

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 55/MP/2015

Subject : Petition for relinquishment of the Long-term Open Access under the Bulk Power Transmission Agreement dated 13.5.2010 under the Regulation 18 read with Regulation 32 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009

Petitioner : Jindal India Thermal Power Limited (JITPL)

Respondents : Power Grid Corporation of India Limited and Ors.

Petition No. 303/MP/2015

Subject : Petition for relinquishment of the Long-term Open Access under the Bulk Power Transmission Agreement dated 5.1.2011 under the Regulation 18 read with Regulation 32 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009

Petitioner : Vedanta Limited

Respondents : Power Grid Corporation of India Limited and Ors.

Petition No. 3/MP/2016

Subject : Petition for relinquishment of the Long-term Open Access under the Bulk Power Transmission Agreement dated 5.7.2010 under the Regulation 18 read with Regulation 32 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009

Petitioner : Vedanta Limited

Respondents : Power Grid Corporation of India Limited and Ors.

Petition No. 137/MP/2016

Subject : Petition for relinquishment of the Long-term Open Access under the Bulk Power Transmission Agreement dated 5.1.2011 under the Regulation 18 read with Regulation 32 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009

Petitioner : GMR Kamalanga Energy Limited (GMRKEL)

Respondents : Power Grid Corporation of India Limited and Ors.



Petition No. 246/MP/2016

Subject : Petition for relinquishment of the Long-term Open Access under the Bulk Power Transmission Agreement dated 24.2.2010 under the Regulation 18 read with Regulation 32 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009

Petitioner : Coastal Energen Private Limited (CEPL)

Respondents : Power Grid Corporation of India Limited and Ors.

Petition No. 11/MP/2017

Subject : Petition under Section 79(1)(c) of the Electricity Act, 2003 read with Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 and the detailed procedure for grant of LTA, seeking relinquishment of Long-term Access of 386 MW in Western Region out of the total quantum of 816 MW as per the BPTA dated 31.3.2010.

Petitioner : GMR Chhattisgarh Energy Limited (GCEL)

Respondents : Power Grid Corporation of India Limited and Ors.

Petition No. 21/MP/2017 along with IA No.9/IA/2017

Subject : Petition for relinquishment of 1100 MW of Long-term Access agreed under the Bulk Power Transmission Agreement dated 24.2.2010 under the Regulation 18 read with Regulation 32 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 of the subject transmission lines by Essar Power Jharkhand Limited (3x600 MW) Thermal Power Plant, Chandwa Teshil, District Latehar in the State of Jharkhand.

Petitioner : Essar Power (Jharkhand) Limited (EPJL)

Respondents : Power Grid Corporation of India Limited and Ors.

Petition No. 129/MP/2017

Subject : Petition seeking surrender of 146 MW (135 MW in Western Region and 11 MW in Southern Region) out of total Long-term Access quantum of 546 MW granted under the Bulk Power Transmission Agreement dated 24.2.2010 read with Annexure – I as modified vide amendments dated 2.1.2012 and 17.10.2012.



Petitioner : Simhapuri Energy Limited (SEL)
Respondents : Power Grid Corporation of India Limited and Ors.

Petition No. 164/MP/2017

Subject : Petition seeking surrender of 610 MW (575 MW in Western Region and 35 MW in Southern Region) out of total Long-term Access quantum of 1150 MW granted under the Bulk Power Transmission Agreement dated 24.12.2010.

Petitioner : IL&FS Tamil Nadu Power Company Limited (IL&FS)
Respondents : Power Grid Corporation of India Limited and Ors.

Petition No. 169/MP/2017 along with IA No. 43/IA/2017

Subject : Petition seeking surrender/relinquishment of 170 MW (170 MW in Western Region) out of total Long-term Access quantum of 683 MW granted under the Bulk Power Transmission Agreement dated 24.2.2010.

Petitioner : SKS Power Generation (Chhattisgarh) Limited (SPGCL)
Respondents : Power Grid Corporation of India Limited and Ors.

Petition No. 253/MP/2017 along with IA No. 87/IA/2017

Subject : Petition seeking surrender/relinquishment of 513 MW (149 MW in Western Region and 364 MW in Northern Region) out of total Long-term Access quantum of 683 MW granted under the Bulk Power Transmission Agreement dated 24.2.2010.

Petitioner : SKS Power Generation (Chhattisgarh) Limited (SPGCL)
Respondents : Power Grid Corporation of India Limited and Ors.

Date of Hearing : 5.11.2019

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

Parties Present : Shri Sanjay Sen, Senior Advocate, JITPL, Vedanta Limited, GMRKEL, CEPL, IL&FS, GCEL & SPGCL
Shri Matrugupta Mishra, Advocate, JITPL
Shri Oman Wazir, Advocate, JITPL
Shri MD Aman Shezikh, Advocate, JITPL
Shri Hemant Singh, Advocate, Vedanta Limited, GMRKEL, CEPL, IL&FS, GCEL, SEL & SPGCL
Shri Lakshyajit Singh, Advocate, Vedanta Limited, GMRKEL, CEPL, IL&FS, GCEL, SEL & SPGCL
Shri Ali Moid, Advocate, Vedanta Limited, CEPL, SEL & SPGCL



Shri Puneet S. Bindra, Advocate, Resolution Professional of EPJL
Ms. Simran Jeet, Advocate, Resolution Professional of EPJL
Shri Akash Singh, Advocate, Resolution Professional of EPJL
Ms. Suparna Srivastava, Advocate, PGCIL
Shri Sitiesh Mukherjee, Advocate, PGCIL
Ms. Nehul Sharma, Advocate, PGIL
Shri Karan Arora, Advocate, PGCIL
Dr. V.N. Paranjape, PGCIL
Ms. Jyoti Prasad, PGCIL

Record of Proceedings

Learned counsel appearing on behalf of the Respondent, PGCIL in Petition Nos. 55/MP/2015, 137/MP/2016, 246/MP/2016, 11/MP/2017, 21/MP/2017, 129/MP/2017 and 164/MP/2017 handed over the copy of common written submissions and advanced her extensive arguments in support of her contentions. Learned counsel, mainly, submitted as under:

(a) Some of the Petitioners, namely Jindal India Thermal Power Limited, IL & FS Tamil Nadu Power Company Limited, GMR Kamalanga Energy Limited, Coastal Energen Private Limited and Simhapuri Energy Limited were also party to Petition No. 92/MP/2015 and some of the submissions raised by these Petitioners in the instant Petitions, regarding liability of relinquishment charges and method for determination of stranded capacity for computation of relinquishment charges have been already decided by the Commission in order dated 8.3.2019 in Petition No. 92/MP/2015.

(b) The Commission in above order dated 8.3.2019 has also held that for the project developers who had abandoned their projects and had sought relief from the payment of relinquishment charges on the ground of force majeure, the stranded transmission capacity resulting on account of abandoned projects would also attract the relinquishment charges.

(c) Contentions regarding the responsibility of PGCIL to execute the transmission corridors taking into account the actual long-term PPAs of the Petitioners also stand rejected in terms of para 91 and 94 of the order dated 8.3.2019. Signing of PPAs is not a pre-condition for implementation of transmission corridors and the same cannot be pleaded as force majeure event for relieving the Petitioner from paying transmission/relinquishment charges under the BPTA.

(d) Clause 5 of the BPTA clearly provides that the relinquishment is upon the payment of necessary compensation in accordance with Regulations of the Commission. Thus, Regulation 18 of the Connectivity Regulations, has been included as an operating contractual provision under the express terms of Clause 5 of the BPTA. Further, the Commission in order dated 8.3.2019 has already held that since BPTA or LTA agreements are in terms of the Connectivity Regulations, they are in the nature of statutory contracts and are to be governed by the provisions of the Connectivity Regulations.

(e) Clause 9 of BPTA reveals that the applicability of the clause has been made temporary by expressly directing the parties to continue performance as soon as the force majeure eventuality ceases to exist and the applicability of



the clause is only restricted to eventualities affecting 'transmission/drawl of power'. Hence, it cannot be relied upon to contend that once it becomes applicable, the entire BPTA including Clause 5 of the BPTA ceases to operate between the parties.

(f) Learned counsel in support of her contention relied upon the Commission's orders in Petition Nos. 283/MP/2015, 167/MP/2016, 187/MP/2017, 69/MP/2014, 317/MP/2013 and 122/MP/2017 and judgment of APTEL in Appeal No. 54 of 2014.

2. Learned counsel appearing on behalf of the Respondent, PGCIL in Petition Nos. 303/MP/2015, 3/MP/2016, 169/MP/2017 and 253/MP/2017, adopted the above submissions and further submitted as under:

(a) The Petitioners have mainly cited de-allocation of coal blocks, delay in grant of statutory clearances, non-availability of long-term PPA and certain operational issues as force majeure events. However, these issues are extraneous to the object of BPTA. These are the business risks knowingly undertaken by the developer/generator and can neither be attributable to PGCIL nor can be covered under the force majeure clause of BPTA.

(b) PGCIL is mandated under the Act read with Regulations framed thereunder to construct the transmission line and to provide open access to generators on their request/assurance. Once having constructed such line, the generators cannot be allowed to relinquish the access without any charges.

(c) Learned counsel in support of his contentions relied upon the 'Doctrine of frustration' under Section 56 of the Indian Contract Act, 1872.

3. Learned counsel for the Respondent, Tamil Nadu Generation and Distribution Co. Ltd (TANGEDCO) in Petition Nos. 246/MP/2016 and 164/MP/2017 adopted the submissions made by the learned counsels for the Respondent, PGCIL. Learned counsel also advanced his extensive arguments relying upon the various clauses of BPTA, Regulations, Commission's orders, judgments of APTEL and reiterated the submissions made in the pleadings. Learned counsel submitted that if the relinquishment charges are not paid by the generators, it should not be passed on to the beneficiaries.

4. In rebuttal, learned senior counsel for the Petitioners mainly submitted as under:

(a) BPTA being in terms of the Connectivity Regulations is in the nature of statutory contract and being a statutory contract, Regulation 18 of the Connectivity Regulations, in respect of relinquishment charges, is incorporated in Clause 5 of the BPTA. The same BPTA also contains Clause 9 (force majeure), which operates over the Clause 5 of the BPTA.

(b) The limited question that needs to be addressed as to whether the force majeure clause is temporary in nature or also provide permanent discharge from the obligation.

(c) Power Purchase Agreements are regulated agreements under the Act and are not remote to the process of BPTA.



(d) Functions of Central Transmission Utility under Section 38(2) of the Act are not contingent upon the contract/PPAs.

(e) In terms of the judgment of Hon'ble Supreme Court in Energy Watchdog v. CERC and Ors., Section 56 of the Contract Act, 1872 is not applicable in the cases wherein the force majeure clause has been defined in the agreement.

5. Learned counsel appearing on behalf of Resolution Professional appointed for the Petitioner, Essar Power Jharkhand Limited in Petition No. 21/MP/2017, submitted that the Resolution Process for the Petitioner has been initiated pursuant to the order of the National Company Law Tribunal (NCLT), New Delhi dated 5.4.2018. Learned counsel submitted that the order on approval of resolution plan vis-à-vis liquidation of the Petitioner Company is reserved by NCLT on 5.7.2019 and moratorium granted in terms of Section 14 of the IBC, 2016 is continued. Learned counsel reiterated the submissions made in the affidavit of Resolution Professional dated 1.7.2019 and further submitted that the Commission may either wait till the order of NCLT or may adjudicate the matter based on the facts of the case as presented.

6. Based on the request of learned senior counsel and learned counsel for the parties, the Commission allowed the Petitioners to file their additional submissions, on affidavit, on or before, 14.11.2019 with an advance copy to the Respondents who may file their response thereof, on affidavit, on or before, 21.11.2019. The Commission directed that due date of filing of additional submissions should be strictly complied with.

7. Subject to the above, the Commission reserved order in the Petitions.

By order of the Commission

**sd/-
(T.D. Pant)
Deputy Chief (Law)**

