December 2013 application had been made with the consent of the Petitioner with clear understanding that whenever the LTA gets operationalized for full quantum, the MTOA shall be relinquished alongwith payment of applicable relinquishment charges. PGCIL further informed that this specific issue was addressed in the meeting where grant of LTA and MTOA were finalized and the Petitioner had given unconditional consent for the same.

- (k) PGCIL vide its letter dated 22.7.2015 informed the Petitioner that 150 MW

MTOA granted stands relinquished w.e.f. 22.1.2016. Accordingly, the Petitioner is required to pay relinquishment charges as per Regulation 24 of Connectivity Regulations. Subsequently, PGCIL vide its letter dated 9.6.2016 raised a demand on the Petitioner for payment of Rs. 2,14,71,750/- towards relinquishment of MTOA.

(l) Since, there is no 'relinquishment' of MTOA, the Connectivity Regulations for relinquishment charges cannot be imposed in the present case. The basic ingredient of relinquishment is cessation of a right for utilization of the same by another person. In the present case, there is no abandonment of the access rights by the Petitioner in order to enable PGCIL to grant that right to another person. In fact, the Petitioner continues to utilize its right of accessing the inter-State Transmission System by getting promoted from a 3 year access right (Medium Term) to a 15 year access right (Long Term).

(m) In the present case, the access of the Inter-State Transmission Corridor, for a 3 year period (Medium Term), continues for a 15 year period (Long Term). However, it needs to be considered that the Petitioner never gave up the said right of transmission/conveyance of power, to the same entity (TANGEDCO) and qua the same PPA. There has been only a promotion in terms of the period for which the Petitioner has a vested right to source power to TANGEDCO. Even if the said increase in the period of access (Medium Term to Long Term) grants a higher priority of access to the Petitioner, the same does not result in vacation/ abandonment of the said access rights accrued to the Petitioner in favour of any other entity or the said rights revert back to CTU. This transfer of Access rights to a third party/ entity or the reversion of

the said rights to the nodal agency (as per the Statement of Reasons) is the fundamental test whether relinquishment of MTOA has happened or not.

(n) In the present case, the Petitioner has moved from MTOA to LTA while the rest of the transaction (PPA and beneficiary) remains the same. The monthly transmission charges to be payable as per the POC mechanism are same for both the above Access rights. Therefore, an LTA carries/ subsumes within itself all the right, title, etc. which existed in favour of the Petitioner in the MTOA. Thus, such promotion/conversion from MTOA to LTA cannot at all be termed as relinquishment within the meaning of Regulation 24 of the Connectivity Regulations.

(o) The invoice dated 9.6.2016, towards relinquishment charges has been raised by PGCIL under the provisions of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 whereas a demand for relinquishment charges can only be made as per the Connectivity Regulations and as such the said invoice has been wrongly raised by PGCIL upon the Petitioner and is liable to be quashed.

(p) Under Section 38 (2) (c) of the Electricity Act, 2003, PGCIL has a mandate to ensure development of an efficient, coordinated and 'economical' system of inter-State transmission lines for smooth flow of electricity from generating stations to the load centres. The word 'economical' confers an obligation upon PGCIL to ensure Access to its system in a most cost effective and reasonable manner. This mandate cannot be reconciled by claiming charges which are unreasonable on account of reasons mentioned in the present

petition.

3. Against the above background, the Petitioner has made the following prayers:

(a) Hold and declare that the Petitioner has not relinquished the Access rights within the meaning of Regulation 24 of the CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009;

(b) Quash the letter/ invoice dated 9.6.2016 issued by PGCIL upon the Petitioner.

4. Notice was issued to the respondents to file their replies. PGCIL has filed its reply.

5. PGCIL in its reply has submitted as under:

(a) Regulation 18 of the Connectivity Regulations provides that a long term customer may relinquish its LTA rights fully or partly before the expiry of the full term of LTA by making payment for compensation of stranded capacity, which compensation is used for reducing the transmission charges payable by other LTA customers and MTOA customer in the year in which such compensation payment is due. Regulation 24 of the Connectivity Regulations provides that medium-term customer may relinquish its rights, fully or partially, by giving at least 30 days prior notice to the Nodal Agency and by paying applicable transmission charges for the period of relinquishment or 30 days whichever is lesser. The use of the word 'shall' as occurring in Regulation 24 shows that so far as the payment of relinquishment charges is concerned, the same is mandatory in nature and has to be necessarily complied with while

LTA rights may be relinquished by paying compensation for the stranded capacity. MTOA rights are to be relinquished by paying mandatory relinquishment charges without any reference whatsoever to stranded capacity or any other consideration. When MTOA rights are relinquished, the liability of the medium-term customer to pay relinquishment charges is absolute.

(b) The Petitioner being fully aware that LTA and MTOA were two different and distinct types of access under the Connectivity Regulations with separate rights and obligations attached thereto, chose to seek both LTA and MTOA rights from CTU for transfer of 150 MW power to TANGEDCO under the PPA executed by it with TANGEDCO.

(c) CTU processed both the applications for LTA and MTOA in accordance with the Connectivity Regulations and the Detailed Procedure made thereunder. CTU vide its letter dated 22.7.2015 granted 150 MW MTOA to the Petitioner for the period from 1.8.2014 to 31.5.2017 subject to signing of requisite MTOA Agreement and fulfillment of other conditions intimated in the grant. The Petitioner was also granted 150 MW LTA on 22.7.2015 subject to the specific condition that the LTA would not be operationalized until the 150 MW MTOA grant for the same PPA was relinquished.

(d) The Petitioner executed MTOA Agreement and the LTA Agreement on 4.8.2015 and 11.8.2015 respectively and opened the LC of Rs.901.03 lakh. For operationalization of 150 MW LTA, CTU specially informed the Petitioner in the letter dated 18.8.2015 that the LTA was expected to be operationalized by October, 2015 subject to the Petitioner's relinquishing the MTOA of 150

MW granted for the same PPA and upon payment of relinquishment charges corresponding to 150 MW MTOA. PGCIL vide its letter dated 28.8.2015, informed the Petitioner that since, operationalization of 150 MW LTA granted was subject to relinquishment of 150 MW earlier granted MTOA, the LC opened for 150 MW MTOA could be considered for 150 MW LTA after relinquishment of 150 MW MTOA.

(e) The Petitioner, vide its letter dated 30.10.2015 unequivocally agreed with the CTU that the issue of foreclosure of MTOA upon operationalization of LTA was to be treated as per the provisions of the Connectivity Regulations. The entire 150 MW MTOA was operationalized for evacuation of power from the Petitioner's project to TANGEDCO w.e.f. 16.12.2015.

(f) The Petitioner contrary to the provisions of the Connectivity Regulations and the conditions of the LTA grant, refused to pay the relinquishment charges arising out of closure/relinquishment of the MTOA and stated that in the present case, only LTA is replacing the MTOA and the same does not interfere with the ATC availability for any of the other customers. In this background, the Petitioner requested PGCIL to waive off the relinquishment charges to be levied as it is only a replacement of the same quantity of LTA for the same transaction between GMR and TANGEDCO against the same PPA of 150 MW.

(g) In terms of the provisions of Regulation 24 of the Connectivity Regulations, read with the Sharing Regulations, CTU raised an invoice dated 9.6.2016 amounting to Rs.2,14,71,750/- towards payment of relinquishment charges for the 150 MW MTOA relinquished by the Petitioner. Instead of paying the said

relinquishment charges, the Petitioner is seeking a declaration contrary to the scheme of giving up of access rights as propounded in the Connectivity Regulations.

(h) The grant of LTA to the Petitioner has been made with specific condition that as and when the MTOA is relinquished by it, corresponding relinquishment charges would be payable by it to PGCIL. The Connectivity Regulations mandated that any closure of MTOA is necessarily to be along with payment of relinquishment charges billed to by PGCIL under the invoice dated 9.6.2016.

6. The Petitioner in its rejoinder has submitted as under:

(a) The Commission vide order dated 16.2.2015 in Petition No. 92/MP/2014 recognised the fact relating to grant of MTOA/ LTA for the same PPA, and that the generating companies should endeavour to obtain MTOA till the time LTA can be granted and operationalized. The entire intent was to put the transmission system into maximum and efficient use through inter-mixing of MTOA and LTA which is for the benefit of all the stakeholders viz. transmission licensees (there is no stranded capacity thereby resulting in recovery of transmission charges), generating companies (which are prevented from contractual penalties qua non-supply of power), distribution licensees (they can fulfill their USO as per Section 43 of the Electricity Act, 2003 through power contracted at competitive rates) and the end-consumers (who are able to source competitive power). The said view of the Commission was also upheld by the Appellate Tribunal in Appeal No. 81 and 94 of 2015.

(b) Failure to construct adequate transmission lines by PGCIL is the main reason due to which the generating Company has to opt for MTOA and the same cannot become an opportunity for PGCIL to collect relinquishment charges for subsequent switchover from MTOA to LTA. PGCIL constructs the transmission corridor which should match with the generation schedules. However, on account of various issues like ROW or Force Majeure situations, etc. the development of the corridor gets delayed but PGCIL gets the said delay condoned in its tariff petitions in order that the cost overrun may be passed through. On account of such delay in the construction of transmission corridor, if a generating company opts for MTOA instead of LTA owing to system strengthening getting delayed, then the generating company cannot at all be fastened with the liability to pay relinquishment charges for switching from MTOA to LTA qua the same PPA.

(c) Long term PPA was executed by the Petitioner with TANGEDCO. Since, LTA was not available due to system constraints and the then pending commissioning of the Raichur-Sholapur 765 kV transmission line, the Petitioner opted for MTOA thereby saving itself from the contractual liabilities against delayed power supply to TANGEDCO, the end-consumers of Tamil Nadu were also able to receive energy at competitive rates. LTA applied for was granted on 22.7.2015 for supply of power to TANGEDCO, therefore, the Petitioner switched to LTA from MTOA in order to pay transmission charges qua operationalization of the above transmission line.

(d) Change of MTOA to LTA is a mere change in nomenclature as the capacity of 150 MW is still retained under LTA. It is well settled principle of law that the

essence of the transaction has to be seen rather than the nomenclature of the transaction. In this background, the CTU cannot at all be allowed to levy relinquishment charges for switching from MTOA to LTA qua the same PPA.

(e) The Commission through draft Connectivity Regulations, 2016 and Explanatory Memorandum to the said draft Regulations and draft Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, (Fifth Amendment) 2016 had proposed certain amendments including amendment on levying relinquishment charges in case there is transfer from MTOA to LTA. On the said draft Regulations, CTU proposed that when LTA customer chooses to avail MTOA in the intervening period till the LTA is granted and is made operational, in that case of switchover/ progression from MTOA midway to LTA, there should not be any levy of relinquishment charges. Therefore, the contention of PGCIL in its reply is contrary to the comments submitted by it before the Commission. CTU cannot be allowed to take contradictory views on the same issue.

(f) The Petitioner informed CTU vide letter dated 30.10.2015 for short-closing of MTOA, but the same *per se* does not mean that the said short-close was a relinquishment and that relinquishment charges can be levied.

7. During the course of hearing on 6.7.2017, learned counsel for the Petitioner submitted that Amendment to the Connectivity Regulations dated 17.2.2017, is a clarificatory provision and is in form of legislative clarification. However, Regulation 24 of the Connectivity Regulations stands unamended. In support of his contention, learned counsel relied upon the judgments of the Hon`ble Supreme Court and Madras High Court in the case of Commissioner of Income Tax Vs. Rasiklal



Maneklal and Others [(1989) 2 SCC 454], P. Nallemmal and Another Vs. State, [(1999) 6 SCC 559], and Natesa Udayar Vs. Murugappa Udayar and others, S.A. 830 of 1978. Per Contra, learned counsel for PGCIL submitted that the amendment dated 17.2.2017 to the Connectivity Regulations is not merely a clarification but is a change/alteration in the rights of the parties that are using the PGCIL's system. Learned counsel for PGCIL submitted that the substantive rights of the parties have been modified to the extent specified in the Amendment which indicates that all the covenants agreed and all the undertakings given in JCC Meetings incorporated in terms of grant are now to be read in accordance with the amendment to the Connectivity Regulations. Therefore, the amendment is prospective in operation. In respect of the present petitions, since, the contracts were signed in accordance with the law that existed at that point of time and the corresponding rights and obligations of the parties that they had undertaken then, shall flow in accordance with those contracts. The Amendment dated 17.2.2017 to the Connectivity Regulations does not apply in the present cases.

8. In response to the Commission's query regarding the number of petitions wherein the LTA and MTOA rights of the parties are being affected by the Amendment dated 17.2.2017, PGCIL vide its affidavit dated 23.8.2017 has submitted that there are no petitions filed before the Commission wherein the LTA and MTOA rights of the parties are being affected by the Amendment dated 17.2.2017 to the Connectivity Regulations. PGCIL has submitted that there are no instances where the rights of LTA and MTOA customers are administrable by the Regulation 15 (B) (2) inserted in the Connectivity Regulation vide Amendment dated 17.2.2017. PGCIL has submitted that prior to issuance of amendment, GMR Warora Energy Ltd. (150 MW), Thermal Powertech Corporation Ltd.(230.55 MW) KSEB Ltd.(140.5 MW) and

Jindal Power Ltd.(165 MW), after issuance of amendment, KSEBL (122 MW) have surrendered their MTOAs to enable operationalization of their LTAs under the same PPA where relinquishment charges are levied. Out of the above, only Jindal Power Ltd. has made payment of relinquishment charges. However, others have contested the liability to bear relinquishment charges.

Analysis and decision

9. We have considered the submissions of the Petitioner and PGCIL and perused the documents on record. The following issues arise for our consideration:

(a) Whether the Petitioner is liable to pay relinquishment charges for surrendering the MTOA?

(b) Whether any direction can be issued to PGCIL with regard to invoices dated 9.6.2016?

These issues have been analyzed and discussed in the succeeding paragraphs.

Issue No.: (a) Whether the Petitioner is liable to pay relinquishment charges for surrendering the MTOA?

10. The Petitioner had participated in a bidding process initiated by TANGEDCO for procurement of power on a long term basis and was declared a successful bidder on 30.10.2013 for supply of 150 MW power. TANGEDCO entered into a Power Purchase Agreement dated 27.11.2013 with the Petitioner for supply of power starting from 1.4.2014 to 30.9.2028. On 27.11.2013, the Petitioner made an application to PGCIL for grant of 150 MW MTOA for the period from 1.6.2014 to 31.5.2017. After applying for grant of MTOA, the Petitioner made an application dated 18.12.2013 to PGCIL for grant of LTA for the said capacity for supply to

TANGEDCO against the PPA dated 27.11.2013. PGCIL vide its letter dated 22.7.2015 intimated the Petitioner about grant of 150 MW MTOA for the period from 1.8.2014 to 31.5.2017, subject to signing of MTOA agreement and fulfillment of other conditions as per the Commission's Regulations. On the same date, PGCIL also granted notional 150 MW LTA to the Petitioner for the period 1.4.2015 to 30.09.2028 with the condition that LTA would be operationalized only after the earlier granted 150 MW MTOA against same PPA is relinquished. The Petitioner executed MTOA and LTA Agreements with PGCIL on 4.8.2015 and 11.8.2015 respectively.

11. PGCIL vide its letter dated 18.8.2015 informed the Petitioner that its LTA for transfer of power from EMCO Energy (subsequently renamed as GMR to TANGEDCO) was likely to be operationalized by October, 2015, subject to opening of LC of Rs. 901.03 lakh and payment of relinquishment charges corresponding to 150 MW MTOA. The Petitioner vide its letter dated 13.10.2015 requested PGCIL to operationalize its MTOA against the 170 MW additional ATC available from New Grid to SR. Alternatively, the Petitioner suggested that if all the MTOA grant of Nov 2013 MTOA applicants can be operationalized upto the boundaries of the respective beneficiaries, the operationalization may be done proportionally now with the present available ATC and progressively fully, till they are fully operationalized with additional ATC becoming available subsequently. PGCIL vide its letter dated 19.10.2015 informed the Petitioner that the balance ATC between NEW Grid and SR Grid as on that date was assessed as 170 MW for operationalization of MTOA granted to the applications received in November, 2013 and were being allowed to operationalize part MTOA on pro-rata basis. Accordingly, PGCIL permitted operationalization of part MTOA of 56 MW for evacuation of power with immediate effect. The Petitioner vide its letter dated 30.10.2015 requested PGCIL to operationalize remaining 94 MW

MTOA as soon as the ATC is available. As regards the operationalization of LTA, the Petitioner stated in the said letter that the LTA of 150 MW when fully available for operationalisation may be operationalized and the issue of foreclosure of MTOA upon operationalization of LTA may be appropriately treated as per the provisions of the regulations. Subsequently, the Petitioner vide its letter dated 17.12.2015, requested PGCIL for operationalization of 150 MW LTA, for closure of 150 MW MTOA and waiver of the relinquishment charges for MTOA as its LTA was only replacing the MTOA and did not interfere with the ATC available with for other customers. PGCIL vide its letter dated 30.12.2015 declined to waive off the relinquishment charges as there is no provision under the Connectivity Regulations for waiver of relinquishment charges upon relinquishment of MTOA subsequent to operationalization of LTA for the same quantum and same transaction.

12. The Petitioner vide its letter dated 13.1.2016 requested PGCIL to operationalize 150 MW LTA by foreclosing the corresponding 150 MW under MTOA and gave consent for payment of relinquishment charges as per the applicable regulations, rules and guidelines. The said letter is extracted as under:

“We are in receipt of your letter dated 30th December, 2015 (Ref No. 8 above) received by us on 08.01.2016, wherein you had sought our consent for payment of relinquishment charges prior to operationalization of the LTA of 150 MW.

We would like to reiterate that vide our letter dated 17th December, 2015 we had only sought for conversion of our MTOA of 150 MW to LTA of 150 MW for purpose of meeting our commitment for supply of power to TANGEDCO on long term basis. As such there is no relinquishment of open access capacity of 150 MW per se but the same capacity which is presently under MTOA will get converted to LTA. We will therefore, continue to utilize and seek scheduling of 150 MW in accordance with extant rules and regulations. Your reliance on Regulation 24 of the CERC Regulations for connectivity and open access 2009 is, therefore, misplaced and not applicable as there is neither any relinquishment of the capacity allocated to us nor will PGCIL suffer any loss as we will continue to avail open access of 150 MW.

We would like to draw your kind attention to our earlier letter dated 30th Oct’15 cited at 6 above under numbered para 2 our MTOA in existence as on that date of operationalizing the LTA, may be short closed for the balance period of grant”. This

in our view suffices the requirement of prior notice for foreclosure of MTOA especially in the circumstance in the instant case where the same transaction of dispatch would be converted to LTA.

In view of the above, it is requested to immediately operationalize the LTA of 150 MW by closing the corresponding 150 MW under MTOA.

Further as required by you vide your letter dated 30th December, 2015 we consent to payment of any relinquishment of charges as per applicable regulations, rules and guidelines.”

13. PGCIL vide its letter dated 15.1.2016 permitted the Petitioner for operationalization of 150 MW LTA w.e.f 22.1.2016 and simultaneous relinquishment of 150 MW MTOA with effect from 21.1.2016, subject to payment of relinquishment charges for 150 MW MTOA under Regulation 24 of the Connectivity Regulations. Subsequently, PGCIL raised the invoice dated 9.6.2016 towards relinquishment charges for 150 MW MTOA. The Petitioner has filed the present petition seeking a declaration that its case is not covered within the meaning of Regulation 24 of the Connectivity Regulations and for quashing the invoice dated 9.6.2016.

14. The main arguments of the Petitioner are that there is no relinquishment of MTOA in this case and there is changeover of MTOA to LTA only. Moreover, PGCIL has not suffered any monetary loss on account of relinquishment of MTOA. The monthly transmission charges to be payable for LTA as per the PoC mechanism also remains the same for MTOA. The Petitioner has submitted that such conversion from MTOA to LTA cannot at all be termed as relinquishment within the meaning of Regulation 24 of the Connectivity Regulations.

15. PGCIL has argued that as CTU it processed both the applications of the Petitioner for LTA and MTOA in accordance with the procedure prescribed under the Connectivity Regulations. According to PGCIL, the Petitioner was granted MTOA and LTA on 22.7.2015 subject to signing of requisite MTOA and LTA Agreements

and fulfillment of other conditions intimated in the grants for LTA and MTOA. PGCIL has submitted that LTA grant was made subject to the specific condition that the LTA would not be operationalized until the MTOA grant of 150 MW for the same capacity was relinquished. The grant of MTOA to November, 2013 application and grant of LTA to December, 2013 application was made with the consent of the Petitioner and with the clear understanding that whenever the LTA got operationalized for full quantum, the MTOA was to be relinquished along with payment of relinquishment charges.

16. Regulation 24 provides for relinquishment of MTOA by a MTOA customer as under:

“24. Exit Option for medium-term customers: A medium term customer may relinquish rights, fully or partly, by giving at least 30 days prior notice to the nodal agency:

Provided that the medium-term customer relinquishing its rights shall pay applicable transmission charges for the period of relinquishment or 30 days whichever is lesser.”

As per the above provision, a Medium Term Customer relinquishing the MTOA either fully or partly, is required to give at least 30 days prior notice to the nodal agency. It further provides that the Medium Term Customer relinquishing its right shall pay the applicable transmission charges for the period of relinquishment or 30 days whichever is lesser. In other words, if the period of relinquishment is more than 30 days, it will be required to pay the transmission charges equivalent to 30 days and if the period of relinquishment is less than 30 days, it will be required to pay transmission charges equivalent to the said period.

17. PGCIL has contended that the use of the word “shall” occurring in Regulation 24 shows that the provisions of Regulation 24 in so far as the payment of relinquishment charges are concerned, are mandatory in nature and are thus

necessarily to be complied with. On the other hand, the Petitioner has submitted that since there is no stranded capacity and the capacity earlier covered under the MTOA is being utilized for LTA, Regulation 24 should be read not to include the case of the Petitioner and no relinquishment charges are payable. In our view, the language of Regulation 24 is couched in absolute terms and does not admit any conclusion/interpretation which partly or fully exempts the MTOA customer from payment of relinquishment charges, if the capacity covered under MTOA is utilized for LTA. Further, MTOA application and the LTA application of the Petitioner were independent of each other, though made for the same capacity. The Petitioner has applied for MTOA for the period of three years expecting that it might not get LTA for the said capacity before three years. Further, period of grant of MTOA has not been made subject to the date of operationalization of LTA. Grant of MTOA to the Petitioner is unconditional and therefore, no condition can be attached to the relinquishment of the said MTOA. Regulation 24 does not require the CTU to prove the losses for payment of relinquishment charges. Unlike the case of LTA, it is not linked to stranded capacity. Therefore, the condition of stranded capacity or losses suffered is not a pre-condition for payment for relinquishment charges under Regulation 24 of the Connectivity Regulations.

18. It is pertinent to mention that the Petitioner has been put on notice at every stage that it would be liable to pay the relinquishment charges, should it relinquish the MTOA before the expiry of the period of MTOA. These are listed as under:

- (a) In the meeting for processing of LTA and MTOA applications held on 15.7.2015, the Petitioner requested for grant of MTOA as per the application made in the month of November, 2013 and it would relinquish MTOA rights

and pay the applicable relinquishment charges in line with the Commission's regulations as and when the LTA for the application made in December, 2013 is operationalized. Relevant portion of minutes of meeting dated 15.7.2015 is extracted as under:

"11.0 CTU stated that GMR EMCO Energy Ltd. has applied MTOA for 150 MW in Nov, 2013 and also applied LTA for 150 MW in Dec, 2013 and enclosed same PPA in both the referred applications. Towards this, the representative of GMR stated that as per the directions given in the CERC order, the applications shall have to be processed sequentially i.e. the MTOA application of Nov, 2013 shall have higher priority than the LTA application received in Dec, 2013. He accordingly requested that MTOA may be granted as per their applications made in the month of Nov'2013 and they shall relinquish MTOA rights and pay the applicable relinquishment charges in line with the CERC regulations as and when the LTA for the application made in Dec'2013 is operationalized."

(b) The liability to bear charges for relinquishment of MTOA under Regulation 24 was also a condition of the LTA intimation dated 22.7.2015 issued by PGCIL which contained the following condition:

"2.As decided in the meeting held on 15.7.2015 for processing of pending LTA & MTOA applications received in Nov' 13 & Dec' 13, the above grant of LTA shall not be operationalized until the earlier granted MTOA of 150 MW for the same PPA against the application made in Nov' 13 is relinquished."

(c) The Petitioner reaffirmed vide its letter dated 13.1.2016 about its liability for payment of relinquishment charges as under:-

"Further as required by you vide your letter dated 30th December, 2015 we consent to payment of any relinquishment of charges as per applicable regulations, rules and guidelines."

Therefore, the Petitioner is well aware that it would be required to pay the relinquishment charges for relinquishment of the MTOA. In our view, the invoice raised by PGCIL for payment of relinquishment charges for relinquishment of MTOA is in accordance with the applicable provision of the Connectivity Regulations.

19. The Commission through Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) (Sixth Amendment) Regulations, 2017 has amended the Connectivity Regulations as under:-

“15B. Firming up of Drawl or Injection by LTA Customers:

(1) The Long Term Access Customer who has been granted long term access to a target region shall, after entering into power purchase agreement for supply of power to the same target region for a period of not less than one year, notify the Nodal Agency about the power purchase agreement along with copy of PPA for scheduling of power under LTA:

Provided that scheduling of power shall be contingent upon the availability of last mile transmission links in the target region:

Provided further that on receipt of the copy of the PPA, CTU shall advise concerned RLDC for scheduling of power at the earliest, but not later than a period of one month:

Provided also that if the capacity required for scheduling of power under LTA has already been allocated to any other person under MTOA or STOA, then MTOA or STOA shall be curtailed in accordance with Regulation 25 of these Regulations corresponding to the quantum and the period of the PPA:

Provided also that where capacities under existing MTOA are curtailed for considering scheduling of power under the PPA of the Long term Access Customer, such MTOA customer shall be permitted to relinquish its MTOA without any relinquishment charges.

(2) An LTA Customer who is availing MTOA on account of non-operationalization of LTA granted to it, shall not be required to pay relinquishment charges towards relinquishment of MTOA if the LTA is operationalized during the subsistence of MTOA.”

This amendment was notified on 17.2.2017. The amendment is prospective in nature and cannot be operated retrospectively to exempt the Petitioner for payment of relinquishment charges. In our view, the Petitioner cannot be granted any relief in terms of the said amendment, as it will result in retrospective operation of the regulations which is not the intent of the amendment. Accordingly, we are not inclined to grant the first prayer of the Petitioner and hold that the Petitioner is liable to pay the applicable relinquishment charges as per Regulation 24 of the

Connectivity Regulations.

Issue No. 2: Whether any direction can be issued to PGCIL with regard to invoices dated 9.6.2016?

20. We have held that the Petitioner is liable to pay the relinquishment charges as per Regulation 24 of the Connectivity Regulations. Since, the invoice has been raised by PGCIL in terms of Regulation 24 of the Connectivity Regulations read with relevant provision of the Sharing Regulations, we find no basis to interfere with the invoice issued by PGCIL.

21. The Petition is disposed of in terms of the above.

Sd/-
(Dr. M. K. Iyer)
Member

sd/-
(A. S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson

