

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No.318/MP/2018
Alongwith IA Nos.85/2018 & 86/2018**

Subject :Petition under Section 79 (1) (f) of the Electricity Act, 2003 read with Regulation 7 of the 5th amendment of the CERC (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010 thereby seeking quashing of the letters dated 28.3.2018, 29.3.2018 and 3.10.2018 issued by PGCIL.

Date of Hearing : 6.11.2018

Coram : Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member

Petitioner : SEL Sunshine Power Private Limited(SELSPPL)

Respondent : Power Grid Corporation of India Limited (PGCIL)

Parties present :Shri Sanjay Sen, Senior Advocate, SELSPPL
ShriHemant Singh, Advocate, SELSPPL
ShriNishant Kumar, Advocate, SELSPPL
Ms. SuparnaSrivastava, Advocate, PGCIL
ShriAryamanSaxena, Advocate, PGCIL
Shri K.K. Jain, PGCIL
Ms. Jyoti Prasad, PGCIL
Ms. Anita A. Srivastava, PGCIL
Shri J. Mazumder, PGCIL

Record of Proceedings

At the outset, learned senior counsel for the Petitioner submitted that the present petition has been filed for seeking direction to quash the letters dated 28.3.2018, 29.3.2018 and TSA termination notice dated 3.10.2018 issued by PGCIL. Learned senior counsel further submitted as under:

(a) The Petitioner has a solar based electricity generation project at Shivpuri in the State of Madhya Pradesh with a capacity of 30 MW. The Petitioner is a lead generator and there are five other Special Purpose Vehicles (SPVs) which are also installing 30 MW power each of solar generating plants in the same area. On 15.7.2015, the Petitioner alongwith the other SPVs executed PPA with Tata Power Delhi Distribution Company Limited (TPDDL) for sale of cumulative quantum of 180 MW of electricity from their solar based power plants.

(b) On 28.7.2015, the Petitioner made an application to PGCIL for grant of LTA for supply of 180 MW of power in Northern Region (NR) which was granted by PGCIL vide its letter dated 29.7.2016 wherein the date of LTA operationalization was mentioned as "30.9.2016 or from the date of availability of the transmission system, whichever is later".

(c) Pursuant to the grant of LTA, the Petitioner and PGCIL executed LTA Agreement and TSA on 26.8.2016. However, while the transmission system to be

developed by PGCIL and the power plant to be developed by the Petitioner are under implementation, PGCIL vide letter dated 28.3.2018 intimated the Petitioner that the LTA for 180 MW would be operationalized w.e.f. 1.4.2018.

(d) Subsequently, on 29.3.2018, PGCIL informed the Petitioner to furnish the LC for an amount of Rs. 7.75 crore towards the payment security mechanism for the LTA granted. The said demand is against the provisions of the 5th Amendment of Sharing Regulations wherein a solar generator is exempted from paying any transmission charges or losses for availing the inter-State transmission network for a period of 25 years.

(e) On 14.5.2018, the Petitioner requested PGCIL to operationalize LTA in line with completion of the specified transmission system as mentioned in the letter of LTA grant. However, no response was received from PGCIL in this regard. Subsequently, PGCIL issued notice dated 3.10.2018 terminating the TSA dated 26.8.2018 on account of non-opening of LC in favour of PGCIL towards the payment security mechanism. Further, PGCIL in the said termination notice has referred to a default notice dated 2.8.2018 issued under Clause 16.2.1 of TSA for non-compliance of Regulation, Clause 3.6 of BCD Procedure approved under Sharing Regulation. However, the said default notice was not received by the Petitioner.

2. Learned senior counsel for the Petitioner submitted that the Petitioner has filed IA Nos. 85/2018 and 86/2018 for urgent listing and interim relief. Learned senior counsel requested the Commission to grant interim injunction against the letters dated 28.3.2018, 29.3.2018 and notice dated 3.10.2018 terminating the TSA issued by PGCIL and to restrain PGCIL from taking any coercive measure till the disposal of the petition.

3. Learned counsel for PGCIL submitted that the Petitioner has filed the petition on two aspects, namely operationalization of LTA and payment of transmission charges. Learned counsel further submitted as under:

(a) As per second proviso of Regulation 8(5) of the Sharing Regulations, the operationalization of LTA is contingent upon the commissioning of several transmission lines or elements and only some of the transmission lines or elements have been declared commercial, the generator shall pay the transmission charges for LTA operationalized corresponding to the transmission system commissioned. Therefore, as per Regulation 8(5) of the Sharing Regulations read with Commission's direction dated 16.2.2015 in Petition No.92/MP/2014, PGCIL vide letter dated 28.3.2018 intimated the Petitioner about the operationalization of LTA.

(b) In the JCC meetings dated 4.11.2016 and 2.3.2017, PGCIL had granted options to all the LTAs grantees for up-gradation of the LTA. However, the Petitioner did not take the option for upgrading its LTA.

(c) With regard to incentive of transmission charges exemption, the Commission vide order dated 19.8.2016 in Petition No.36/MP/2016 observed that the transmission charges for delay in commissioning of solar power generators shall be paid by such solar generators/ SPPD in accordance with the relevant regulations. Further, there are three conditions to be fulfilled for grant of exemption from transmission charges and losses to Solar generators as per the 5th Amendment to the Sharing Regulations and the Petitioner did not satisfy the condition (ii) of the Regulation 7(1)(y) of the Fifth Amendment to the Sharing

Regulations. Since, there is delay in commissioning of the project, the Petitioner is liable to pay the transmission charges.

4. Considering the submissions of the learned senior counsel for the Petitioner and learned counsel for PGCIL, the Commission directed PGCIL not to take any coercive measure against the Petitioner till the next date of hearing. Accordingly, the Commission disposed of the IA Nos. 85/2018 and 86/2018.

5. The Commission admitted the petition and directed to issue notice to PGCIL. The Commission directed the Petitioner to serve copy of the petition on the respondent immediately, if not served already. The respondent was directed to file its reply, by 3.12.2018, with an advance copy to the Petitioner, who may file its rejoinder, if any, by 14.12.2018. The Commission directed that due date of filing the reply and rejoinders should be strictly complied with. No extension shall be granted on that account.

6. The petition shall be listed for hearing in due course for which separate notice will be issued.

By order of the Commission

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