

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 240/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 : 31st October, 2017

In the matter of:

Petition seeking declaration that no relinquishment charges are payable for termination of the Medium-Term Open Access dated 6.10.2015 granted to the Petitioner by PGCIL.

And

In the matter of:

Thermal Powertech Corporation India Limited
6-3-1090, Block A, Level 5, TSR Towers
Rajbhavan Road, Somajiguda
Hyderabad – 500082

... Petitioner

Vs.

M/s Power Grid Corporation of India Limited
B - 9, Qutab Industrial Area,
Katwaria Sarai,
New Delhi – 110016

...Respondent

Parties Present:

Shri Sitesh Mukherjee, Advocate, TPCIL
Shri Gautam Chawla, Advocate, TPCIL
Ms. Akanksha Tyagi, Advocate, TPCIL
Shri Kedar Guttikar, TPCIL
Ms. Suparna Srivastava, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL
Shri Dilip Rozekar, PGCIL
Shri Swapnil Verma, PGCIL

ORDER

The Petitioner, Thermal Powertech Corporation India Limited (TPCIL), has filed the present petition under Section 79 (1) (c) , (f) and (k) read with Section 38 (2) (c) of the Electricity Act, 2003 seeking declaration that no relinquishment charges 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 (Connectivity Regulations) are payable for termination of 230.55 MW Medium Term Open Access (MTOA) granted to the Petitioner by PGCIL.

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 1320 MW (2x660 MW) supercritical coal-fired plant in Krishnapatnam, SPSR Nellore District (Power Plant), which is connected to Southern Grid at Bus-bar via CTU network. On 24.12.2010, the Petitioner entered into a BPTA with PGCIL for Long Term Access (LTA).

(b) On 24.12.2010, the Petitioner entered into the Transmission Agreement with PGCIL. The Petitioner entered into a PPA on 1.3.2013 with Central Power Distribution Company of Andhra Pradesh Limited, Eastern Power Distribution Company of Andhra Pradesh, Southern Power Distribution Company of Andhra Pradesh and Northern Power Distribution Company of Andhra Pradesh for supply of 500 MW power. Subsequently, on 18.2.2016, the Petitioner entered into another long term PPA with Southern Power Distribution Company of Telangana Limited, and Northern Power Distribution Company of Telangana Limited (Telangana Discoms) for supply of 570 MW power. The Unit-I and Unit-II of the power plant were commissioned on 2.3.2015 and 15.9.2015 respectively.

(c) The Petitioner on 30.7.2015 applied to PGCIL for grant of 230.55 MW MTOA for supply of power from its power plant to AP Discoms. PGCIL vide its letter dated 10.9.2015, intimated the Petitioner about grant of 230.55 MW MTOA



for the period from January 2016 to March 2017 subject to signing of MTOA Agreement. Subsequently, the Petitioner entered into the MTOA Agreement dated 6.10.2015 with PGCIL for transfer of 230.55 MW power to AP Discoms which provides for termination or downsizing of the MTOA upon operationalization of LTA during the period of MTOA. Pursuant to the operationalization of LTA, the Petitioner vide its letter dated 9.8.2016 requested PGCIL for termination of 230.55 MW MTOA. The Petitioner vide its letter dated 14.9.2016, apprised PGCIL about the non-applicability of the relinquishment charges and requested to waive off the payment of relinquishment charges against the said termination of MTOA.

(d) Subsequently, PGCIL vide its invoice dated 22.9.2016, raised PoC bill for the month of August 2016 amounting to ₹8,94,56,167/- towards transmission charges under the Central Electricity Regulatory Commission (Sharing of inter-State transmission charges & losses) Regulations, 2010 (hereinafter referred to as 'Sharing Regulations'). The Petitioner, vide its letter dated 4.10.2016, reiterated that there is no provision in the Connectivity Regulations and in the Detailed Procedure made thereunder to charge for termination of MTOA on account of operationalization of LTA for the same corridor/region and the same beneficiary. The Petitioner requested PGCIL to withdraw the PoC bill. However, PGCIL, vide letter dated 13.10.2016, declined the Petitioner's request.

(e) The reliance placed by PGCIL on Regulation 24 of the Connectivity Regulations, for interpreting the termination of MTOA as relinquishment of MTOA, and for levying relinquishment charges on the Petitioner, is misplaced.

(f) The Petitioner has not relinquished its MTOA under the provisions of the Connectivity Regulations. In fact, the Petitioner has terminated its MTOA under



the MTOA Agreement. Since, the Petitioner was granted MTOA with the condition of termination/downsizing upon firming up of beneficiaries by target region LTA customers, the Petitioner, upon operationalization of LTA for the full capacity on the same transmission corridor/region, requested PGCIL for termination of MTOA.

(g) Since, there is no provision in the MTOA Agreement for levy of relinquishment charges upon the termination of MTOA, no relinquishment charges can be levied on the Petitioner. The Connectivity Regulations provides that the transmission system/lines are built only for LTA applicants and not for MTOA or Short term open access applicants which are accommodated only in margins available in transmission system. Since, no transmission system is created or augmented for the Petitioner's MTOA, PGCIL has not incurred any additional expenditure in accommodating the said MTOA as it was granted on margin available. As the Petitioner continues to enjoy the right to open access for conveyance of power on the same corridor, no loss/damage had occasioned to PGCIL on account of the termination of the MTOA.

(h) It is a settled principle of law that a provision of statute specifying levy of charges has to be strictly construed, and for the said reason the requirement of the trigger event which in the present case has to be relinquishment/abandonment of access right.

(i) The monthly transmission charges to be payable as per the PoC mechanism are same for both LTA and MTOA. The Petitioner will continue to use PGCIL's transmission system and to pay the same transmission charges against the LTA. Therefore, the Petitioner is not liable to pay any compensation/relinquishment



charges. If the interpretation of PGCIL is accepted, then an LTA applicant will have to pay for both MTOA charges and LTA charges on the same transmission corridor/region. This would result in double charging of transmission charges to the Petitioner and would be detrimental to not only the generators and Discoms, but also the end users. Therefore, the said MTOA charges should be offset against LTA charges, to prevent double charging.

(j) The Sharing Regulations and Connectivity Regulations do not stipulate for double billing. The double billing of LTA consumers serves only to discourage potential LTA consumers from applying for LTA.

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

(a) Hold and declare that no relinquishment charges are payable for termination of 230.55 MW of MTOA granted to the Petitioner by the Respondent;

(b) Quash the PoC bill dated 22.9.2016, raised by the Respondent for the for the month of August 2016, demanding ₹8,94,56,167/- towards transmission charges under the Central Electricity Regulatory Commission (Sharing of inter-State transmission charges & losses) Regulations, 2010;

(c) Restrain the Respondent to raise any further demands towards relinquishment charges;

(d) Grant ad-interim orders directing the Respondent to maintain status quo and not to take any coercive steps in respect to the PoC bill dated 22.09.2016 till final adjudication of the present petition.”

4. Notice was issued to the respondent to file its reply. PGCIL has filed its reply and Petitioner has filed rejoinder to the same.

5. PGCIL, vide its affidavit dated 22.2.2017, has submitted as under:

(a) The Petitioner has not relinquished the Medium Term Open Access (MTOA) granted to it under the Connectivity Regulations, but has in fact terminated the MTOA under the MTOA Agreement executed by it with the Respondent. The same has been done in view of the condition specified under the MTOA grant viz. of



termination/downsizing the MTOA upon firming up of beneficiaries by target region LTA customers

(b) The Petitioner was granted LTA under BPTA dated 24.12.2010 executed between the Petitioner and PGCIL. Subsequently, on the request of the Petitioner, the Petitioner was granted 230.55 MW MTOA vide letter dated 10.9.2015 for the period from 1.1.2016 to 31.3.2017 based on the margins and subject to signing of the requisite MTOA Agreement and fulfillment of other conditions as stipulated in the intimation and the Connectivity Regulations.

(c) The conditionality of termination/downsizing nowhere contemplated any termination/downsizing of MTOA upon operationalization of the Petitioner's LTA. It is a matter of common knowledge that MTOA is granted on the margins that may remain available after grant of LTAs. While certain LTAs are granted with firm PPAs and some are granted on target region basis pending firming up of beneficiaries. When the target region LTAs are firmed up and operationalized, it may result in reduction of margins and consequently affect the existing MTOAs. Condition (iv) of grant of MTOA was that if after the MTOA grant made to the Petitioner, the available margins reduced on account of firming up of PPAs by target region LTA grants and operationalization of their LTAs, then the said MTOA could be correspondingly downsized or terminated, as the case may be. These aspects were clearly brought to the notice of the Petitioner vide letter dated 6.9.2016.

(d) Whenever an MTOA customer relinquishes its MTOA rights, whether fully or partially, it is liable to pay charges corresponding to the transmission charges for the period of relinquishment or 30 days, whichever is lesser. The use of the word "shall" appearing in the proviso makes it clear that the provisions of Regulation 24



are mandatory in its operation viz. any relinquishment of MTOA rights is necessarily subject to payment of relinquishment charges as prescribed therein. The question of any loss/damage to PGCIL on account of such relinquishment is not a material consideration (unlike, in the case of LTA relinquishment). That being so, when there is no termination/downsizing of MTOA on the happening of the event specified in condition (iv) of the MTOA grant made to the Petitioner, then the matter would fall within the realm of relinquishment and for which the Petitioner would be liable to pay mandatory relinquishment charges under the provisions of Regulation 24 of the Connectivity Regulations.

(e) The Petitioner contractually agreed with PGCIL that there could be a termination/downsizing of the MTOA in the event the LTA applications granted on target beneficiary basis firmed up long-term PPAs and were operationalized during the period of MTOA. Like the MTOA grant intimation, the MTOA Agreement also nowhere contemplated or made available an option to the Petitioner to terminate/downsize the MTOA on operationalization of its own the LTA of 1240 MW granted by PGCIL. Any reliance by the Petitioner on Recital D for claiming "termination" of MTOA upon operationalization of its LTA of 1240 MW is not admissible.

(f) Based on the Petitioner's request and upon opening of the LC, the LTA was operationalized from 21.6.2016 and accordingly, two bills, namely Bill-1 towards the transmission charges for LTA and Bill-2 towards transmission charges for relinquishment of MTOA for the month of August 2016, were raised by PGCIL on the Petitioner. Therefore, there was no double billing.



(g) The Petitioner has contended that its MTOA had been terminated as the LTA has been operationalized and if the same had not been done till date, the same may be relinquished with immediate effect. However, there was no termination of MTOA which could be said to have taken place upon operationalization of the Petitioner's LTA as was wrongly being contended by the Petitioner. Moreover, there had been no firming up of target region beneficiaries and operationalization of their LTAs so as to attract condition (iv) of the MTOA grant.

(h) The Petitioner vide letter dated 9.8.2016 requested PGCIL to relinquish its MTOA with immediate effect as its 1240 MW LTA has been operationalized for which AP Discoms are the identified beneficiary for 230.55 MW LTA. In the said letter, there was no termination of MTOA. Moreover, there had been no firm up of target region beneficiaries and which could be said to have been taken place upon operationalization of their LTAs so as to attract condition (iv) of the MTOA grant. Accordingly, PGCIL accepted the Petitioner's request for relinquishment of MTOA and allowed such relinquishment w.e.f. 9.9.2016 i.e. after expiry of 30 days' notice period in terms of Regulation 24 of the Connectivity Regulations from the date of receipt of the Petitioner's request. The intimation of the same was sent to the Petitioner vide letter dated 6.9.2016. Accordingly, PGCIL raised the POC bill towards transmission charges on account of relinquishment of MTOA (PoC Bill-2) on the Petitioner on 22.9.2016 amounting to ₹89,456,167 in accordance with the Regulations 24 of the Connectivity Regulations.

(i) The Petitioner denied its liability to pay the POC/ transmission charges on the ground that there was no provision in the Connectivity Regulations and in the detailed procedure to charge for termination of MTOA on account of operationalization of LTA for the same corridor/region and the same beneficiary.



(j) The Petitioner's contention that it has not relinquished its MTOA under the Connectivity Regulations but has in fact terminated the MTOA under the MTOA Agreement is not sustainable and is liable to be rejected. The condition attached with the MTOA grant has been completely misconstrued by the Petitioner to plead a case for termination of MTOA on account of operationalization of LTA, which cannot be permitted.

6. The Petitioner in its rejoinder has mainly made the following submissions:

(a) If the interpretation of PGCIL is accepted, then the Petitioner will have to pay for both MTOA and LTA charges for conveyance of power (qua the same beneficiary and the PPA). This would result in double charging of the Petitioner and would be detrimental to not only the generators and Discoms, but also the end users. Therefore, the said MTOA charges should be off-set against LTA charges, to prevent double charging.

(b) Sharing Regulations provides that the transmission charges are required to be payable for use of transmission capacity, where the yearly cost of the transmission lines is shared by the users of the transmission lines, apportioned on a monthly basis among the users (LTA, MTOA and STOA) in proportion to their use. The Sharing Regulations further provide for offsetting the injection charges for MTOA against LTA granted instead of double billing.

(c) The Commission has amended the Connectivity Regulations and inserted Regulation 15B which provides that 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. In light of the amendment dated 17.2.2017 to the Connectivity Regulations, insertion of Regulation 15B makes it clear that Regulation 24 is not applicable in the case of termination/downsizing of the MTOA by LTC's upon operationalization of their LTAs. Payment of relinquishment charges irrespective of any loss/damage to PGCIL would lead to its unjust enrichment. Amendments are clarificatory and can be applied retrospectively.

(d) Regulation 24 of the Connectivity Regulations was not applicable to the cases of termination / downsizing of the MTOA by LTCs upon operationalization of their LTAs during the subsistence of their MTOAs. Therefore, the contention of PGCIL that the present matter is squarely covered under Regulation 24 of the Connectivity Regulations is wrong.

(e) Recital D of the MTOA Agreement provides that the granted MTOA is liable for termination / downsizing if the LTA applications granted on target beneficiary basis firm up long term PPA and are operationalized during the period of MTOA. In the present matter, the Petitioner has terminated its MTOA pursuant to operationalization of its LTA granted on target beneficiary basis on the same transmission corridor/region during the subsistence of its MTOA. Therefore, the present case is covered under Recital D of the MTOA Agreement.

7. 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 to the Connectivity Regulations 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 15B (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), and 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, Jindal Power Limited has made payment of relinquishment charges. However, others have contested the liability to bear relinquishment charges.

Analysis and Decision:

8. 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 relinquishing the MTOA?
- (b) Whether any direction can be issued to PGCIL with regard to invoices dated 22.9.2016?

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

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

9. The Petitioner has set up a 1320 MW (2X660 MW) thermal power plant in Krishnapatnam SPSR Nellore district. The Petitioner applied to PGCIL for grant of 1320 MW LTA with target beneficiaries (SR 1125 MW and WR 115 MW) for which the Petitioner executed a Bulk Power Purchase Agreement (BPTA) dated 24.12.2010 with PGCIL. Subsequently, the Petitioner applied to PGCIL for grant of MTOA for supply of 230.55 MW power to the distribution company of Andhra Pradesh for the period from



1.1.2016 to 31.3.2017. PGCIL vide its letter dated 10.9.2015 intimated the Petitioner about grant of 230.55 MW MTOA for the period from 1.1.2016 to 31.3.2017, subject to signing of MTOA Agreement and fulfillment of other conditions as per the Connectivity Regulations. The Petitioner entered into MTOA Agreement dated 6.10.2015 for transmission of 230.55 MW power to AP Discom for the period from January, 2016 to March, 2017 with PGCIL. Subsequently, on 21.6.2016, PGCIL operationalized 1240 MW LTA.

10. The main contentions of the Petitioner in the present petition are as under:

(a) There is no provision in the Connectivity Regulations and in the Detailed Procedure to charge for termination of MTOA on account of operationalization of LTA for the same corridor/region and the same beneficiary;

(b) MTOA of the Petitioner overlaps with its LTA as they are granted for the same corridor/region and the same beneficiary;

(c) No loss and damage has been suffered by PGCIL on account of the termination of the MTOA.

11. As regards the first contention, PGCIL has submitted that under the Connectivity Regulations, a provision is made in Regulation 24 of the Connectivity Regulations wherein an exit option is made available for MTOA customer. PGCIL has submitted that whenever an MTOA customer relinquishes its MTOA rights, whether fully or partially, it is liable to pay charges corresponding to the transmission charges for the period of relinquishment or 30 days, whichever is lesser. 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. PGCIL has submitted that upon operationalization of LTA, PGCIL raised two bills, namely Bill-1 towards the transmission charges for LTA and Bill-2 towards transmission charges for relinquishment of MTOA. PGCIL has contended that there was no termination of MTOA which could be said to have taken place upon operationalization of the Petitioner`s LTA as was wrongly being alleged by the Petitioner. Moreover, there had been no firming up of target region beneficiaries and operationalization of its LTA to attract condition 4 of the MTOA grant. On the other hand, the Petitioner has submitted that it has not relinquished its MTOA under the Connectivity Regulations, but in fact it has terminated its MTOA under Recital D of the MTOA Agreement. Therefore, PGCIL has wrongly relied upon Regulation 24 of the Connectivity Regulations for interpreting the termination of MTOA as relinquishment of MTOA and for levying relinquishment charges on the Petitioner.

12. 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 atleast a 30 days prior notice to the nodal agency. There is no provision for payment of any charges, if the notice period falls short of 30 days. It further provides that the Medium Term Open Access 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.

13. 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 or within the 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 subject to compliance of the provisions of the Regulations and Connectivity Regulations.

14. The next contention of the Petitioner is that MTOA of the Petitioner overlaps with its LTA as they are granted for the same corridor /region and the same beneficiary. The Petitioner has argued that Recital D of the MTOA Agreement provides that granted MTOA is liable for termination/downsizing with notice period of one month, if the LTA applications granted on target beneficiary basis firm up long term PPA and are operationalized during the period of MTOA. The Petitioner has submitted that pursuant to operationalization of LTA, the Petitioner vide its letter dated 9.8.2016 informed PGCIL that as per Recital D of the MTOA Agreement, the MTOA is liable for termination/downsizing with a notice period of one month, if the LTA applications granted on target beneficiary basis firm up long term PPA and are operationalized during the period of MTOA and no notice period charges are applicable. Accordingly, the Petitioner requested PGCIL to relinquish its 230.55 MW MTOA. PGCIL vide its letter dated 7.9.2016 accepted the Petitioner's request for relinquishment and directed the



Petitioner to pay transmission charges for 230.55 MW MTOA for a period of 30 days in terms of Regulation 24 of the Connectivity Regulations.

15. PGCIL has contended that the incidence of relinquishment charges is not due to termination of MTOA by PGCIL on account of operationalization of LTA in the same corridor/region, rather it is on account of the relinquishment of MTOA by PGCIL which is governed by the provisions of Regulation 24 of the Connectivity Regulations. PGCIL has argued that as CTU it processed the application of the Petitioner for MTOA in accordance with the procedure prescribed under the Connectivity Regulations. According to PGCIL, the Petitioner was granted MTOA 10.9.2015 based on the margin and subject to signing of requisite MTOA Agreement and fulfillment of other conditions intimated in the grant for MTOA. PGCIL has submitted that LTA grant was made subject to the specific condition that the MTOA would be liable for termination/downsizing with notice period of one month, if the LTA applications granted on target beneficiaries basis firm up long term PPA and are operationalized during the period of MTOA. PGCIL has submitted that the conditionality of termination/downsizing of MTOA upon operationalization of the Petitioner's LTA and this was more so when the Petitioner already had a firm PPA qua which it had obtained MTOA. PGCIL has argued that reliance placed by the Petitioner on Recital D for claiming termination of MTOA upon operationalization of LTA is not admissible which is extracted as under:

“D. The grant of MTOA is subject to the condition specified at Note no. 4 of above mentioned intimation. The same is reproduced as below:

Note 4

The granted MTOA is liable for termination/downsizing with notice period of 01 months, if the LTA applications granted on target beneficiary basis firm up long term PPA and are operationalized during the period of MTOA.”

16. PGCIL has contended that under Recital H of the MTOA Agreement, the Petitioner acknowledged that the provisions of the Connectivity Regulations were to be



applicable to the MTOA grant. PGCIL has submitted that the provisions of Regulation 24 of the Connectivity Regulations are mandatory in their operation. Relinquishment of MTOA rights is necessarily subject to payment of relinquishment charges as prescribed therein.

17. We have considered the submission of the Petitioner and PGCIL. MTOA was granted to the Petitioner by PGCIL subject to compliance of the applicable Regulations. Relevant portion of the intimation for grant of MTOA to the Petitioner is extracted as under:

“3. The applicant shall abide by the provisions of all applicable Regulations, Notifications, Guidelines, Acts, Codes, Rule and amendments thereof from time to time including Electricity, 2003, CERC (Grant of Connectivity, Long Term Access and medium-term Open Access in inter-State Transmission Charges and Losses) Regulations, 2010, CEA (Technical Standards for connectivity to the Grid) Regulations, 2010 including provisions related to under drawl/over drawl.”

Recital H of the MTOA Agreement provides as under:

“H AND WHEREAS Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 & the detailed Procedures made therein shall be applicable including amendment made therein from time to time.”

18. The Petitioner vide its letter dated 9.8.2016 requested PGCIL to terminate its MTOA of 230.55 MW. The said letter is extracted as under:

To,
The Chief Operating Officer (CTU)
Power Grid Corporation of India Limited
Plot No. -2, Saudamini, Sector-29
Gurgaon-122 001

Sub : Request for Relinquishment of MToA of 230.55 towards AP-Reg.

Ref:

1. MTOA Agreement dated 06th October 2015
2. PGCIL Letter dated 21st June 2016-Operationalization of LTOA-1240 MW

Dear Sir,



In reference to the MTOA Agreement dated 06th October 2015, the MTOA has been granted for transmission of 230.55 MW to Andhra Pradesh Discoms (**AP Discoms**) for the period from January 2016 to March 2017. Further, in reference to the PGCIL Letter dated 21st June, 2016, the LToA of 1240 MW for TPCIL has been operationalized and AP Discoms are the identified beneficiary for 230.55 MW under the Long Term PPA dated 01st April 2013.

We understood that with reference to Point D of the recitals of the said MTOA Agreement- “the granted MTOA is liable for termination/downsizing with a notice period of 01 months, if the LTA applications granted on target beneficiary basis firm up long term PPA and are operationalized during the period of MTOA” and no notice period charges are applicable.

We request you to confirm the termination of MTOA as the LToA has been operationalized for the entire 1240 MW and AP Discoms are the identified beneficiary for 230.55 MW under the said Long Term PPA. However, if the same has not been done till date, we request you to relinquish the said MTOA with immediate effect.”

19. PGCIL vide its letter dated 6.9.2016 accepted the Petitioner`s request for relinquishment of MTOA and informed that the Petitioner`s is required to pay relinquishment of MTOA charges. Relevant portion of said letter is extracted as under:

“With reference to your letter ref (iii) above, your request for relinquishment has been accepted and relinquishment of MTOA is allowed w.e.f 9th Sept. 2016 (00:00 Hrs) i.e. after expiry of 30 day notice period from the date of receipt of your request.

Further, with regard to your request for non-applicability of relinquishment charges, it may be mentioned that clause referred in your letter at Ref (iii) is stipulated in cases where number of LTAs had already been granted on target basis and in view of non-firming of the PPA, the transmission capacity already granted under LTA is being released under the MTOA in line with the provisions of regulation/procedure. In such cases, the MTOA are liable for termination/downsizing if LTA customer with target basis firms up PPA and their quantum could not be accommodated in available transmission capacity.

However, presently such is not the case as neither any new firming up of PPA has taken place nor there is any constraint in transmission capacity under consideration and the relinquishment of MTO is solely on your request.

Accordingly, TPCIL shall be required to pay transmission charges for 230.55 MW for a period of 30 days in line with the 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. ...”

20. PGCIL raised the invoice dated 22.9.2016 towards relinquishment charges for 230.55 MW MTOA. The Petitioner vide its letter dated 4.10.2016 requested PGCIL to withdraw the POC bill. PGCIL vide its letter dated 13.10.2016 declined the Petitioner`s



request for non-applicability of relinquishment charges and to withdraw the POC bill dated 22.9.2016 and directed the Petitioner to pay relinquishment charges in terms of Regulation 24 of the Connectivity Regulations.

21. Even though the period of LTA overlaps with that of MTOA, Regulation 24 of the Connectivity Regulations does not admit any exception and in case of relinquishment of MTOA for operationalization of LTA, the MTOA customer shall be liable to pay the relinquishment charges.

22. The next contention of the Petitioner is that since there is no relinquishment of MTOA in this case for termination of MTOA on account of operationalization of LTA for the same transmission corridor/region, no loss or damage would be suffered by PGCIL on account of termination of MTOA. PGCIL has argued that there is no provision under Regulation 24 of the Connectivity Regulations for non-levy of relinquishment charges even if the MTOA customer had secured LTA on the same corridor/region and the same beneficiary. Therefore, the question of any loss/damage to PGCIL on account of such relinquishment is not a material consideration.

23. We have already decided that MTOA application and the LTA application of the Petitioner were independent of each other, though made for the same capacity or within the capacity. Accordingly, the Petitioner is liable to pay relinquishment charges in terms of Regulation 24 of the Connectivity Regulations.

24. Learned counsel for the Petitioner, during the hearing argued that in light of the amendment dated 17.2.2017 to the Connectivity Regulations, insertion of Regulation 15 B makes it clear that Regulation 24 is not applicable in the case of termination/downsizing of the MTOA by LTCs upon operationalization of their LTAs. Learned counsel submitted that payment of relinquishment charges irrespective of any



loss/damage to PGCIL would lead to its unjust enrichment. Learned counsel for the Petitioner submitted that amendments in the Connectivity Regulations are clarificatory and can be applied retrospectively. Learned counsel for PGCIL clarified 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. The substantive rights of the parties have been modified to the extent specified in the Amendment. It 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. Learned counsel for PGCIL contended that 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 case.

25. 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 alongwith 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 not only result in retrospective operation of the regulations which is not allowed, but also result in demand from similarly placed Medium Term Open Access Customer who have paid the relinquishment charges on operationalization of the same capacity for LTA.

Issue No. 2: Whether any direction can be issued to PGCIL with regard to invoices dated 22.9.2016?

26. 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.

27. 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

