

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 13/RP/2019
Along with IA 68/2019
in
Petition No. 35/MP/2018**

**Coram:
Shri P.K Pujari, Chairperson
Dr. M.K. Iyer, Member
Date of Order: 13.12.2019**

In the matter of:

Review Petition under Section 94 of the Electricity Act, 2003 read with regulations 103, 111 and 114 of the Central Electricity Regulatory Commission (Conduct of business) Regulations, 1999 read with order 47, rule 1 of the code of civil procedure, 1908 for review of order dated 19.3.2019 passed by this Hon'ble Commission in petition no. 35/MP/2018.

And

In the matter of:

The Central Transmission Utility,
(Power Grid Corporation of India Limited),
B-9, Qutub Industrial Area,
Kawaria Sarai, New Delhi-110016

...Petitioner

Versus

1. M/s. GMR Kamalanga Energy Limited
Building No.302, New Shakti Bhavan
Near Terminal-3, Indira Gandhi International Airport
Delhi-110037
2. Eastern Regional Load Despatch Center
14, Golf Club Road 4A, Gokhale Marg
Tollygunge, Kolkata-700 033

...Respondents

Parties Present:

1. Shri Tushar Mathur, Advocate, PGCIL
2. Ms. Suparna Srivastava, Advocate, PGCIL
3. Shri K K Jain, PGCIL
4. Shri A A Srivastava, PGCIL
5. Shri I. Srinivas, PGCIL
6. Ms. Swati Verma, PGCIL
7. Shri Siddhath Sharma, PGCIL
8. Shri Hemanth Singh, Advocate, GMR
9. Shri Nishant Kumar, Advocate, GMR
10. Shri Alok Kumar Mishra, POSCO

ORDER

The Review Petitioner aggrieved by the adjudication of the issue of effective date of operationalization of long-term access (LTA) availed by GMR Kamalanga has filed the present Review Petition seeking review of Order dated 19.3.2019 passed by the Commission in Petition No.35/MP/2018. The Review Petitioner has made the following prayers:

- “ a) Admit the present Review Petition in view of facts submitted hereinabove and review and modify the Order dated 19.3.2019 to the extent it holds that the LTA granted to Respondent No. 1 stands operationalized w.e.f. 2.8.2017 instead of 9.7.2017 thereby denying the Review Petitioner to recover PoC charges for the period from 9.7.2017 to 2.8.2017;*
- b) Pass such further and other order(s) as this Hon’ble Commission may deem fit and proper in the facts and circumstances of the present case.”*

Submission of Review Petitioner

2. The Review Petitioner has submitted that Commission in its Order dated 19.3.2019 in Petition No. 35/MP/2018 has held that the LTA granted to GMR stands operationalized w.e.f 2.8.2017 as CTU has requested ERLDC to operationalize the

LTA vide letter dated 7.7.2017 without indicating any firm date of such operationalization. Accordingly, the Commission has held that GMR is not liable to pay LTA charges for the period from 9.7.2017 to 1.8.2017 and has directed Eastern Region Power Committee (ERPC) to revise the Regional Transmission Account (RTAs) and to adjust the PoC bills already paid by GMR for the said period in the subsequent PoC bills of GMR.

3. The Review Petitioner has submitted that the following errors apparent have occurred in the impugned Order which required rectification in review :

(i) The Commission while finalizing its Order dated 19.3.2019 has erroneously construed Regulation 14 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 (Connectivity Regulations) to mean as if the Review Petitioner is required to inform the firm date of operationalisation of the LTA whereas the said Regulation 14 only requires the Review Petitioner to communicate the date from which the LTA is to be granted (and not operationalized) .

(ii) The Commission has erroneously relied upon observations under para 63 of the Order dated 8.3.2018 passed in Petition No.229/RC/2015 to the effect that the Review Petitioner is bound to inform the firm date of operationalization of LTA for the purpose of facilitation of payment security mechanism whereas, in the present case, GMR has already put the said payment security mechanism in place, and as such, the Order dated 8.3.2018 is irrelevant and non-contextual for the present controversy.

(iii) The Commission has omitted to consider letters dated 28.4.2017, 30.3.2017 and 17.4.2017 placed before it by the Review Petitioner in compliance of the Record of Proceedings dated 12.12.2018 demonstrating

that the procedure for operationalizing the LTA where the date is not mentioned has been the same for various other LTA applicants as has been followed in the case of GMR.

(iv) The Commission has omitted to return any finding on the submissions made by Respondent No.2 (ERLDC) in its Reply to Petition No.35/MP/2018 regarding scheduling of power followed by GMR through the same procedure and in the same web-based scheduling system for operationalization of its other granted LTA to Haryana.

4. The Review Petitioner has submitted that, the Commission, without considering the above stated relevant material placed before it, has not only erroneously deferred the date of operationalisation of LTA granted to GMR from 9.7.2017 to 2.8.2017, but also absolved GMR from its liability to pay PoC bills accrued from the period from 9.7.2017 to 1.8.2017. This has resulted in consequential erroneous direction to ERPC to revise the RTAs considering the date of operationalisation of LTA granted to Respondent No.1 as 2.8.2017 instead of 9.7.2017. The Review Petitioner has prayed that the above said apparent errors in the Order dated 19.3.2019 passed in Petition No.35/MP/2018 are liable to be rectified by this Commission by exercising the powers vested in it under its review jurisdiction.

5. The Review Petitioner has further submitted that it has demonstrated sufficient cause for the Commission to review and rectify the above errors in Order dated 19.3.2019 passed in Petition No.35/MP/2018. As per the law laid down by the Hon'ble Supreme Court in Indian Charge Chrome Ltd. vs. Union of India [(2005) 4 SCC 67], omission to consider the contentions made (and materials placed) constitute manifest error resulting in grave miscarriage of justice, which errors are amenable to rectification under exercise of review jurisdiction.

6. The Review Petitioner has filed IA no. 68/2019 seeking Stay of the operation of the Order dated 19.03.2018 in Petition no. 35/MP/2018.

7. Learned counsel for the Review Petitioner reiterated the grounds for Review for review taken in the Review Petition and requested the review of the impugned Order dated 19.3.2019 to the extent that it holds that the LTA granted to GMR stands operationalised with effect from 2.8.2017 instead of 9.7.2017.

Analysis and Decision

8. We have considered the submissions of the learned counsel for Review Petitioner and perused the impugned order and documents on record. Order in the review petition was reserved on the issue of admissibility. Accordingly, we are proceeding to the issue the Order on admissibility of the grounds of review raised in the Review petition.

9. Order 47, Rule 1 of Civil Procedure Code, 1908 read with Section 91 of the Act and Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulation, 1999 lay down the following conditions for preferring a Review Petition:

- (v) Discovery of new and important matter or evidence which, after exercise of due diligence was not within the knowledge of the person seeking review or could not be produced by him at the time when order was made, or
- (vi) On account of some mistake or error apparent on face of record, or
- (vii) For any other sufficient reason.

10. The Review Petitioner has filed the review stating that there are errors apparent on the face of record and other sufficient reasons for reviewing the impugned order dated 19.03.2019 in Petition No. 35/MP/2018. Accordingly, we

have examined the grounds urged by the Review Petitioner for review of the impugned Order in the light of the abovementioned principles.

(i) Error in interpretation of Regulation 14 of the CERC Connectivity Regulation

11. The first ground of review is that Regulation 14 of the Connectivity Regulations do not relate to operationalisation of LTA but relates to grant of LTA only as intention of the said Regulation in the case of operationalisation is an error apparent in the impugned Order.

12. Regulation 14 of the Connectivity Regulation is extracted as under:

“14. Communication of Estimate of Transmission Charges, etc.

While granting long term access, the nodal agency shall communicate to the applicant, the date from which long-term access shall be granted and an estimate of the transmission charges likely to be payable based on the prevailing costs, prices and methodology of sharing of transmission charges specified by the Commission.”

As per the above Regulation, CTU while granting the LTA is required to indicate the date from which long term access is to be granted. After the Transmission assets are ready, CTU is duty bound to intimate the long term customer about the firm date from which LTA shall be operationalised. Obligation to intimate the date of Grant of LTA carries with it the liability to intimate the date for which the granted LTA shall be operationalised. The Commission after interpreting the Regulation 14 of the Connectivity Regulations has taken a conscious view that CTU cannot pass over its obligation to communicate the date of Operationalisation of LTA to some other agency. The Review Petitioner seeking to re-argue the issue on merit which is not permissible in review. Therefore, there is no error in the impugned Order on this ground.

(ii) Error Occurred on the reliance upon observations under para 63 of the Order dated 8.3.2018 in Petition No.229/RC/2015

13. The Second ground of Review is that reliance on observation in para 63 of the Order dated 8.3.2018 in petition no. 229/RC/2015 is irrelevant and non-contextual as the said observation was in the context of institution of payment security mechanism prior to the operationalisation of LTA, and not with regard to intimation of firm date of Operationalisation of LTA which is an error apparent on the impugned Order.

14. The Commission in its impugned Order had observed as under.

“ 14. We have also observed in our order dated 8.3.2018 in Petition No.229/RC/2015 that CTU is required to inform the firm date to facilitate institution of Payment Security Mechanism. The relevant extract of the said order is reproduced as under :

“ 63

(b) Payment Security Mechanism is an important regulatory requirement for availing the transmission services and all Respondents are directed to open the LC for the required amount one month before the operationalization of LTA. CTU is directed to inform the firm dates to facilitate institution of Payment Security Mechanism.....”

The reading of above extract reveals that CTU is required to inform about the firm date for the purpose of operationalisation of LTA even for the purpose of facilitation of Payment Security Mechanism.”

In para 63 (b) of the Order dated 8.3.2018 in Petition No. 229/RC/2015, the Commission has observed that the long term customer are required to open LC for the required amount one month before operationalisation of LTA and CTU was directed to inform firm dates to facilitate institution of payment Security mechanism. The use of the words “firm dates” indicate that CTU is required to inform to the Long term customer firm dates for opening of payment security mechanism as well as operationalisation of LTA. Accordingly, the Commission has held in the impugned Order that even for the purpose of payment security mechanism, CTU is required CTU is required to indicate the firm date for operationalisation of LTA. We are of the view that para 63 (b) of the Order dated 8.3.2018 in petition no. 229/RC/2015 deals with payment security mechanism for the purpose of operationalisation of LTA and

is therefore relevant in the context of intimation of firm date for operationalisation of LTA. Accordingly, there is no error in the impugned Order on this ground.

(iii)Omission of letters dated 28.4.2017, 30.3.2017 and 17.4.2017

15. The next ground of review is that the Commission has omitted to consider letters dated 28.4.2017, 30.3.2017 and 17.4.2017 placed before it by the Review Petitioner in compliance of the Record of Proceedings dated 12.12.2018 demonstrating that the procedure for operationalizing the LTA where the date is not mentioned has been the same for various other LTA applicants.

16. The Commission vide RoP dated 12.12.2018 in Petition No. 35/MP/2018 directed CTU to furnish the reason for departure from procedure in operationalisation of LTA and also to explain the procedure adopted by it for operationalisation of LTA where date is not mentioned. The Petitioner is claiming the letters dated 28.4.2017, 30.3.2017 and 17.4.2017 has been filed in compliance of the Record of Proceedings dated 12.12.2018. On perusal of the record, we observe that the Review Petitioner has not filed any document including the letters as referred to above in compliance of RoP dated 12.12.2018. However; CTU has filed these three letters along with the review petition. Since these letters were not placed before the Commission pursuant to the ROP dated 12.12.2018 at any time before passing of the impugned Order, the Commission did not have any occasion to examine the contents and relevance of these letters in the impugned Order. Therefore, non consideration of documents which are not placed on record by the Review Petitioner despite specific direction to that effect cannot be consider as an error in the impugned Order.

(iv)Omission of submissions made by ERLDC in its Reply to Petition No.35/MP/2018

17. The next ground of review is that the Commission has omitted to return any finding on the submissions made by ERLDC in its Reply to Petition No.35/MP/2018 regarding scheduling of power followed by CTU through the same procedure and in the same web-based scheduling system for operationalization of its other granted LTA to Haryana.

18. We have considered the submission of the Review Petitioner. The main issue under consideration in Petition No. 35/MP/2018 was whether CTU was under any obligation to intimate firm date of operationalisation of LTA to the long-term customer. The Commission after perusal of the documents on record, the relevant Regulation and its earlier Order dated 8.3.2018 in Petition No. 229/RC/2015 came to the conclusion that CTU has failed in discharging its obligation to intimate the firm date prior to operationalisation of LTA to Respondent No. 1 (M/s GMR Kamlanga Energy Ltd.). The submissions of ERLDC explaining the procedure followed of CTU regarding scheduling of power for operationalisation of LTA can not absolve CTU from its responsibility to inform firm date for operationalisation of LTA to Respondent No. 1. Had CTU intimated Respondent No. 1 about the firm date of operationalisation of LTA, Respondent No. 1 would have scheduled power under LTA, and not under STOA from 9.7.2017 to 2.8.2017. Therefore, absence of any finding on the submission of ERLDC is not an error apparent in the impugned Order. Review on this ground cannot be maintained.

19. For the reasons as mentioned in the foregoing paragraphs, we do not find any error apparent in the order dated 19.3.2019 in Petition No. 35/MP/2018. Review Petition No. 13/RP/2019 alongwith I.A. No. 68/IA/2019 is disposed of accordingly.

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

Sd/-
(P.K Pujari)
Chairperson