

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 166/MP/2015**

**Coram:**

**Shri Gireesh B. Pradhan, Chairperson**

**Shri A. K. Singhal, Member**

**Shri A. S. Bakshi, Member**

**Dr. M. K. Iyer, Member**

**Date of Order: 11<sup>th</sup> of April, 2017**

**In the matter of**

Miscellaneous petition for issuing orders for grant of compensation pursuant to breach of Long Term open Access granted to PTC India Limited (PTC) and failure to comply with BCD Procedure issued under Regulation 15 (3) of the Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010.

**And**

**In the matter of**

Power Grid Corporation of India Limited  
"Saudamini", Plot No.2,  
Sector-29, Gurgaon -122 001

**...Petitioner**

**Vs**

PTC India Limited,  
2<sup>nd</sup> Floor, 15, Bhikaji Cama Place,  
New Delhi-110 066

**...Respondent**

**The following were present:**

Shri Gautam Chawla, Advocate for PGCIL

Ms. Akansha Tyagi, Advocate for PGCIL

Shri Swapnil Verma, PGCIL

Ms. Jyoti Prasad, PGCIL

Shri Ravi Kishore, PTC

Shri Anil Sharma, LANCO



## ORDER

The Petitioner, Power Grid Corporation of India Limited, has filed the present petition seeking termination of Transmission Service Agreement and Long Tern Access granted to PTC India Limited on account of its default in establishing payment security along with compensation and declaratory relief.

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

(a) PTC India Limited (PTC) made an application to CTU on 20.3.2007 for grant of long term open access for transfer of power from the generation project of LANCO Amarkantak Power Pvt. Ltd. (1x300 MW) at Pathadi village, District Korba in the State of Chhattisgarh to Haryana Power Generation Corporation Ltd. (HPGCL). CTU vide its letter dated 16.6.2008 communicated to PTC for grant of LTOA with request to sign the requisite BPTA with PGCIL for sharing of Western/Northern Region Transmission Charges corresponding to 300 MW power. In the said letter dated 16.6.2008, it was also provided that till the conditions specified therein are satisfied, PTC be allowed to transfer power to HPGCL on short term basis depending on the availability of transmission capacity.

(b) On 27.7.2009, PTC entered into a BPTA with PGCIL. In terms of the BPTA, PTC is required to pay all transmission charges of PGCIL including regional transmission charges, corresponding to 300 MW power from the Pathadi Stage-II and to open a Letter of Credit (LC).



(c) Subsequently, in terms of Regulation 14 of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 (Sharing Regulations), PTC entered into a Transmission Service Agreement (TSA) on 22.6.2011. As per clause 3.6 of the TSA, DICs are required to open LC in favour of CTU within one month from the effective date.

(d) The Petitioner vide its letter dated 31.7.2014 informed PTC that the transmission system, except the dedicated transmission line, has been commissioned and requested to open LC of Rs. 13.82 crore towards payment security mechanism. In response, PTC vide its letter dated 22.8.2014 informed the Petitioner that LANCO has terminated the PPA for supply of power to Haryana on 11.1.2011 and the said termination had been challenged by PTC which is pending before various forums. PTC requested for extension of time to open LC.

(e) The Petitioner vide its letters dated 7.10.2014 and 17.12.2014 informed PTC that as per the TSA, the Petitioner is required to establish LC before commencement of LTA and requested PTC to open LC within seven days of receipt of the letter, failing which PGCIL would be constrained to take remedial action as per the provisions of the regulations. PTC vide its letter dated 22.1.2015 informed the Petitioner that the final position of the parties to the dispute are subject to the outcome of the proceedings in the Hon`ble Supreme



Court and requested the Petitioner to defer/suspend the operation of the LTA till pendency of the appeals before the Hon`ble Supreme Court.

(f) PTC vide its letters dated 24.12.2014 and 22.1.2015 informed the Petitioner that since the matter is pending before the Hon`ble Supreme Court and any action on the part of the CTU to set a timeline for operationalization of the LTA, and/or withdrawal/cancellation of the LTA would be unfair and not in consonance with the interim order of the Hon`ble Supreme Court dated 16.12.2011.

(g) As per clause 16.2 of the TSA, if the DIC fails to comply with the prevailing regulations, it would amount to material breach of the TSA. Since, the respondent has failed to open LC, the Petitioner is entitled to terminate the TSA. As per the Connectivity Regulations, if an LTA customer desires to relinquish the LTA, it is liable to pay compensation for the stranded capacity. Therefore, the respondent is liable to pay compensation for non-compliance of the regulations and non-operationalization of the LTA.

3. Against the above background, the Petitioner has filed the present petition with the following prayers:

(a) declare that Petitioner is entitled to terminate, and allow it to terminate, the PTC TSA dated 22.6.2011 and the long term open access granted/permitted to PTC India;

(b) direct that Petitioner is entitled to compensation in the facts of the present



case and in similar cases of non-compliance of the extant regulations and/or the breach of the obligations under the Transmission Services Agreement;

(c) amend/modify the CERC Regulations to allow Petitioner to terminate the long term open access and claim compensation, in similar cases of non-compliance of the extant regulations and/or the breach of the obligations under the Transmission Services Agreement; and

(d) pass such any other order(s) as the Commission may deem fit.

4. Notice was issued to the respondent to file its reply. The Respondent in its reply has submitted that LANCO and HPGCL filed petitions before the HERC for resolution of disputes between them. Subsequently, during the pendency of the petitions before HERC, LANCO unilaterally terminated the PPA. The Respondent has submitted that on 12.1.2011, LANCO entered into a PPA with Chhattisgarh State Power Trading Company Ltd. for supply of 35% share to Govt. of Chhattisgarh in view of the obligation under the Implementation Agreement. Aggrieved by the decision of the HERC, LANCO filed an appeal before the Appellate Tribunal for Electricity. The Appellate Tribunal vide its interim order dated 23.3.2011 directed LANCO to supply 35% power to Chhattisgarh and balance 65% power to PTC so that PTC can discharge its obligation to HPGCL. Aggrieved by the decision of the Appellate Tribunal, LANCO filed an appeal before the Hon`ble Supreme Court. The Hon`ble Supreme Court vide its order dated 16.12.2011 issued a direction to LANCO to continue supply of power as per the order of the Appellate Tribunal. PTC has submitted that subsequently, LANCO discontinued supply of power to PTC citing various difficulties including non-availability of coal from Southern



Eastern Coalfield Ltd. PTC has submitted that since the power was not being supplied by LANCO to PTC for onward sale to Haryana, PTC vide its letters dated 24.12.2014 and 22.1.2015 requested the Petitioner to keep the operationalization of the LTOA in abeyance till the final disposal of the matter by the Hon`ble Supreme Court. Since no reply was received from the Petitioner, PTC approached the Hon`ble Supreme Court for impleadment of the Petitioner as a necessary party in Civil Appeal No. 10329 of 2011 and sought appropriate directions. The Hon`ble Supreme Court vide its order dated 27.7.2015 impleaded the Petitioner as necessary party to the proceedings. Subsequently, during the hearing, learned senior counsel for LANCO undertook to open LC for an amount of Rs. 13.82 crore which was recorded by the Hon`ble Supreme Court in its order dated 18.9.2015. Therefore, the present petition has become infructuous.

5. The Petitioner, in its rejoinder dated 14.10.2015, has submitted that the Hon`ble Supreme Court in its order dated 18.9.2015 did not issue any directions with respect to the opening of LC, although learned counsel for LANCO undertook to open the same. The Petitioner has submitted that the opening of the LC prior to operationalisation of LTA is a regulatory duty of the Long Term Customer/ Designated ISTS Customers in terms of the 2009 Connectivity Regulations, 2010 Sharing Regulations, Detailed Procedure and BCD Procedure notified by the Commission. Therefore, any assumption by LANCO of this regulatory duty (with regard to the LC) of the LTC/DICs ought not to be considered as precedent and should be allowed in reference to LANCO's undertaking given and recorded in order of the Hon`ble Supreme Court. It is pertinent to note that the LC is a revolving instrument which acts as a payment security mechanism for the obligations of a LTC/DIC towards payment of transmission charges and the same ought to be



replenished from time to time if the situation so warrants. The Petitioner has submitted that LANCO vide its letter dated 23.9.2015 informed PTC that it is opening the LC without prejudice to its rights and pursuant to order of the Hon'ble Supreme Court and without diluting all other obligations of PTC towards transmission including payment of transmission charges. In response, PTC vide its letter dated 1.10.2015 informed LANCO that LANCO is required to open the LC as per the direction of the Hon'ble Supreme Court and has suggested that a clause indicating that the LC is being opened by LANCO on behalf of PTC be inserted in the LC. Therefore, the Petitioner has submitted that the LC has to be opened strictly in line with the regulations, as it is not privy to the dispute of PTC and LANCO with respect to their Power Purchase Agreement and therefore, as a transmission licensee, its rights towards complete and timely payment of transmission charges in terms of the respective Regulations/Procedures is also independent of the said Power Purchase Agreement. Under the Regulations, it can only bind PTC for any issues with respect to the payment of transmission charges and the maintenance of payment security mechanism and as such, it has no mutual rights and obligations towards LANCO. Therefore, regardless of LANCO's undertaking, without prejudice to its rights conferred (all of which are reserved), the charges would continue to be payable by PTC in terms of the applicable regulations. The Petitioner has requested the Commission to direct LANCO to sign a tripartite agreement with PGCIL and PTC, and to undertake the responsibility of maintenance of payment security mechanism along with payment of all other charges. The Petitioner has submitted that the assertion of PTC that the instant petition has become infructuous, is erroneous and



in complete disregard to its prayers, which pertain to termination of the LTA for a continuous and prolonged default in establishment of payment security mechanism.

6. PTC, vide its additional affidavit dated 29.10.2015, has submitted that the Petitioner has in fact willingly suppressed the fact of proceedings before the Hon'ble Supreme Court. It is evident from the fact as the Hon'ble Supreme Court had issued notice to the Petitioner vide order dated 17.4.2015 and the Petitioner is understood to have received the notice in the month of April, 2015. However, the instant petition was filed in June, 2015 i.e. after the Petitioner became aware of the case and was impleaded by the Hon'ble Supreme Court. PTC has submitted that it is prepared to fully comply with the orders dated 16.12.2011 and 18.9.2015 of the Hon'ble Supreme Court, wherein 65% of power is to flow to Haryana through PTC. Accordingly, only 65% of transmission charges be billed and payment to the Petitioner shall be restricted to the extent of 65% of power from LANCO.

**Analysis and Decision:**

7. We have considered the submissions of the Petitioner and the Respondent. The present petition has been filed seeking a declaration that the Petitioner is entitled to terminate the TSA and claim compensation from the Respondent for the breach of the terms and conditions of the TSA. To recapitulate the facts, on 16.6.2008, PTC was granted LTOA for inter-State transmission system for transfer of power from the proposed generating station of LANCO located in the State of Chhattisgarh to HPGCL. PTC entered into a BPTA with PGCIL and in terms of BPTA, PTC is required to pay all transmission charges of PGCIL including regional transmission charges, corresponding to 300 MW power from the Pathadi Stage-II and to open a Letter of Credit.





Subsequently, in terms of Regulations 13 and 14 of the Sharing Regulations, PTC entered into a TSA on 22.6.2011. The Petitioner vide its letter dated 31.7.2014 informed PTC that the transmission system, except the dedicated transmission line, has been commissioned and requested to open LC of Rs. 13.82 crore towards payment security mechanism. In response, PTC vide its letter dated 22.8.2014 informed the Petitioner that LANCO has terminated the PPA for supply of power to Haryana on 11.1.2011 and the said termination has been challenged by PTC before the APTEL and Supreme Court which is still pending, and sought extension of time to open LC.

8. Clause 2 of the LTA Agreement entered into between the Petitioner and PTC provides as under:

“2.0 (a) Long term transmission customer shall share and pay the transmission charges in accordance with the regulation/tariff order issued by Central Electricity Regulatory Commission from time to time of POWERGRID transmission system of concerned applicable Region i.e. Southern Region/Eastern Region/Western Region/Northern Region/North Eastern Region including charges for inter regional links/ULDC/NLDC charges and any additions thereof. These charges would be applicable corresponding to the capacity of power contracted from the said generation project through open access from the scheduled date of commissioning of generating projects as indicated at Annexure-I irrespective of their actual date of commissioning.

(b) Long term transmission customer shall share and pay the transmission charges of the transmission system detailed in Annexure-3 in accordance with the sharing mechanism detailed in Annexure-4. In case, in future, any other long-term transmission customer(s) is/are granted open access through the transmission system detailed at Annexure-3 (subject to technical feasibility), he/they would also share the applicable transmission charges.

(c) Each Long term transmission customer its successor/assignee shall pay the applicable transmission charges from the date of commissioning of the respective transmission system which would not be prior to the schedule commissioning date of generating units as indicated by of the respective developer as per Annexure-1. The commissioning of transmission system would be preponed only if the same is agreed mutually by concerned parties.

(d) In addition to opening of LC for 105% of estimated average monthly billing for charges mentioned at 2(a) and 2(b) above, Long-Term Transmission customer would



provide security in the form of irrevocable Bank Guarantee (BG), in favor of POWERGRID, equivalent to two months estimated average monthly billing, three months prior to the scheduled date of commissioning of generating units as indicated at Annexure-1. Initially the security mechanism shall be valid for a minimum period of three (3) years and shall be renewed from time to time till the expiry of the open access.

(e) The estimated average transmission charges would be reviewed every six months and accordingly the amount of security would be enhanced/ reduced by long term transmission customers.

(f) In case the long term transmission customer defaults in payment of the monthly charges of POWERGRID bills then, POWERGRID shall be entitled to encash/adjust the BG immediately.

(g) In case of encashment/adjustment of the BG by POWERGRID against non-payment of monthly charges by long-term transmission customer, the same should be immediately replenished/recouped by long-term transmission customers before the next billing cycle.”

As per the above provisions, a long term transmission customer is required to share and pay the transmission charges in accordance with the regulation/tariff orders issued by the Commission from time to time. PTC has signed the LTA Agreement and therefore, PTC is a Long Term Transmission Customer and is liable to open the LC and pay the transmission charges.

9. Regulation 12(8) of the Sharing Regulations provides as under:

“12. Collection

...

(8) Designated ISTS Customers shall provide payment security as determined through detailed procedures developed by the CTU. The level of such payment security shall be related to the Approved Withdrawal or Approved Injection.

Further, Clause 3.6 of the Billing, Collection and Disbursement Procedure made under Sharing Regulations provides as under:

“3.6 Letter of Credit:

3.6.1 Not later than one (1) month prior to the Effective Date, each DIC shall, through a scheduled bank, open a confirmed irrevocable, unconditional and revolving Letter of Credit in favour of the CTU, to be made operative from a date prior to the Due Date of its first Bill and shall be renewed annually.



3.6.2 Each DIC unequivocally agrees to allow CTU to enforce recovery of payment under any Bill through the Letter of Credit provided by the DIC. In event that more than one Bill becomes overdue; the amount recovered through the enforcement of Letter of Credit shall be appropriated against such overdue Bills on as per FIFO method. Each DIC unequivocally agrees to allow CTU to enforce recovery of payment through Letter of Credit on behalf of all the ISTS Licensees in the event of default in payment by the DIC, in accordance with Clause 3.6.6.”

As per the above provisions of the Regulations and BCD Procedure, DIC is required to open the LC as a payment security measure one month prior to commissioning of the transmission system. The Petitioner, vide its letter dated 17.12.2014, informed PTC that LTA would commence from January, 2015 and requested to open the LC within 7 days of issuance of the letter failing which PTC would be liable to take action as per the provisions of the Regulations. However, PTC instead of complying with the provisions of BCD Procedure and the TSA, vide its letter dated 22.1.2015 requested the Petitioner to defer the requirement to open the LC and to keep its LTA in abeyance due to pending dispute under the PPA with LANCO before the Hon`ble Supreme Court. It is noted that the said dispute involving the PPA between LANCO and PTC has no bearing on the operationalization of the LTA in terms of the LTA Agreement and TSA. Both are independent agreements and need to be handled independently. It is pertinent to mention that there is no provision in the Connectivity Regulations for keeping the operationalization of LTA in abeyance after the transmission systems connected with such LTA have been commissioned. Further, keeping the LTA in abeyance would result in non-utilization of the transmission system and deprive the Petitioner of the transmission charges.

Further, Article 3.4 of the TSA provides as under:



“3.4 From the Effective Date, each Party undertakes to each other Party to comply with and to perform its obligations in accordance with and subject to this Agreement.”

As per the above provision, the parties are required to comply with the provisions of the TSA i.e. the respondent is bound to pay the transmission charges in accordance with the TSA. Therefore, PTC is required to open the LC and is liable to pay the transmission charges to the Petitioner.

11. As regards the dispute between the LANCO and PTC with regard to the PPA, it is noticed that the Appellate Tribunal vide its interim order dated 23.3.2011 directed LANCO to supply 35% of power to Chhattisgarh. Relevant portion of the said judgment is extracted as under:

“The Appellant (LAPL) is permitted to supply 35% power to Chhattisgarh Government Company and is directed to supply balance power to PTC so that PTC can discharge its obligation to the Haryana Power General Corporation in pursuance of the PSA entered into between them.”

12. Aggrieved by the said decision of the Appellate Tribunal, LANCO filed an Appeal before the Hon`ble Supreme Court. The Hon`ble Supreme Court vide its order dated 16.11.2011 in Appeal No. 10329 of 2011 directed LANCO to continue supply of power as per interim order of the Appellate Tribunal dated 23.3.2011. Subsequently, the Hon`ble Supreme Court vide its Record of Proceedings for the hearing dated 18.9.2015 in IA. No. 9/2015 in Civil Appeal No. 10329/2011 filed by LANCO had observed as under:

“Shri Harish Salve, learned senior counsel appearing for the appellant submitted that though the legal obligations to open a Letter of Credit for an amount of Rs. 13.82 crore in favour of respondent No. 9 is that of respondent no. 3 in view of the predicament in which the applicant is placed, the applicant is prepared to open a Letter of Credit on behalf of respondent No. 3 without prejudice to the applicant’s legal rights in this behalf.”



13. Learned counsel for LANCO submitted during the hearing that LANCO has opened the LC for the entire capacity of 300 MW and has been paying transmission charges in order to avail the LTA for evacuation of power from its generating station. We are of the view that PTC had obtained the LTA for transmission of power from the generating station of LANCO for supply to HPGCL. LANCO is presently utilizing the LTA for supply of power to HPGCL under the interim direction of the Hon'ble Supreme Court. In so far as the LTA has been utilized and the Petitioner is getting the transmission charges, its concern has been addressed. Only in the event of LANCO not paying the transmission charges or not availing the LTA, it will be responsibility of PTC to pay the transmission charges. If PTC fails to honor its obligations under the LTA Agreement/TSA, the Petitioner will be at liberty to take any actions as may be available to it under the law or the agreement.

14. The Petitioner in the second prayer has sought direction that PGCIL is entitled for compensation due to non-compliance of the regulations and breach of the obligations under the TSA. In the third prayer, the Petitioner has requested for amendment of the Regulation to enable the Petitioner to terminate the LTA and claim compensation in similar cases of non-compliance. We are not inclined to issue any directions with regard to these prayers in the present petition. We keep the issues open to be dealt with in future in appropriate application.

15. This order disposes of Petition No. 166/MP/2015.

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

sd/-  
**(A.S. Bakshi)**  
Member

sd/-  
**(A.K. Singhal)**  
Member

sd/-  
**(Gireesh B. Pradhan)**  
Chairperson

