

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 166/MP/2018

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

Date of Order: 14th February, 2019

In the matter of:

Petition under Section 79(1)(f) read with Section 79 (1) (c) of the Electricity Act, 2003 and Regulation 33B of the Grant Of Connectivity (Long Term Access, Medium Term Open Access in Inter-State Transmission and Related Matters) Regulations, 2009 and the Detailed Procedure issued there under.

**And
In the matter of**

Power Grid Corporation of India Limited
Saudamini, Plot No. 2, Sector 29
Gurugram – 122 001
Haryana

....Petitioner

Versus

Jaiprakash Power Ventures Limited,
Through Managing Director
Corporate Office, Sector 128
Noida – 201 304
Uttar Pradesh

....Respondent

Parties present:

Ms. Suparna Srivastava, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL
Ms. Astha Sharma, Advocate, JPVL



ORDER

The present Petition has been filed by the Petitioner, Power Grid Corporation of India Limited (hereinafter referred to as 'Petitioner') under Sections 79 (1) (f) read with Section 79 (1) (c) of the Electricity Act, 2003 and Regulation 33B 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 (hereinafter to be referred as 'Connectivity Regulations') for seeking clarification as to the application of appropriate provision of Para 23 of the Detailed Procedure notified under the Connectivity Regulations for administration of the Respondent's request for non-processing of its LTA Application.

2. The Respondent, Jaiprakash Power Ventures Limited (hereinafter referred to as 'Respondent') is a generating company and has established a generating station, namely, JP Nigrie Super Thermal Power Station of 2 x 660 MW in the Nigrie District of the State of Madhya Pradesh.

3. On 27.8.2016, the Respondent made an application for Long Term Access for conveyance/transmission of 450 MW from the place of generation at Nigrie in the State of Madhya Pradesh from Western Region to the Northern Region and had also furnished a bank guarantee of Rs 45 lakh as required in terms of the Connectivity Regulations. The LTA application of the Respondent was approved at the 24th Meeting of Western Region constituents for Connectivity & LTA applications held on 21.12.2016. Thereafter, the LTA application was to be taken up for consideration



before the Constituents of Northern Region. The Petitioner vide its letter dated 19.5.2017 informed the Respondent that meeting of Northern Region Constituents shall be held on 30.5.2017.

4. Prior to the meeting of the Northern Region Constituents to be held on 30.5.2017, the Respondent vide its letter dated 25.5.2017 requested the Petitioner that its LTA application may be treated as withdrawn and further requested for the return of the bank guarantee. However, the Respondent vide its another letter dated 29.5.2017 withdrew its letter dated 25.5.2017.

5. During the 10th Meeting of Northern Region constituents regarding Connectivity/LTA Applications held on 30.5.2017, the Respondent requested that its LTA application made by it be kept on hold. The Committee advised the Respondent to make a formal request to the CTU, which shall take action as per the regulatory provision.

6. Accordingly, the Respondent vide its letter dated 14.6.2017 requested the Petitioner for the cancellation of its LTA and the return of bank guarantee submitted along with the LTA application. However, the Respondent vide its another dated 13.7.2017 requested the Petitioner to keep its LTA application in abeyance due to uncertainty about the procurement of power by the procurer. The Respondent has also stated that its letter dated 13.7.2017 shall supersede its earlier letter dated 14.6.2017.



7. The Petitioner has submitted that Regulation 12(5) of the Connectivity Regulations clearly provides for encashment of application bank guarantee in the case where the LTA application is withdrawn by the applicant, which has also been reiterated in Detailed Procedure on grant of Connectivity, Long-Term Access and Medium-Term Access (hereinafter referred to as the “Detailed Procedure”) in Para 23.5(i) which provided that the application bank guarantee may be encashed by the nodal agency if the application is withdrawn by the applicant.

8. The Petitioner has contended that consequent upon amendments dated 5.6.2015 and 17.2.2016 in the Detailed Procedure, there are two sets of provisions, in relation to seeking non-processing of LTA application. As per Para 23.8 of the Detailed Procedure, if an application is withdrawn, then the same shall attract the encashment of application bank guarantee. However, in terms of Para 23.16 of the Detailed Procedure, if a request for non-prosecution of LTA application is made by an applicant seeking abeyance/ deferment in processing the application, the application can be closed but application BG is required to be returned to the applicant.

9. The Petitioner has submitted that the Respondent has made inconsistent requests in its letters dated 25.5.2017, 29.5.2017, 14.6.2017 and 13.7.2017. Each of these requests made by the Respondent’s different letters, alternated between being governed by Regulation 12(5) of Connectivity Regulations read with Para 23.8 (‘withdrawal’) and 23.16 (‘abeyance’) of the Detailed Procedure.



10. The Petitioner has submitted that the intent behind the Para 23.16 of the Detailed Procedure under Connectivity Regulations is a one-time measure to provide a regulatory solution to the long pending LTA applications and is not intended to encourage any applicant to vary its options in respect of under- process application as per its convenience in the disguise of seeking abeyance. The Respondent had also not furnished any substantial ground for 'keeping the application in abeyance' and the only reason furnished for such a request has been made on the basis of internal discussions on uncertainty of power procurement by procurers and has not furnished any time-limit till which the application is to be kept in abeyance.

11. The Petitioner has submitted that the provision under Para 23.16 of the Detailed Procedure, first-part, potentially overlaps with the provision under Para 23.8, both resulting in closure of LTA application but with very different consequences for the accompanying application bank guarantee.

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

(a) issue clarification as to the application of appropriate provision of Para 23 of the Detailed Procedure notified under the Connectivity Regulations for administration of the Respondent - Jaiprakash Power Ventures Limited's request for non-prosecution of its LTA Application No. 1200000471; and

(b) in the alternative, declare that the Petitioner/Nodal Agency shall be entitled to encash the application bank guarantee in the sum of Rs 45,00,000 Lacs furnished by the Respondent , Jaiprakash Power Ventures Limited through the ICICI Bank Limited and appropriate the same in view of the cancellation of the Long Term Access sought for by the Respondent – Jaiprakash Power Ventures Limited.



13. The Petition was heard on 20.12.2018 and notice was issued to the respondent to file its reply. The Respondent has filed its reply vide affidavit dated 7.1.2019 and submitted as under: -

(a) As per Regulation 27 of the Connectivity Regulations, CTU is required to submit the 'Detailed Procedure' before the Commission, for its approval, within a period of 60 days of notification of the Regulations. CTU vide its letter dated 9.11.2009 submitted the draft of "Detailed Procedure on grant of Connectivity, Long-term Access & Medium-term Open Access" and the Commission while considering the said draft detailed procedure submitted by the CTU, approved the same vide its Order dated 31.12.2009.

(b) The said Detailed Procedure was subsequently amended vide the notifications dated 5.6.2015 and 17.2.2016. This Commission vide the amendment notification dated 17.2.2016 has added Para 23.16 to the Detailed Procedure, which provides that,, if the LTA applicant requests for deferment or abeyance of the LTA application, then the said application shall not be processed and the CTU in such cases shall close the LTA application and return the bank guarantee.:

(c) The Petitioner in the current Petition has submitted that the letters dated 25.5.2017, 29.5.2017, 14.6.2017 and 13.7.2017 are inconsistent with each other and there is no clarity as to whether the LTA application filed by the Respondent is sought to be withdrawn or is to be kept in abeyance. The letters dated 25.5.2017, 29.5.2017 and 13.7.2017 are not inconsistent as contended by the Petitioner. The Respondent vide its letter dated 13.7.2017 has clarified that considering



uncertainty about procurement of power by the procurer, the LTA application filed before the Petitioner on 27.8.2016 shall be kept in abeyance and has also clarified that the request made by the said letter shall supersede the earlier letter dated 14.6.2017, whereunder the Respondent has sought withdrawal of the LTA application..

(d) Since, as per Para 23.16 of the Detailed Procedure, any request for abeyance of the LTA application is required to be rejected and the CTU in such cases is required to close the LTA application and return the bank guarantee. Therefore, considering the request made by the Respondent vide its letter dated 13.7.2017 to keep the LTA application in abeyance, the LTA application of the respondent may be closed by the Petitioner. The Respondent vide its letter dated 13.7.2017 has clearly requested for keeping its LTA applications in abeyance. Therefore, if the Petitioner is closing the LTA application, the Petitioner is obliged under Para 23.16 of the Detailed Procedure to return the application bank guarantee submitted by the Respondent.

(e) The Detailed Procedure provides for two different procedures in two different scenarios. As per Para 23.8 of the Detailed Procedure, if the applicant intends to withdraw the LTA application then the bank guarantee submitted in compliance of Regulation 12(3) of the Connectivity Regulations is allowed to be invoked. However, if the applicant intends to keep the LTA application in abeyance, then in compliance of Para 23.16 of the Detailed Procure, such application is required to be closed and the CTU is required to return the bank guarantee. The said two procedures prescribed under Para 23.8 and 23.16 of the Detailed Procedure are



for two different scenarios and are in no way overlapping. Therefore, the stand taken by the Petitioner that provision under para 23.16 of the Detailed Procedure is potentially overlapping with the provision under para 23.8 of the Detailed Procure is without any merit.

(f) Due to uncertainty in procurement of power by the procurer, The Respondent vide his letter dated 13.7.2017 requested CTU to keep its LTA application in abeyance, till the time such uncertainty prevails. Therefore, considering the content of the letter dated 13.7.2017 it is clear that request to keep the LTA application in abeyance, as sought by the Respondent, was due to certain unforeseen event and bone-fide in nature. However, the Petitioner did not respond to Respondent's request or close the application (in terms of para 23.16 of the Detailed Procedure) for more than a year. The Petitioner, under the guise of the present petition, is seeking review of Detailed Procedure with retrospective effect, which is not allowed under extant statutory and regulatory framework.

(g) Therefore, in light of the above, the LTA application should be kept in abeyance. In case the Petitioner does not intend to keep the LTA application in abeyance, then the Petitioner is required to return the bank guarantee in compliance of Para 23.16 of the Detailed Procedure. Therefore, considering Para 23.16 of the Detailed Procedure, it is submitted that the current Petition filed by the Petitioner for seeking clarification and/or encashment of the bank guarantee is misconceived, without any merit and is required to be rejected.



Analysis and Decision:

14. In the light of the submission made by the parties, the only issue which arises for our consideration is whether the application Bank Guarantee is to be encashed by the Petitioner or the Respondent is entitled for the return of the Bank Guarantee.

15. The Petitioner has submitted that the respondent, JPVL, has made an application for LTA in terms of the Connectivity Regulations and the Detailed Procedure for conveyance/ transmission of 450 MW from the place of generation at Nigrie, Madhya Pradesh from WR to the NR, and the Respondent had furnished a bank guarantee dated 18.8.2016 of Rs. 45 lakh. Subsequently, the Respondent, Jaiprakash Power Ventures Limited has requested for non-processing of its LTA Application either by requesting to withdraw the application or requesting to keep the application in abeyance.

16. The Petitioner has stated that the Respondent's stance is not consistent and has provided the following timelines as regards Respondent's requests: -

Date of the Respondent's Letter/ Statement	Request made	Provision attracted (Detailed Procedure)	Commercial Implication
21.12.2016 (24 th WR SCM)	Application was agreed with specified system	-	-
25.05.2017	"[application] may kindly be treated as withdrawn"	23.8	BG liable to be encashed
29.05.2017	"we wish to withdraw our letter [dated 25.05.2017]"	-	-
30.05.2017 (10 th NR Constituents Meeting)	"... THE RESPONDENT requested that their LTA application may be kept on hold. ... Committee advised JVPL to give formal request to CTU and CTU shall take action as per the regulatory	23.16 (subject to appropriate formal request)	BG not liable to be encashed



	provisions.”		
14.06.2017	“[application] may please be cancelled”	23.8	BG liable to be encashed
13.07.2017	“application may not be processed for the time being and may please be kept in abeyance ...” “this letter shall supersede our earlier letter dated 14.06.2017”	23.16	BG not liable to encashed

17. The Petitioner has contended that in the Detailed Procedure, there are two set of provisions, in relation to seeking non-processing of LTA application. As per Clause (5) of Regulation 12 of Connectivity Regulations read with Para 23.8, if an LTA application is withdrawn, then the same shall attract the encashment of application bank guarantee. Whereas, under Para 23.16 of the Detailed Procedure, if an LTA applicant seeks abeyance or deferment of its LTA application, the application is liable to be closed but application BG is required to be returned to the applicant. The Petitioner contends that the provision under Para 23.16 of the Detailed Procedure, first-part, potentially overlaps with the provision under Para 23.8, both resulting in closure of LTA application but with very different consequences for the accompanying application bank guarantee.

18. The Commission had approved Amendments to the Detailed Procedure dated 17.2.2016, wherein Para 23.16 was inserted in the Detailed Procedure, which provided as under :-

(i) All pending LTA applications which were kept on ‘hold’ or in ‘abeyance’ shall be finalized for closure/grant and no such applications shall be kept further pending with nodal agency. In all such cases, where the application is being closed, the application bank guarantee was to be returned.



(ii) *In case of a new application where applicant seeks application to be kept in abeyance or if the applicant does not attend the LTA meetings, then the application shall be closed. In all such cases, the application bank guarantee was to be returned.*

19. The Petitioner has submitted that the intent behind the Para 23.16 of the Detailed Procedure is a one-time measure to provide a regulatory solution to the long pending LTA applications and is not intended to encourage an applicant to vary its options in respect of under- process application as per their convenience in the disguise of keeping the application in abeyance.

20. The Respondent has submitted that in its letter dated 13.7.2017, it nowhere intends to withdraw the LTA application filed by it and only intended to keep the LTA application in abeyance. Therefore, in the light of Para 23.16 of the Detailed Procedure, the Petitioner is obliged to return the application bank guarantee. Para 23.8 and para 23.16 of the Detailed Procedure deals with two different situations i.e. withdrawal of LTA application and request for keeping in abeyance an LTA application. Therefore, there is no overlap in the said provisions.

21. We have considered the submissions of Petitioner and Respondent. We have also perused the provisions in the Connectivity Regulations and the Detailed Procedure regarding the encashment of Bank Guarantee. The relevant clause of Regulation 12 of the Connectivity Regulations is extracted as under:

12. *Application for long-term access*

.....
(3) *The application shall be accompanied by a bank guarantee of Rs 10,000/- (ten thousand) per MW of the total power to be transmitted. The bank guarantee shall be in favour of the nodal agency, in the manner laid down under the detailed procedure.*



(4) *The bank guarantee of Rs. 10,000 /- (ten thousand) per MW shall be kept valid and subsisting till the execution of the long-term access agreement, in the case when augmentation of transmission system is required, and till operationalization of long-term access when augmentation of transmission system is not required.*

(5) *The bank guarantee may be encashed by the nodal agency, if the application is withdrawn by the applicant or the long-term access rights are relinquished prior to the operationalisation of such rights when augmentation of transmission system is not required.*

(6) *The aforesaid bank guarantee will stand discharged with the submission of bank guarantee required to be given by the applicant to the Central Transmission Utility during construction phase when augmentation of transmission system is required, in accordance with the provisions in the detailed procedure.*

As per the above provisions, an applicant who applies for LTA shall provide an application BG of Rs. 10,000/- per MW for the total quantum applied in favour of nodal agency. Further, Clause (5) provides that bank guarantee may be encashed by the nodal agency, if the application is withdrawn by the applicant.

22. Para 23.5 of the Detailed Procedure approved by the Commission dated 31st December, 2009 provides for encashment of BG by the nodal agency. Further, the clause 23.5 was renumbered as 23.8 vide amendment dated 5.6.2015 to the Detailed Procedure. The relevant portion of the said Para is extracted as under:

“23.8. The bank guarantee may be encashed by the nodal agency,

(i) if the application is withdrawn by the applicant or

(ii) If, the long-term access rights are relinquished prior to the operationalisation of such long-term access when augmentation of transmission system is not required, or

(iii) If the applicant fails to sign the Long Term Access Agreement with CTU or a tripartite agreement with CTU and transmission licensee, as the case may be, and fails to furnish appropriate BG for construction phase, within stipulated time as indicated in the intimation letter, or



(iv) If the applicant fails to submit the extension letter of the earlier furnished BG at least 30 days prior to its expiry.

As per the above provisions, the bank guarantee may be encashed by the nodal agency, if the application is withdrawn by the applicant.

23. The Commission thereafter issued amendment to the Detailed Procedure dated 17.2.2016 and added Para 23.16 to deal with the situation wherein, the LTA application has been kept in abeyance. The relevant portions of the Para 23.16 is extracted as under:

“23.16 CTU shall not hold any LTA application in abeyance and process the applications within the timeline prescribed in Regulation 7 of the Connectivity Regulations. If any LTA applicant requests CTU in writing for deferment of consideration of its applications or does not participate in the LTA meetings despite being invited by CTU, the application shall not be further processed. CTU shall in such cases close the applications and return the bank guarantee.

In respect of applications which are already pending with CTU on request of the applicants or for their non-participation in the LTA meetings, CTU may give a notice of 15 days in writing to the concerned LTA applicants about the closure of the application. If any applicant is willing to pursue his application the same shall be processed in the next LTA meeting. If the applicant seeks further deferment of extension of application or does not respond to the notice, CTU may proceed to close the applications and return the bank guarantee”

As per the above provisions, if any LTA applicant seeks for deferment or abeyance of its applications or does not participate in the LTA meetings then the nodal agency shall close the applications and return the bank guarantee to the applicant.

24. In the Statement of Reasons to the Connectivity Regulations, the Commission has explained the purpose of bank guarantee as under:

“68. We are of the view that furnishing of Bank Guarantee is required to bring seriousness to the applications made by applicants. However, a provision has



been made requiring the bank guarantee to stand discharged with the submission of bank guarantee required to be given by the applicant to the Central Transmission Utility during construction phase when augmentation of transmission system is required, in accordance with the provisions in the detailed procedure. Furthermore, the amount of Bank Guarantee has been reduced from the originally proposed Rs. 1 lakh per MW to Rs. 10,000 per MW.”

As stated above, the purpose of prescribing bank guarantee is to foster seriousness among the LTA applicants.

25. The Connectivity Regulations and the Detailed Procedure are very clear about conditions of encashment of application BG. Para 23.16 to the Detailed Procedure provides that if any LTA applicant seeks for deferment or abeyance of its applications or does not participate in the LTA meetings, then the nodal agency shall close the applications and return the bank guarantee to the applicant. In the other case of an applicant seeking to withdraw an LTA application, the bank guarantee shall be encashed in terms of provisions of para 23.8 of the Detailed Procedure. In our view, the para 23.8 and para 23.16 of the Detailed Procedure deal with two different situations. Para 23.8 deals with withdrawal of LTA application while para 23.16 deals with requests for keeping in abeyance an LTA application. Therefore, we do not agree with contention of the Petitioner that para 23.16 of the Detailed Procedure was a one-time solution for long pending applications. We also do not agree with the contention of the Petitioner that there is an overlap between these two provisions.

26. We have perused letters of the Respondent & SCM minutes. It is clear in the Detailed Procedure that ‘withdrawal’ of application attracts encashment of BG. We note that the Respondent withdrew its letters dated 25.05.2017 and 14.06.2017 where it said that it had requested to withdraw its LTA application. We also observe



that CTU did not take any action on the application viz. withdrawal or abeyance till the filing of petitions (more than 1 year), when the Detailed Procedure was already in place. As of now, it is only the letter of 13.7.2017 that remains relevant for the purpose of deciding this Petition since we have no information if any action was taken by the Petitioner.

27. We have gone through the Respondent's letter dated 13.7.2017 requesting for keeping its LTA application in abeyance. The relevant portions of the said letter is extracted as under:

"Subject: LTOA Application No. 12000000471
Ref :Our letter dated 14.6.2017

Dear Sir,

In continuation to letter dated 14.06.2017, we wish to submit that we have reviewed the matter internally in the company and it is requested that our application may not be processed for the time being and may please be kept in abeyance due to uncertainty about procurement of power by the procurer. We shall intimate about the processing of application separately at an appropriate time. It is also submitted that this letter shall supersede our earlier dated 14.6.2017.

Thanking you,

Yours faithfully

For Jaypee Nigrie Super Thermal Power Station
(A Division of Jaiprakash Power Ventures Ltd)

Sd/-

SUREN JAIN
(Managing Director)"

The perusal of the above letter reveals that the respondent had made its stand clear to keep its LTA application in abeyance due to uncertainty of procurement of power by the procurer.



28. In view of the above, we are inclined to hold that the CTU is obliged to return the bank guarantee to the respondent under Para 23.16 of the Detailed Procedure. The CTU shall do so within 15 days of issue of this order.

29. The Petition No.166/MP/2018 is disposed of in terms of the above.

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

Sd/-
(P. K. Pujari)
Chairperson

