

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

IA No. 75/IA/2019

In

Petition No. 253/MP/2019

Coram:

Shri P. K. Pujari, Chairperson

Dr. M. K. Iyer, Member

Shri I. S. Jha, Member

Date of Order: 21.11.2019

In the matter of:

Interlocutory Application for urgent listing and interim order in the Petition under Section 79(1)(c)(d) and (f) 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 seeking directions to Respondent No.1 to allow scheduling of power from the Petitioner No. 1's Jorethang Loop Hydro Electric Project and Petitioner No.2's Tashiding Hydro Electric Project under Long-term Access in terms of Bulk Power Transmission Agreement dated 24.2.2010 and Long-term Access Agreement dated 19.10.2011 respectively.

And

In the matter of:

1. DANS Energy Private Limited
5th Floor, Cyber City Tower,
DLF Cyber City, Gurugram, Haryana – 122 002.

2. SHIGA Energy Private Limited
5th Floor, Cyber City Tower,
DLF Cyber City, Gurugram, Haryana – 122 002.

Versus

1. Power Grid Corporation of India Limited
B-9, Qutub Institutional Area, KatwariaSarai,
New Delhi – 110 016.

2. Haryana Power Purchase Centre
Shakti Bhawan, Second Floor, Sector – 6,
Panchkula, Haryana – 134 109.

Parties Present:



For Applicants : Shri M.G. Ramachandran, Sr. Advocate
Shri Amal Nair, Advocate

For Respondents : Ms. SuparnaSrivastav, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL

ORDER

The Applicants, DANS Energy Private Limited and SHIGA Energy Private Limited, have filed the present Interlocutory Application seeking the following relief:

*“ (i) List the matter on an early date of hearing;
(ii) Take up the present application;
(iii) Direct Power Grid to permit the Petitioners to use the LTA granted to its to supply power to HPPC as per the BPTA and LTAA, respectively;
(iii) Pass such further order(s) as may be deemed fit and proper.”*

2. During the hearing on 3.9.2019, learned senior counsel for the Applicants mainly submitted as under:

(a) The Applicants DANS Energy Private Limited and SHIGA Energy Private Limited are having Hydro Electricity Plants (HEPs) of 96 MW and 97 MW capacity respectively and in order to supply the energy generated therein on Long-term basis have entered into Bulk Power Transmission Agreements and LTA Agreement with Respondent No. 1 i.e. PGCIL on 24.2.2010 and 19.10.2011 respectively.

(b) Long-term Access in terms of both the BPTA and LTAA has been operationalized and the Applicants are made to pay the corresponding long-term transmission charges. However, the Applicants are not allowed to schedule the generation from their HEPs to Respondent No. 2, Haryana Power Purchase Centre (HPPC).



- (c) Applicants have requested the Respondent No. 1 to allow the scheduling of power under the Long-term Access. However, PGCIL has refused to do so by citing that there is no executed PPA and NOC from Haryana STU. This has forced the Applicants to supply the power to HPPC under the Short-term Open Access despite its LTA having been operationalized.
- (d) Applicants have submitted the initialled PPAs to the Respondent No.1 as approved by the Haryana Electricity Regulatory Commission vide its orders HERC /PRO-26 and HERC /PRO-25 dated 8.3.2019. The power is required to be scheduled by HPPC in line with the orders of HERC which while approving the power procurement from HEP, allowed to schedule power at APPC rate pending determination of final tariff.
- (e) HERC, while approving the PPAs, has directed the parties to incorporate certain amendments. However, incorporation of some amendments is opposed by the Respondent No. 2 HPPC and HPPC has challenged the said order of HERC before the APTEL.
- (f) PGCIL vide letter dated 18.07.2019 has rejected the request of Applicants and has stated that till the submission of signed PPA and NOC, Applicants cannot be permitted to use the LTA but is still obliged to pay the POC Charges for the LTA.
- (g) There is no requirement either for a final signed PPA with HPPC or a No Objection from the Haryana STU. The fact that there is a long term PPA is
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well established by the various Orders passed by the HERC approving the power purchase and the PPA, the LOI issued by HPPC and above all, the fact that the Petitioners are scheduling the power to HPPC on a continuous basis through STOA in view of the delay in operationalisation of LTA by PGCIL. Further, there has been no system constraint for more than 2 years.

- (h) Duly initialled PPAs given to the Respondent No.1 satisfy the requirement under the Regulation 15B of Central Electricity Regulatory Commission (Grant of Connectivity, Long-term and Medium-term Open Access and related matters) Regulations, 2009 (hereinafter referred to as the 2009 Connectivity Regulations) as the rationale behind submitting a copy of PPA is to evidence the Long-term agreement between the parties.
- (i) Under Section 28(3)(a) and 32 (2)(a) of the Electricity Act, 2003, the scheduling and dispatch of electricity has to be undertaken by the Load Despatch Centre in accordance with the contract entered into between the generating company and procuring licensee and admittedly, there is long-term contract between the Applicants and HPPC.
- (j) Pending execution of final PPAs, the PPAs entered into between the Petitioner and HPPC continues to be a long-term contract. Reliance was placed on the order of Hon'ble Supreme Court in Lanco Amarkantak Power Limited vs. Haryana Electricity Regulatory Commission and Ors. in Civil Appeal No. 10329 of 2011 wherein the Hon'ble Supreme Court has annulled a



similar stand taken by Coal India and Power Grid and allowed them to provide long-term contract.

3. Learned counsel for the Respondent No. 1, Power Grid Corporation of India Limited, mainly submitted as under during hearing held on 3.9.2019:

(a) In terms of Regulation 15B(1) of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term and Medium-term Open Access and related matters) Regulations, 2009 and subsequent amendments thereto, LTA customer who has been granted long-term access to a target region shall after entering into power purchase agreement for supply of power to the same target region for a period of not less than one year, is required to notify the Nodal Agency about the power purchase agreement along with copy of the PPA for scheduling of power under LTA. Further, 2nd proviso to the said Regulation provides that only after receipt of the copy of PPA, CTU is to advise the concerned RLDC for scheduling of power.

(b) Detailed Procedure issued under the 2009 Connectivity Regulations also requires the Petitioner to submit the No Objection Certificate from State Transmission Utility and PPA or SPA as applicable along with the application for LTA.

(c) The Power Purchase Agreements submitted by the Applicants are not the signed Power Purchase Agreements and are only initialled Power Purchase Agreements as submitted before HERC. These cannot be termed as final PPAs.



(d) HERC in its various orders has directed the Applicants and HPPC to incorporate the amendment to the Power Purchase Agreements.

(e) PPAs executed between the Applicants and HPPC are not entirely approved as the approval granted by the HERC was subject to the incorporation of the amendments. In any case, the Applicants have not submitted the duly executed PPAs and accordingly, the LTA of the Applicants have been operationalized on target region basis.

(f) Order of the Hon'ble Supreme in the matter of in Lanco Amarkantak Power Limited vs. Haryana Electricity Regulatory Commission and Ors as relied upon by the Applicants is distinguishable in facts of the present case. In case before the Hon'ble Supreme Court, Lanco was supplying the power under the firm Power Purchase Agreement and Long-term Access. After dispute arose regarding termination of PPA, the Hon'ble Supreme Court pending adjudication allowed scheduling of power by the generators under LTA. However, in the present case, there is no valid executed PPAs to begin with.

(g) Insistence by the Respondent for submissions of the PPAs and NOC is in terms of the 2009 Connectivity Regulations.

(h) Respondent is not concerned with whether HPPC chose to object the amendments/modification directed by HERC or not. The only concern of the Respondent is whether the duly executed PPA as required in terms of Regulations, has been provided or not. Only initialled PPAs as furnished by the Applicants are not valid PPAs.



Analysis and Decision

4. We have noted the submissions made by learned senior counsel for the Petitioner and learned counsel for the Respondent. The Applicants have filed the present Interlocutory Application No. 75/IA/2019, seeking the early listing and direction to Respondent No. 1 – PGCIL to permit the Applicants to use the LTA granted to it to supply power to HPPC as per the BPTA and LTAs pending adjudication of main Petition No. 253/MP/2019.

5. Learned senior counsel for the Petitioner has submitted that the Applicants have already submitted the initialled Power Purchase Agreements to PGCIL and HERC has already approved the Agreements subject to the amendments to certain clauses. Learned senior counsel has further submitted that since the Respondent No. 2 HPPC has chosen to contest some amendments proposed by HERC before APTEL, final PPAs could not be executed and the initialled PPAs read with the orders of HERC satisfy the requirements under the 2009 Connectivity Regulations.

6. Per contra, learned counsel for the Respondent has submitted that the Applicants have not submitted the duly executed Power Purchase Agreements as well as the NOC of the State Transmission Utility and that the initialled PPAs as submitted by the Applicants do not meet the requirements under the 2009 Connectivity Regulations and the Detailed Procedure issued there-under as they are neither enforceable nor valid.



7. Having considered the submissions made by parties, we deem it appropriate to refer to the relevant provisions of the 2009 Connectivity Regulations. Regulation 15B of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term and Medium-term Open Access and related matters) Regulations, 2009, is reproduced below:

“15B. Firming up of Drawl or Injection by LTA Customers

(1)The Long Term Access Customer who hasbeen granted long term access to atarget region shall,after entering into power purchase agreement for supply of power to the same target region for a period of not less than one year,notify the Nodal Agency about the power purchase agreement along with copy of PPAfor scheduling of power under LTA:

Provided that scheduling of power shall be contingent upon the availability of last mile transmission links in the target region:

Provided further that on receipt of the copy of the PPA, CTU shall advise concerned RLDC for scheduling of power at the earliest, but not later than a period of one month:

Provided also that if the capacity required for scheduling of power under LTA has already been allocated to any other person under MTOA or STOA, then MTOA or STOA shall be curtailed in accordance with Regulation 25 of these Regulations corresponding to the quantum and the period of the PPA:

Provided also that where capacities under existing MTOA are curtailed for considering scheduling of power under the PPA of the Long term Access Customer, such MTOA customer shall be permitted to relinquish its MTOA without any relinquishment charges.”

8. In terms of the above Regulation, the LTA customer to whom LTA has been granted to target region is required to notify the Nodal Agency (CTU) about the power purchase agreement entered into by the LTA customer for supply of power to the same target region for a period of not less than one year along with a copy of PPA for scheduling of power under the LTA. Further in terms of 2nd proviso to this Regulation, upon receipt of the copy of PPA, CTU is to advice the concerned RLDC for scheduling the power.



9. Thus, the 2009 Connectivity Regulations provide for submission of the copy of the PPA to CTU for scheduling of power. Merely an initialled PPA, in our view, cannot be termed as valid or duly executed PPA. We, therefore, are not inclined to accept the submissions of learned senior counsel of Petitioner that initialled PPAs submitted to PGCIL are sufficient to meet the requirement under the 2009 Connectivity Regulations as they stand approved by HERC apart from certain amendments. We observe that even approval of HERC vide orders dated 8.3.2019 is a conditional approval as HERC has approved the PPAs subject to the amendments approved in the said orders.
10. In view of the foregoing observations, we are of the view that the PPAs have not been signed by both the parties and that the Applicants are required to submit the copy of duly executed Power Purchase Agreements to the Respondent PGCIL to enable scheduling under LTA. In absence of submissions of these documents, the relief as sought by the Applicants in the present IA cannot be granted.
11. In terms of this order, IA No. 75/IA/2019 stands disposed of.

Sd/-
(I. S. Jha)
Member

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

Sd/-
(P.K Pujari)
Chairperson

