

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 318/MP/2018

Coram:

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

Date of Order: 09.04.2019

In the matter of:

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) Regulation 2010 thereby seeking quashing of the letters dated 28.3.2018, 29.3.2018 and 3.10.2018 issued by PGCIL.

And

In the matter of

M/s SEI Sunshine Power Private Limited
10th Floor, Menon Eternity
Old No. 110, New No. 165,
St. Mary's Road, Alwarpet,
Chennai- 600018 Tamil Nadu

....Petitioner

Versus

Power Grid Corporation of India Limited
Saudamini, Plot No. 2, Sector- 29,
Gurgaon- 122001, Haryana

...Respondent

Parties present:

Shri Sanjay Sen, Senior Advocate, SSPPL
Ms. Jyotsna, Advocate, SSPPL
Shri Nishant Kumar, Advocate, SSPPL
Shri Hemant Singh, Advocate, SSPPL
Shri Pawan Kumar Gupta, SSPPL
Ms. Suparna Srivastava, Advocate, PGCIL
Shri Bhaskar Wagh, Advocate, PGCIL



ORDER

The present petition has been filed by SEI Sunshine Power Private Limited (hereinafter to be referred as “the Petitioner”) seeking direction to quash the letters dated 28.3.2018, 29.3.2018 and TSA termination notice dated 3.10.2018 issued by PGCIL. The petitioner is a generating company setting up solar based generating station at Shivpuri, Madhya Pradesh. The Respondent is Central Transmission Utility within the meaning of the Section 38 of the Electricity Act, 2003 (“the Act”). The Petitioner has made the following prayers:

- a) Quash the letters dated 28.03.2018 and 29.03.2018 issued by PGCIL and hold that the same are illegal;
- b) Quash the TSA termination notice dated 03.10.2018 on account of its being illegal and arbitrary;
- c) Hold and declare that the LTA granted to the Petitioner shall be operationalised in accordance with the provisions of the LTAA, TSA and the Sharing Regulations ; and
- d) hold and declare that the Petitioner is not liable to make payment of any transmission charges in terms of Regulation 7(1)(y) of the 5th amendment of the CERC Sharing Regulations, 2010.

Background:

2. The Petitioner has mainly submitted as under :

- a) The Petitioner along with its five other SPV’s is setting up solar based generating station at Shivpuri, Madhya Pradesh with installed capacity of 30 MW each, thereby totaling to 180 MW. The Petitioner, has also executed Power Purchase Agreements (PPAs) dated 15.7.2015 with Tata Power Delhi Distribution Ltd (TPDDL) for sale of cumulative quantum of 180 MW of electricity from their solar based power plants.
- b) The Petitioner vide its application dated 28.7.2015 applied for grant of LTA to the extent of 180 MW for supplying power to Tata Power Delhi Distribution Limited. PGCIL, vide its intimation letter dated 29.7.2016, granted the LTA to the Petitioner. As per the said intimation letter, the LTA was to be operationalised either from



30.9.2016 or from the date of availability of the specified Transmission System, whichever is later.

c) Pursuant to the grant of LTA, the Petitioner and PGCIL also executed Long Term Access Agreement (LTAA) and Transmission Service Agreement dated 26.8.2016. Accordingly, the Petitioner planned the implementation of the projects keeping in mind the development of the specified Transmission System, which was specifically detailed by PGCIL in the LTA intimation letter dated 29.7.2016. The following transmission system was required to be implemented for operationalising the LTA granted to the Petitioner:

“Inter-regional system strengthening scheme in WR and NR (Part-B)

- Jabalpur PS – Orai 765 kV D/C line
- Orai – Aligarh 765 kV D/C line
- Orai–Orai 400 kV D/C (Quad) line
- LILO of one ckt of Satna – Gwalior 765 kV 2xS/C line at Orai
- LILO of Agra – Meerut 765 kV S/C at Aligarh
- LILO of Kanpur – Jhatikara 765 kV S/C at Aligarh

Transmission system strengthening in WR-NR Transmission Corridor for IPPs in Chhattisgarh

- Up-gradation of ± 800 kV, 3000 MW HVDC bipole between Champa PS – Kurukshetra (NR) to 6000 MW
- Kurukshetra (NR) – Jind 400 kV D/c (Quad)”

d) The Respondent, PGCIL vide letter dated 28.3.2018 informed the Petitioner that Jabalpur - Orai - Aligarh 765 kV corridor has been charged and is likely to be commissioned by 31.3.2018 and with its commissioning margin shall be available to transfer 180 MW to NR and accordingly LTA of 180 MW granted to the Petitioner shall be operationalised w.e.f. 1.4.2018. PGCIL vide its another letter dated 29.3.2018 directed the Petitioner to furnish LC of Rs 7.75 crore towards payment security mechanism.

e) In reply to PGCIL’s letter dated 28.3.2018, the Petitioner vide its letter dated 14.5.2018 objected to the operationalization of LTA and opening of LC as a payment security mechanism. The Petitioner requested PGCIL to operationalise the LTA in line with the completion the specified transmission system as mentioned in LTA grant letter dated 29.7.2016. The Petitioner also informed PGCIL that solar

power projects are exempted from making any payment towards transmission charges and losses and therefore, there is no requirement for opening any LC towards the payment security mechanism.

f) PGCIL did not give any reply to the Petitioner's letter dated 14.5.2018. Further, PGCIL vide its letter dated 3.10.2018 issued notice for termination of the TSA on account of non-opening of LC in its favour towards the payment security mechanism for the transmission charges and losses. In reply, the Petitioner vide its letter dated 22.10.2018 reiterated its earlier stand that the operationalisation of LTA is not valid and the Petitioner is not required to open LC towards payment security mechanism.

g) PGCIL's request for the opening of LC is contrary to Regulation 7(1)(y) of the Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) (Fifth Amendment) Regulations, 2017 (hereinafter to be referred as Sharing Regulations). The LTA customer is required to open an LC for the purpose of securing the payment of transmission charges and losses which may accrue for utilizing the LTA granted by PGCIL. In the present case, the Petitioner is not required to make payment of any transmission charges for utilizing the said LTA, and as such there is no requirement, whatsoever, to open any LC. Further, the Respondent has also failed to issue any default notice under TSA. Therefore TSA termination notice in itself is bad in law.

3. The Petition was admitted and notice was issued to the PGCIL. PGCIL vide its affidavit dated 8.12.2018 has filed its reply to the Petition and the Petitioner vide its affidavit dated 10.1.2019 has filed its rejoinder to the reply filed by PGCIL.

4. PGCIL has mainly submitted as under :

(a) The Petitioner's letter for the grant of LTA was discussed in the 23rd Meeting dated 1.6.2016 of the Western Region constituents regarding connectivity/long-term access and in the 9th Meeting dated 30.5.2016 of the Northern Region constituents regarding connectivity/long-term access. The consideration of the Petitioner's application as also of many other generators was in the backdrop of relinquishment



of a large LTA capacity in WR-NR corridor (of 1980 MW) by many LTA customers. This relinquished quantum could be utilized for grant of LTA to other eligible LTA customers with the commissioning of Jabalpur PS-Orai 765 kV corridor under implementation as “Inter-Regional System Strengthening Scheme in WR and NR Part-B” and Champa- Kurukshetra HVDC Phase II under implementation as “Transmission System Strengthening in WR-NR Transmission Corridor for IPPs in Chhattisgarh”. The LTA to the Petitioner was agreed to be granted accordingly.

(b) PGCIL vide its intimation letter dated 29.7.2016, granted LTA for 180MW to the Petitioner. The date from which the LTA was granted was 30.9.2016 or from availability of the specified transmission system, whichever was later

(c) The proviso to Regulation 8 clause 5 of the Sharing Regulations provides as under:

“Provided further that where the operationalization of the LTA is contingent upon commissioning of several transmission lines or elements have been declared commercial, the generator shall pay the transmission charges for LTA operationalized corresponding to the transmission system commissioned.”

Further, the Commission in its Order dated 16.2.2015 in Petition No.92/MP/2014 had held that:

“129. In case of generation station with multiple units, LTA shall be operationalized if the transmission system are available for evacuation of entire contracted power from a particular unit.”

Thus, when the implementation of identified transmission system reached a stage where the LTA quantum from a unit or a generating station could be evacuated through it, then the LTA has to be operationalised by the Respondent.

(d) The regulatory regime applicable at the time of grant of LTA to the Petitioner and the entering into of the LTA Agreement was that if solar-based generation projects were commissioned during the period 1.7.2014 to 30.6.2017, no transmission charges for use of inter-State transmission system were payable by them. The LTA Agreement also accordingly proceeded based on the scheduled commissioning date of 30.9.2016 and not on the availability of identified transmission

system which could be later than 30.9.2016 or even 30.6.2017 (the cut-off date for claiming exemption). The Fifth Amendment to the Sharing Regulations came into force after the contractual arrangement between the Petitioner and the Respondent and therefore is not applicable in the present case.

(e) The Central Commission vide its order dated 19.8.2016 in Petition No.36/MP/2016 has observed that in case of a delayed commissioning of solar power project, there is no exemption available from the payment of transmission charges once the LTA is operationalised. Thus, when liability to pay transmission charges ensued, the provisions of TSA with regard to discharge of such liability also became applicable. The failure to pay transmission charges or opening of required LC ultimately results in termination of LTA.

(f) In compliance of the directions issued vide Order dated 28.10.2016 passed by the Commission in Petition No.84/MP/2016, a Meeting was held at the office of the Respondent on 4.11.2016 for operationalisation of the LTA against 559 MW of transmission capacity available after surrender of the LTA by different LTA applicants. In the said Meeting, where the representative of the Petitioner was present, the eligible LTA applicants in terms of their priority (with respect to the date of application) were given an option to have their respective LTAs operationalised with effect from 30.11.2016. The Petitioner, however, expressed no interest in early operationalisation of its LTA.

(g) In its another meeting dated 28.2.2017 for operationalisation/upgradation of LTAs against 559 MW of transmission capacity available after surrender of LTA by different LTA applicants as per the directions of the Commission in I.A. No.30/2016 and IA No.7/2017 in Petition No.84/MP/2016. The eligible LTA applicants in terms of their priority were again given an option to have their LTA upgraded & to be operationalised with commissioning of Champa-Kurukshetra HVDC Pole-I (3000 MW) link. As in the earlier Meeting, the representative of the Petitioner was also present in the said Meeting but did not express any interest in early operationalisation of their LTA. The Petitioner was given an opportunity to operationalise its LTA against the available transmission system capacity (each of the above two Meetings having taken place immediately after the scheduled start

date of the LTA i.e. 30.9.2016 had been reached) and yet, the Petitioner chose not to operationalise the LTA. Therefore, the contention of the Petitioner that it was awaiting for the commissioning of identified transmission system for commissioning its generation projects is not sustainable.

(h) The Petitioner was also not in the readiness to commission the projects and was seeking to wrongly shift the onus of delay on the Respondent. The progress of the Petitioner's project was being discussed from time to time in various Joint Coordination Committee (JCC) Meetings of IPPs granted LTA in the Western Region. In the 14th JCC Meeting held on 27.12.2016, the Petitioner informed the commissioning date of its projects as June, 2017. The Petitioner thereafter did not attend the 15th and 16th JCC Meetings. In the 16th JCC Meeting held on 16.6.2017, it was recorded that the Petitioner had consistently been absent from JCC Meetings. In the 17th JCC Meeting dated 20.9.2017, the expected commissioning date for the Petitioner's project was recorded as March, 2018. It was also noted that Section 68 permission was yet to be applied for by the Petitioner. Thereafter, in the 18th JCC Meeting, it was informed that Petitioner's project was expected to be commissioned by September, 2018. Even, at this stage the Section 68 approval was yet to be obtained and that the work on connectivity line was also yet to begin. Petitioner again did not attend the subsequent JCC Meetings where the status of commissioning of the inter-regional system strengthening scheme in WR and NR (the Jabalpur – Orai-Aligarh corridor) was discussed. The asset was commissioned in March, 2018/April, 2018 and was also informed in the 19th JCC Meeting. Further the minutes of all JCCs are also regularly uploaded on CTU website through which the information regarding the status of associated transmission system can be obtained. Even in the Meetings that the Petitioner did attend, no issue was ever raised as regards the commissioning of the Respondent's transmission system for enabling it to commission its own generating units.

(i) After the commissioning of Jabalpur – Orai-Aligarh corridor, power from the Petitioner's projects was ready to be evacuated. Therefore, in accordance with the directions of the Commission in Order dated 16.2.2015 in Petition No.92/MP/2014, the Respondent vide its letter dated 28.3.2018 informed the Petitioner that its LTA would be operationalised with the commissioning of Jabalpur – Orai- Aligarh corridor.



Accordingly, the Respondent vide letter dated 29.3.2018 requested the Petitioner to open a Letter of Credit.

(j) The Petitioner has failed to complete its project and therefore, the benefit of exemption from payment of transmission charges was not available to the Petitioner. Therefore, the Respondent, vide its letter dated 29.3.2018, requested the Petitioner to open an LC for a sum of ₹7.75 crore as payment security mechanism for operationalization of 180MW LTA granted to it.

(k) The Petitioner has refused to open LC in response to the letter dated 29.3.2018. Thereafter, the Respondent issued a notice of default dated 2.8.2018 upon the Petitioner (vide email as well as speed post at the address used in its correspondences) for rectification of the said default within 30 days from the date of issuance thereof. However, when despite the default notice the Petitioner failed to open the requisite LC, the Respondent was constrained to invoke the provisions of clause 16.4.4 of the TSA and issue the termination notice dated 3.10.2018 affording an opportunity (Consultation Period) of 30 days to the Petitioner to rectify the default of non-opening of LC failing which, the Petitioner was to cease to be a DIC and was to become ineligible to inject power into the inter-State transmission system through any form of access as directed by the Commission in its Order dated 8.3.2018 passed in Petition No.229/RC/2015. Therefore, the contention of the Petitioner that it did not receive any LC default notice and that the consultation period as mentioned under Clause 16.4.1 of the TSA was never provided to it before issuing the impugned termination notice dated 3.10.2018 is incorrect and is liable to be rejected.

(l) The Petitioner is liable to pay to the Respondent the transmission charges billed on it as per the Sharing Regulations and open the mandatory LC in compliance of the impugned letter dated 29.3.2018, failing which the Respondent is within its rights and entitlement to take necessary action, including the impugned action of termination of TSA, as permitted under the Regulations of the Commission. There is thus, no infirmity in the impugned actions of the Respondent qua the Petitioner as has wrongly been alleged in the present Petition.



5. The Petitioner vide its rejoinder affidavit dated 10.1.2019 has mainly submitted as under :

(a) The 23rd meeting of WR constituents for connectivity and LTA application held on 1.6.2016 itself records that the LTA shall be granted subject to the commissioning of Jabalpur- Orai 765 kV corridor and Champa - Kurukshetra HVDVC Phase- II. However, Champa- Kurukshetra Phase II is still under construction and therefore PGCIL cannot seek operationalisation of LTA, at this stage. Further, as per the minutes of meeting of 4.11.2016 held by PGCIL for operationalisation of LTA, the concurrence of LTA customer is a condition precedent for the early operationalisation of LTA. The Petitioner never opted for the early operationalisation of LTA and therefore PGCIL cannot unilaterally pre-pone the operationalisation of LTA.

(b) In the 21st JCC meeting for generation projects in WR, conducted by PGCIL, on 28.9.2018, it was specifically recorded that the upgradation of 800kV, 3000MW HVDC bipole between Champa Pooling station – Kurukshetra (NR) to 6000 MW, which is part of the “identified” transmission system mentioned in the LTA intimation letter of the Petitioner, will only get commissioned in June, 2019. PGCIL has been frequently changing the date of LTA operationalisation, which subjected the Petitioner to unnecessary hardship and therefore, the Petitioner has been restrained from implementing its Project. The operationalisation of LTA by the PGCIL has no legal sanctity as the said LTA can be operationalised after commissioning of “identified transmission system of PGCIL in accordance with the terms of intimation letter and LTAA executed between the Petitioner and PGCIL.

(c) The argument of PGCIL that since, the Petitioner has delayed the commissioning of the Project and therefore the benefit of Regulation 7 of the 5th Amendment of Sharing Regulation is not tenable. The exemption from the payment of transmission charges was upto 30.6.2017, which was further extended to 31.12.2019 by 5th Amendment of the Sharing Regulations.

(d) The reliance of PGCIL upon first and second Proviso of clause (5) of Regulation 8 of the Sharing Regulation is misplaced as the said Regulation is applicable in the cases where LTA has been operationalised and generating station



or unit has been delayed. However, in the present case LTA can become effective only after commissioning of transmission system as mentioned in LTA grant letter.

(e) The letter dated 29.3.2018 issued by PGCIL and directing the Petitioner to open the LC for payment security mechanism towards the alleged transmission charges has no basis and is completely illegal as the Petitioner is already exempted from payment of transmission charges and losses in terms of the provisions contained under the Fifth Amendment of the CERC (Sharing of Inter State Transmission Charges and Losses) Regulation 2010 for a period of 25 years, in the event the generating station of the Petitioner is commissioned by 31.12.2019. Further, the question of payment of transmission charges will only arise if the transmission system as mentioned in the LTA intimation letter and LTAA is commissioned and the Petitioner's generating station is not ready. However, in the present case the transmission system of PGCIL is yet to be commissioned and as such until the said system is commissioned by PGCIL, PGCIL cannot claim any transmission charges or any payment security mechanism, whatsoever.

(f) The contention of the respondent that the benefit of exemption of Regulation 7(1)(u) shall be available only when the power is evacuated through transmission system to the beneficiaries after the commercial operation of generating station is misplaced as the Sharing Regulation does not provide for any such condition for levy of transmission charges. The Respondent has no right to claim any transmission charges until the "identified" transmission system as per the LTA intimation letter and LTAA is commissioned.

(g) The LTA intimation letter clearly records the date of grant of LTA with effect from 30.9.2016 or the availability of the transmission system, "whichever is later". The transmission system was not ready as on 30.9.2016 and therefore, the date of operationalisation of LTA can be considered only after 30.9.2016. As per the minutes of 23rd meeting of WR constituents, minutes of meeting of 4.11.2016 and 2.8.2017, minutes of 21st JCC meeting held on 28.9.2018 makes it clear that "identified" transmission system as mentioned in LTA intimation letter read with LTAA, being the 800 kV, 3000 MW HVDC bipole between Champa pooling station- Kurukshetra will only get commissioned in June 2019 and accordingly the Petitioner is implementing

its solar plants in accordance with the timelines of PGCIL qua construction/ implementation of the 'Identified transmission system.

(h) PGCIL has wrongly relied upon the order of the Commission in Petition No. 36/MP/2016 by suggesting that the exemption will not be available to solar power generators in the event of commissioning of power plant is delayed by generators. However, in the present case, there is no delay in the implementation of the project as the transmission system is yet to be implemented by PGCIL.

(i) PGCIL has wrongly relied upon the Commission's order dated 16.2.2015 in Petition No. 92/MP/2014 to contend that LTA can be partly operationalised. The Commission has allowed part operationalisation of LTA in Petition No. 92/MP/2014 for the reason that if an LTA customer who is having multiple generation units and is desirous of evacuating power from a particular unit prior to the implementation of the entire transmission system. However, in the present case, the Petitioner was scheduling its commissioning in accordance with the availability of the entire transmission system and as such there was no requirement for "prior" operationalisation of the LTA of the Petitioner.

(j) The contention of PGCIL that exemption from the payment of the transmission charges is not applicable to the Petitioner as the Project is yet to be commissioned, is not sustainable as the 5th Amendment to the Sharing regulations, 2010 clearly exempts the Petitioner from the payment of any transmission charges.

6. The Petitioner has also filed its written submission dated 7.2.2019 where the Petitioner has mainly reiterated the submission made in the Petition and its reply, and the same has been considered.

7. The Commission, vide RoP dated 17.1.2019, directed PGCIL to submit the details of nine other generators to whom LTAs have been made operationalised along with the respective corridors.



8. PGCIL in compliance to the Commission's directions dated 17.1.2019 has submitted the required information as below :

a) The details of the 9 Nos. of cases/generators including that of the Petitioner are as below:

Table – I			
S.No.	Name of the Applicant	Injecting Region	Quantum of LTA sought for NR (MW)
1.	MB Power (Madhya Pradesh)Ltd.	WR	169
2.	MB Power (Madhya Pradesh)Ltd.	WR	31
3.	KSK Mahanadi Power Company Ltd.	WR	1000
4.	MB Power (Madhya Pradesh)Ltd.	WR	144
5.	Suzlon Power Infrastructure Ltd.	SR	40
6.	Suzlon Power Infrastructure Ltd.	SR	40
7.	Suzlon Power Infrastructure Ltd.	SR	40
8.	SEI Sunshine Power Pvt. Ltd.	WR	180
9.	TRN Energy Ltd.	WR	240
	Total		1884

b) The above generation projects were granted LTA along with WR-NR transmission corridors viz. Jabalpur – Orai 765 kV D/c line and Champa PS – Kurukshetra ±800 kV, 3000 MW HVDC Bipole-2.

c) However, some of these generation projects [S.Nos. 1–4 & 9 in Table-1 above] were operationalized along with WR-NR corridors i.e. Champa – Kurukshetra HVDC Phase-I/Phase-II, Bipole-1 (1500 MW each) and/or Jabalpur – Orai 765 kV D/c line as given below:

Table – 2				
Sr. NO.	Name of the Applicant	Quantum of LTA for NR (MW)	Date of Commencement of LTA	WR – NR Corridor for operationalization
	MB Power (Madhya Pradesh) Ltd.	169	01-Apr-2017	Champa – Kurukshetra HVDC Phase-I, Bipole-1 (1500 MW)
	MB Power (Madhya Pradesh) Ltd.	31 (Target)	01-Oct-2017	Champa – Kurukshetra HVDC Phase-II, Bipole-1 (additional 1500 MW)
	KSK Mahanadi Power Company Ltd	1000	20-Apr-2017	Champa – Kurukshetra HVDC Phase-I, Bipole-1 (1500 MW)
	MB Power (Madhya Pradesh) Ltd.	144	02-May-2018	Jabalpur – Orai 765 kV D/c line
	TRN Energy Ltd.	240	20-Apr-2017	Champa –



Table – 2				
Sr. NO.	Name of the Applicant	Quantum of LTA for NR (MW)	Date of Commencement of LTA	WR – NR Corridor for operationalization
				Kurukshetra HVDC Phase-I, Bipole-1 (1500 MW)

d) In regard to LTAs granted to M/s Suzlon Power Infrastructure Ltd. (SPIL) for 40 MW each [S.Nos. 5–7 in Table-1 above], as per clause 10.13(ii) of the “Detailed Procedure for Grant of connectivity to projects based on renewable sources to ISTS” notified by CERC on 15.5.2018, all existing entities who have been granted LTA prior to notification of the Procedure are to be issued revised grant of LTA (inter alia including date of start & point of connection) along with grant of Stage-II Connectivity. The status of the Connectivity granted (prior to notification of the detailed procedure) to SPIL is that of “Deemed Stage-I Connectivity grantee” as per S.No. (6) of the Table under Para 5.1 of the notified Detailed Procedure. However, SPIL vide letter dated 13.7.2018 has stated that since SPIL is deemed Stage-I Connectivity grantee and the LTA granted for 3x75 MW is liable to be kept in abeyance till the receipt of application of Stage-II connectivity, SPIL is not liable for payment of any transmission charges for the referred LTA. This issue has been referred by CTU to the Commission for clarification as per the directions in RoP dated 12.12.2018 in the Petition No. 18/MP/2018.

e) The Petitioner’s LTA was made effective from 2.5.2018 with the commissioning of Jabalpur – Orai 765 kV D/c corridor. However, as the Petitioner did not open LC in spite of reminders and there were no progress of the generation project as per JCC meeting discussion, the notice for termination of TSA dated 3.10.2018 was issued.

Analysis and Decision:

9. We have considered the submissions of the Petitioner and the Respondent. The following issues arise for our consideration:

(a) Issue No. 1: Whether PGCIL is entitled to seek operationalization of LTA under second proviso to clause (5) of Regulation 8 of the Sharing Regulation?



(b) Issue No. 2: Whether any direction is required to be issued for the opening of LC towards payment security mechanism?

(c) Issue No.3: Whether any direction is required to be issued against TSA Termination Notice dated 3.10.2018?

The above issues have been dealt with in succeeding paragraphs.

Issue No.1: Whether PGCIL is entitled to seek operationalisation of LTA in the absence of completion of entire transmission system?

10. The Petitioner has mainly contended that the operationalisation of LTA was always subject to the “Identified” or “specified transmission system” as mentioned in the LTA intimation letter dated 29.7.2016. The 2nd phase of the “Identified Transmission System” is still under construction and the same has also been recorded in the 21st JCC Meeting held on 28.9.2018. Therefore, PGCIL is not entitled to seek operationalisation of LTA with effect from 1.4.2018. Further, as per the 5th Amendment to the Sharing Regulations, the Solar Power generating stations which are to be commissioned between the period of 1.7.2017 and 31.12.2019 are exempted from making payment of transmission charges for the period of 25 years from COD.

11. The Respondent has relied upon clause (5) of Regulation 8 of the Sharing Regulation to contend that where the operationalisation of the LTA is contingent upon commissioning of several transmission lines or elements have been declared under commercial operation, the generator shall pay the transmission charges for LTA operationalised corresponding to the transmission system commissioned. Further, the Commission vide its order dated 16.2.2015 in Petition No. 92/MP/2014 has observed that in case of generation station with multiple units, LTA shall be operationalised if the transmission system are available for evacuation of entire contracted power from the particular unit. Therefore, as per Regulation 8(5) of the Sharing Regulations read with



Commission's order dated 16.2.2015 in Petition No.92/MP/2014, PGCIL vide letter dated 28.3.2018 intimated the Petitioner about the operationalisation of LTA.

12. The Respondent has also contended that at the time of grant of LTA and execution of LTA Agreement, the exemption under Sharing Regulation was available to solar based generating station only upon the commissioning of generating station during the period 1.7.2014 to 30.6.2017. Thus, the LTA Agreement was premised upon commissioning of Petitioner's generating station and not on the availability of identified transmission system, which could be later than 30.9.2016 or even 30.6.2017. Further, the Petitioner's reliance upon 5th Amendment of the Sharing Regulation is misplaced as the same was prospective in operation and is not applicable to the Petitioner's case. Further, the Commission vide order dated 19.8.2016 in Petition No.36/MP/2016 observed that in case of a delayed commissioning of a solar power project, there is no exemption from the payment of transmission charges once the LTA is operationalised.

13. We have considered the submissions of the parties. The entire issue revolves around the LTA Intimation Letter dated 29.7.2016 and the right of PGCIL to operationalisation of LTA before the completion of transmission system as specified in the LTA intimation letter. The respondent, PGCIL was required to complete the following transmission system:

“Inter-regional system strengthening scheme in WR and NR (Part-B)

- Jabalpur PS – Orai 765 kV D/C line
- Orai – Aligarh 765 kV D/C line
- Orai–Orai 400 kV D/C (Quad) line
- LILO of one ckt of Satna – Gwalior 765 kV 2xS/C line at Orai
- LILO of Agra – Meerut 765 kV S/C at Aligarh
- LILO of Kanpur – Jhatikara 765 kV S/C at Aligarh

Transmission system strengthening in WR-NR Transmission Corridor for IPPs in Chhattisgarh



- Up-gradation of ± 800 kV, 3000 MW HVDC bipole between Champa PS – Kurukshetra (NR) to 6000 MW
- Kurukshetra (NR) – Jind 400 kV D/c (Quad)”

It is observed that PGCIL granted LTA on 29.7.2016. The Annexure-I of the LTA agreement envisaged the requirement of aforementioned transmission system for the evacuation of power from the Petitioner’s generating station and the date of operationalisation of LTA was fixed “as 30.9.2016 or availability of transmission system, whichever is later”.

14. It is observed that the entire transmission system as envisaged in LTAA has not been commissioned as yet. The Respondent has put his reliance upon second proviso to clause (5) of Regulation 8 of the Sharing Regulation for the operationalisation of LTA, which reads as under :

“Provided further that where the operationalization of the LTA is contingent upon commissioning of several transmission lines or only some of the transmission lines or elements have been declared commercial, the generator shall pay the transmission charges for LTA operationalised corresponding to the transmission system commissioned.”

As per the above proviso, where the operationalization of LTA is contingent upon commissioning of several transmission lines or elements and only some of the transmission lines or elements have been declared commercial operation, the generator is required to pay the transmission charges for LTA operationalized corresponding to the transmission system declared under commercial operation.

15. Regulation 8 of the Sharing Regulation deals with the determination of specific transmission charges applicable for a Designated ISTS customer and its clause (5) reads as under :

“(5) Where the Approved Withdrawal or Approved Injection in case of a DIC is not materializing either partly or fully for any reason whatsoever, the concerned DIC shall be obliged to pay the transmission charges allocated under these regulations :”



Provided that in case the commissioning of a generating station or unit thereof is delayed, the generator shall be liable to pay Withdrawal Charges corresponding to its Long term Access from the date the Long Term Access granted by CTU becomes effective. The Withdrawal Charges shall be at the average withdrawal rate of the target region;

Provided further that where the operationalization of LTA is contingent upon 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 operationalised corresponding to the transmission system commissioned.”

16. A plain reading of clause (5) of Regulation 8 of the Sharing Regulation postulates the following situations :

a) It provides for obligations upon Designated Inter-State Customer (DIC) including a generator to pay transmission charges irrespective of whether its plant is operational or not; whether LTA is used or not; and whether approved withdrawal or approved injection is materializing or not.

b) First proviso addresses the situation where the commissioning of a generating station or unit thereof is delayed and the transmission system is ready. In this situation, the obligations of generator is limited to pay withdrawal charges corresponding to its Long term Access from the date the Long Term Access granted by CTU becomes effective.

c) Second proviso addresses the situation where the operationalization of LTA is contingent upon commissioning of several transmission lines or elements and only some of the transmission lines or elements have been declared commercial operation. In such case, the obligations of the generator to pay the transmission charges is to the extent of LTA operationalised corresponding to the transmission system commissioned.

17. It may be observed that the above provision addresses two situations- firstly, circumstances where the generator has delayed and the transmission system is ready and



secondly, circumstances where operationalization of part LTA where the some of the transmission system is ready. In the instant case, the transmission system as envisaged in the LTAA is not developed, rather the capacity was created due to relinquishment of other LTA customers. This situation has been not envisaged in the abovesaid Regulations. Thus, the contention of PGCIL that LTA of the petitioner may be operationalised upon the completion of part transmission system, even if, generating station is not ready does not fall under provisions of Regulation 8 of the Sharing Regulation. There being no specific provision in the Regulations, the issue has to be considered under provisions of LTAA, if any.

18. PGCIL has also relied upon following para of the order dated 16.2.2015 passed by the Commission in Petition No.92/MP/2014.

“129. In case of generation station with multiple units, LTA shall be operationalized if the transmission system are available for evacuation of entire contracted power from a particular unit.”

PGCIL has contended that if the implementation of identified transmission system reached a stage where the LTA quantum (from a unit or a generating station) could be evacuated through it, then the LTA has to be operationalized. Thus, the PGCIL has argued that the LTA has to be operationalized either after 30.9.2016 or from the date when the elements of the identified transmission system are capable of carrying the LTA quantum of 180 MW. We have gone through the above Order. It is observed that the said order nowhere requires the CTU to operationalise the LTA with the part transmission system in the event of non-commissioning of the generating station.

19. In the said LTA agreement dated 26.8.2016, PGCIL envisaged the requirement of following transmission system and agreed for operationalization of entire quantum of LTA



agreement. It is noticed that LTA agreement dated 26.8.2016 is concluded contract and no parties have disputed the same.

“Inter-regional system strengthening scheme in WR and NR (Part-B)

- Jabalpur PS – Oral 765 kV D/C line
- Orai – Aligarh 765 kV D/C line
- Orai–Orai 400 kV D/C (Quad) line
- LILO of one ckt of Satna – Gwalior 765 kV 2xS/C line at Orai
- LILO of Agra – Meerut 765 kV S/C at Aligarh
- LILO of Kanpur – Jhatikara 765 kV S/C at Aligarh

Transmission system strengthening in WR-NR Transmission Corridor for IPPs in Chhattisgarh

- Up-gradation of ± 800 kV, 3000 MW HVDC bipole between Champa PS – Kurukshetra (NR) to 6000 MW
- Kurukshetra (NR) – Jind 400 kV D/c (Quad)”

It is observed that the PGCIL and the petitioner have not revised the requirement of transmission system after execution of LTA agreement dated 26.8.2016. If the some of the LTA holders had relinquished their LTA capacity in the given corridor, PGCIL should have taken steps to revise the requirement of the transmission system in LTA agreement. The petitioner is required to develop its project with the understanding that its LTA will be operationalized after commissioning of the entire transmission system as it was agreed under concluded contract. In the above situation, we do not find it appropriate to alter the rights of the petitioner and obligations of the Respondent under the concluded contract (LTAA). Therefore, we hold that as per the LTA agreement dated 26.8.2016, the date of operationalisation of LTA was “as 30.9.2016 or availability of transmission system, whichever is later” and in absence of any facts to the contrary this position continues.

20. In the light of the above discussion, we are of the view that the decision of the PGCIL to operationalise the LTA without commissioning the entire transmission system is not as per the LTA agreement dated 26.8.2016. Further, PGCIL’s decision to invoke the second proviso to clause (5) of Regulation 8 of the Sharing Regulation is not applicable in



the present case. Therefore, letter dated 28.3.2018 issued by PGCIL to the Petitioner declaring operationalization of the LTA is not in order.

Issue No. 2: Whether any direction is required to be issued for the opening of LC towards payment security mechanism?

21. The argument which the Petitioner has advanced is that Regulation 7 (1) (y) of the Sharing Regulation exempts the solar power developer from making any payment towards the transmission charges for availing the LTA granted by the PGCIL. Therefore, the question of furnishing the LC towards payment security mechanism does not arise at all.

22. PGCIL has contended that at the time of grant of LTA, solar power developers were exempted from the payment of transmission charges upon the commissioning of their projects during the period 1.7.2014 to 30.6.2017. Therefore, the LTA Agreement accordingly proceeded based on the scheduled commissioning date of 30.9.2016 and not on the availability of identified transmission system which could be later than 30.9.2016 or even 30.6.2017.

23. PGCIL has also contended that the Petitioner's reliance on the 5th Amendment to Sharing Regulation is misplaced as the same came into force after the contractual arrangement between the Petitioner and respondent. However, the exemption from the payment of transmission charges is available to solar power generators only upon the commissioning of their projects and not before that. Further, the Commission in its order dated 19.8.2016 in Petition No. 36/MP/2016 has observed that in the case of a delayed commissioning of solar power project, there is no exemption available from payment of transmission charges once the LTA is operationalised.

24. We have considered the submissions of the parties. Regulation 7 (1) (u) of the Sharing Regulations reads as under :



“No transmission charges for the use of ISTS network shall be charged to solar based generation. This shall be applicable for the useful life of the projects commissioned in next three years.

Provided that the above provision shall also be applicable for the useful life of the projects commissioned during the period 1.7.2014 to 30.6.2017.”

Regulation 7(1)(u) of the Sharing Regulations exempted the Solar Power Developer (SPD) from the payment of any transmission charges for the useful life of the projects commissioned during the period 1.7.2014 to 30.6.2017. The exemption is applicable only when the power is evacuated through the transmission system to the beneficiaries after the commercial operation of the generating station.

25. Further, by way of the Fifth Amendment dated 14.12.2017 to the Sharing Regulation, a new sub clause (y) was added to Regulation 7(1) of the Principal Regulations as under:

“(y) No transmission charges and losses for the use of ISTS network shall be payable for the capacity of the generation projects based on solar resources for a period of 25 years from the date of commercial operation of the such generation projects if they fulfill the following conditions:

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(i) Such generation capacity has been awarded through competitive bidding; and

(ii) Such generation capacity has been declared under commercial operation between 1.7.2017 and 31.12.2019; and

(iii) Power Purchase Agreement(s) have been executed for sale of power from such generation capacity to the Distribution Companies for compliance of their renewable purchase obligation.”

26. Subsequent to 5th amendment to the Sharing Regulations, the exemption from the payment of transmission charges for solar generation projects commissioning between 1.7.2017 to 31.12.2019 was provided (extending it from erstwhile date of 30.6.2017). We are not inclined to accept the contention of PGCIL that Regulation 7 (1) (y) of the Sharing Regulation is not applicable upon the Petitioner. The effective date of Regulation 7 (1) (y) is 1.7.2017. Further, the Fifth Amendment nowhere prohibits the under construction generating stations from the exemption provided therein. Therefore, the exemption which



was available till 30.6.2017 under Regulation 7(1)(u) has been further extended to 31.12.2019 by way of Fifth Amendment to the Sharing Regulation. The Fifth Amendment is equally applicable upon the Petitioner also and therefore, we are not inclined to accept the contention of PGCIL that the Fifth Amendment to the Sharing Regulation is not applicable in the instant case.

27. PGCIL has contended that in the light of order dated 19.8.2016 passed by the Commission in Petition No.36/MP/2016, the transmission charges for delay in commissioning of solar power generators shall be paid by such solar generators/SPPD in accordance with the relevant regulation of the Commission. Further, in the case of a delayed commissioning of a solar power project (such as in the case of the present Petitioner), there is no exemption available from payment of transmission charges once the LTA is operationalized. PGCIL has relied upon the following para of the said order:

“32. With regard to recovery of transmission charges on account of delay in commissioning of solar generation, in the Statement of Reasons for the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-state Transmission and related matters) (Fifth Amendment) Regulations, 2015, and Central Electricity Regulatory Commission (Grant of Regulatory Approval for execution of Inter-State Transmission Scheme to Central Transmission Utility) (First Amendment) Regulations, 2015, the following has been clarified:

“8.2.1 With regard to the suggestions of PGCIL, it is clarified that SPPD who shall apply for Connectivity/ Long term Access shall be liable to deposit Application Bank Guarantee/Construction Bank Guarantee as required under Connectivity Regulation. Further, SPPD shall also be liable for payment of transmission charges for delay in commissioning of generator and relinquishment charges towards transmission access under Connectivity Regulations and Sharing Regulations. Regulation 7(1)(u) of the Sharing Regulations provides that "No transmission charges for the use of ISTS network shall be charged to solar based generation" is applicable only when the power is evacuated through the transmission system to the beneficiaries after the commercial operation of the generating station. Therefore, transmission charges for delay in commissioning of solar power generators shall be payable by such solar generators/SPPD on the same line as the liability for payment by the thermal and hydro generating station in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014. 8.2.2 With regard to delay of internal system, it is clarified that SPPD shall be executing internal system on behalf of solar power generators. The treatment of delay or other modalities should be covered in Agreement between solar power generators and SPPD. In regard to NTPC's comments on development of transmission matching wit generation, it is clarified that CTU shall



carry out coordination with the SPPD/solar power generators in accordance with Section 38 of the Act.”

Therefore, the transmission charges for delay in commissioning of solar power generators shall be paid by such solar generators/SPPD in accordance with the relevant regulation of the Commission.”

28. We have gone through the above order. We tend to agree with the contention of PGCIL that the transmission charges for delay in commissioning of solar power generators shall be paid by such solar power developers, in accordance with the relevant regulation of the Commission. But, in the instant case, we have observed that the operationalization of LTA is not in order as contemplated in LTA grant letter dated 29.7.2016 and therefore order dated 19.8.2016 passed by this Commission in Petition No.36/MP/2016 is not applicable in the present case.

29. At this stage, it is necessary to clarify that in the event, the entire transmission system gets commissioned and still, the Petitioner fails to declare the commercial operation of its generating station, the Petitioner shall be liable to pay the transmission charges and shall also be liable to open LC towards the payment security mechanism, till the commissioning of its generating station.

30. In the light of above discussion, the letter dated 29.3.2018 issued by PGCIL requesting the Petitioner to open LC towards payment security mechanism is set aside.

Issue No. 3: Whether any direction is required to be issued against TSA Termination Notice dated 3.10.2018?

31. The Petitioner has submitted that the respondent vide its letter dated 3.10.2018 issued notice for the termination of TSA dated 26.8.2016 on account of non-opening of LC towards the payment security mechanism. As per clause 3.6 of the Billing, Collection and Disbursement procedure (BCD Procedure), a LTA customer has to open an LC for an amount equivalent to 1.05 times the average of the first bill amount for different months of



the application period as computed by PGCIL. Since, the solar power generators are exempted from the payment of transmission charges, no amount can be arrived by applying the formula enshrined under BCD procedure. Further, the Respondent has also not issued any LC default notice and therefore, consultation period under clause 16.4.1 of the TSA was never provided to the Petitioner and therefore, the TSA termination notice is in violation to the provisions of TSA and the Sharing Regulations.

32. The Respondent has submitted that opening of LC is a statutory requirement in terms of clause (8) of the Regulation 12 of Sharing regulations and clause 3.6 of the BCD Procedure and Transmission Service Agreement. Failure to open LC constitutes an event of default by DIC in terms of Article 16.2 of the TSA leading to termination of TSA under Article 16.4 of the TSA. The Respondent vide its letter dated 29.3.2018 had requested the Petitioner to open the LC but the Petitioner failed to do so. The Respondent issued a notice of default dated 2.8.2018 vide email as well as speed post for the rectification of the default, but the same was not done. Therefore, the Respondent vide letter dated 3.10.2018 issued the notice of termination of TSA.

33. Since, we have already observed that the Petitioner is not obliged to open the LC and therefore, TSA Termination Notice dated 3.10.2018 is also set aside.

34. The Petition No. 318/MP/2018 is disposed of in terms of the above.

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

Sd/-
(P. K. Pujari)
Chairperson

