

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 394/MP/2019**

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

**Date of Order: 24<sup>th</sup> January, 2020**

**In the matter of:**

Petition under section 79(1)(f) of The Electricity Act, 2003 read with Regulation 20 and 21 Of The Central Electricity Regulatory Commission (Sharing Of Transmission Charges & Losses In Inter-State Transmission) Regulations, 2010 And Regulation 111 of The Central Electricity Regulation Commission (Conduct Of Business) Regulations, 1999 seeking directions to recover the outstanding dues of Transmission Charges of the Respondents through adjustment in charges recovered from use of Short Term Open Access.

**And**

**In the matter of:**

The Central Transmission Utility,  
(Power Grid Corporation of India Limited),  
Through its General Manager (CTU-Plg.)  
B-9, Qutub Industrial Area,  
Kawaria Sarai, New Delhi-110016

**...Petitioner**

**Versus**

1. Himachal Sorang Power Private Limited,  
Through its Director Director,  
D-14, Ashirvad Building Sector-1,  
Near state Bank of India,  
New Shimla, Shimla-171009
2. Ind Barath Energy (Utkal) Limited,  
Through its Director Technical,  
Plot No. 30-A, Road No-1, Film Nagar,  
Jubilee Hills, Hyderabad-500033
3. Simhapuri Energy Limited,  
Through its Chief Operating Officer,  
Madhucon Greenlands, 6-3-866/2,

**Parties Present:**

1. Ms. Suparna Srivastava, Advocate, PGCIL
2. Shri K. K.Jain, PGCIL
3. Shri J. Mazumdar, PGCIL

**ORDER**

The Petitioner has filed the present petition placing before the Commission the difficulties being faced in recovery of transmission charges from various generators whose long-term access (LTAs) have been operationalized and subsequently, the generators have not been able to generate power due to either their inability to firm up Power Purchase Agreements with the beneficiaries or occurrence of force majeure, leading to termination of their Agreements with the Petitioner or relinquishment of LTA rights.

2. The Petitioner has made following prayers:

*(a) Direct the Petitioner to recover the outstanding dues of the Respondents amounting to Rs.455.22 crores through adjustment against the STOA charges being passed onto the LTA customers every month in 3 monthly installments.*

*(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;*

**Submissions of Petitioner**

3. The Petitioner has sought appropriate directions from the Commission to recover its outstanding transmission charges from Himachal Sorang Power Pvt. Ltd., Ind Barath Energy (Utkal) Ltd. and Simhapuri Energy Ltd. (aggregate to the tune of Rs.455 crores) towards use of the LTA granted to them.

4. The petitioner has sought permission from Commission to allow recover the outstanding dues of the Respondents through adjustment of short-term open access

(STOA) charges for recovery of full and exact Yearly Transmission Charges (YTC) of the ISTS licensees.

5. The petitioner has submitted that Himachal Sorang Power Pvt. Ltd., Ind Barath Energy (Utkal) Ltd. and Simhapuri Energy Ltd. are Independent Power Producers. These IPPs had sought connectivity and LTA for their proposed power plants during the period of 2007 to 2011 and they are Designated ISTS Customers (DICs) in terms of provisions of Regulation 2(1)(I) of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and losses) Regulation, 2010 ( herein after referred to as 2010 Sharing Regulations). Upon commissioning of their respective Associated Transmission Systems and establishment of payment security mechanism, the LTAs of the IPPs were operationalized by the Petitioner.

6. The Petitioner has submitted, that owing to various reasons such as technical issues, financial crunch and inability to have firm PPAs, these IPPs did not commence generation. Instead of relinquishing their LTAs as per the applicable provisions, they approached this Commission seeking deferment of their respective LTAs.

7. The Petitioner has submitted that, Himachal Sorang Power Private Ltd., Respondent No. 1, was granted LTA on 17.7.2009 w.e.f. November, 2010 for 100 MW with target region as Northern Region. Subsequently, citing certain geological uncontrollable events at its project site, Himanchal Sarong filed a Petition No.43/MP/2012 seeking extension of LTA commencement up to 2012 from May 2011, which was dismissed vide Order dated 31.1.2013 by the Commission. Being aggrieved thereof, Himachal Sorang filed Appeal No.54/2014 before the Appellate Tribunal for electricity (APTEL). The Appeal was also dismissed vide Order dated 30.4.2015 of APTEL wherein it was held that no

force majeure event took place after April, 2012 and, therefore, Respondent No.1 was liable to pay transmission charges to the Petitioner. In order to recover the said charges, the CTU filed Petition No.32/MP/2017 seeking directions to Respondent No. 1 to pay the past and current dues pertaining to transmission charges and to open the required LC. Vide Order dated 26.9.2017, the Commission decided the said Petition, directing Respondent No. 1 to pay the outstanding transmission charges and also directed the Petitioner to continue raising invoices for transmission charges on it. Subsequently, Respondent No.1 while citing an accident at its site, sought relinquishment of 100 MW LTA, and the same was given effect to from 1.10.2018. Being aggrieved by Order dated 26.09.2017 of the Commission, the Respondent No. 1 filed Appeal No.169/2018 before the APTEL, which is presently pending adjudication. In the interim Order dated 30.11.2018, APTEL has directed the Petitioner not to take any precipitative action for recovery of unpaid dues from Respondent No. 1.

8. The Petitioner has submitted that Ind Barath Energy (Utkal) Ltd., Respondent No. 2 was granted LTA on 14.5.2009 for 616 MW with target region as Northern Region for 266 MW and as Western Region for 350 MW. Upon commissioning of the associated transmission system and upon opening of the required LC of Rs.27.73 crore by Respondent No.2 on 11.08.2015, the LTA of 500 MW came under operation w.e.f. 16.12.2015. When the LC was invoked for the first time on account of non-payment of transmission charges, it was noticed that Respondent No.2 had established only a part LC. And it continued to default in making payments to the Petitioner. Subsequently, Respondent No.2 filed Petition No.127/MP/2016 before this Commission in July, 2016 for directions to the Petitioner to release 50% bank guarantee so as to enable them to construct the pending dedicated transmission line. During the preliminary hearing in the

matter, the Petitioner objected to the request of Respondent No.2 for release of bank guarantee in view of its pending outstanding dues. Further, during subsequent hearings in the aforesaid Petition over a period of one and half years, this Commission provided various opportunities to Respondent No.2 to clear its outstanding dues in installments and restraining the Petitioner from taking coercive actions. However, despite various commitments by Respondent No.2, it failed to clear its outstanding dues. In the meantime, the billing on Respondent No.2 continued as per the applicable Regulations and the dues kept mounting. On continued default and non-compliance on part of Respondent No.2, the Petitioner invoked the existing LC of Rs.14.28 Crore in August, 2017 and further invoked its bank guarantee of Rs.30.8 crores on 31.10.2017. Thereafter, during the proceedings on 1.5.2018, this Commission directed Respondent No.2 to approach its lender (PFC) to a hold a meeting with the Petitioner to find an amicable solution by 11.5.2018. However, no solution could be found and the same was intimated to this Commission. Subsequently, when the Petitioner issued a TSA termination notice dated 18.6.2018, Respondent No.2 again approached this Commission by filing an Interim Application No.55/2018 in Petition No.127/MP/2016 seeking a stay on the operation of TSA termination notice and LTA termination notice. Vide Order dated 5.10.2018, this Commission disposed-off the said Petition No.127/MP/2016 and upheld the invocation of the bank guarantee and termination of LTA and TSA by the Petitioner, and further directed that no access be provided to Respondent No.2 till it liquidates the dues. Accordingly, LTA and TSA of Respondent No.2 were revoked w.e.f 18.7.2018. Even though Appeal No.314/2018 against the Order in Petition No.127/MP/2016 has been withdrawn, Respondent No.2 is facing the Corporate Insolvency Resolution Process (CIRP) before National Company Law Tribunal (NCLT).

9. The Petitioner has submitted that Simhapuri Energy Limited, Respondent No. 3 was granted LTA on 6.7.2009 for 446 MW with target region as Southern Region for 311 MW

and as Western Region for 135 MW. The transmission system identified for grant of LTA to its project, inter alia, required development of High Capacity Power Transmission Corridor (HCPTC-VI). Upon commissioning of the associated transmission system and upon opening of the required LC of Rs.25.36 crore by the Respondent No. 3 on 13.6.2016, the LTA of 446 MW came under operation from 16.6.2016. When Respondent No.3 defaulted in making the payments for the PoC bills raised for the period August, 2016, September, 2016 and part October, 2016, the same was realized through invocation of LC on 10.1.2017 as per the provisions of the BPTA/TSA. Respondent No.3 subsequently reinstated the LC and also made the payments regularly for the bills raised for the period till January, 2017. However, Respondent No.3 again stopped paying transmission charges to the Petitioner for the subject LTA for the period from February, 2017 and instead, proceeded to file a Petition No.103/MP/2017 before this Commission seeking a direction in the nature of suspension of the imposition of transmission charges by the Petitioner on Respondent No.3 and a direction that the Petitioner be restrained from taking any coercive step. Vide Order dated 6.7.2017, this Commission decided the said Petition and held Respondent No.3 liable to pay transmission charges, irrespective of whether it actually availed the long term access or not. Being aggrieved, Respondent No.3 filed Appeal No.205/2017 before the APTEL. During the pendency of the said Appeal and on dismissal of an interim application [being IA No.542/2017] by APTEL, the Petitioner invoked the LC of Respondent No.3 for utilization of its unpaid transmission charges for the period from February, 2017 to April, 2017. However, Respondent No.3 failed to reinstate the requisite LC constraining the Petitioner to issue a default Notice dated 5.6.2018 and Notice dated 10.7.2018 for termination of the TSA in accordance with the applicable provisions. Respondent No.3 then filed an I.A. No.1050/2018 before the APTEL seeking stay of the operation of the said Notice dated 10.7.2018 till the pendency of Appeal No.205/ 2017.

The said IA was disposed off by APTEL vide Order dated 6.9.2018 in terms of a payment undertaking of Respondent No.3 wherein the termination of TSA was directed to be suspended subject to Respondent No.3 honouring its undertaking. When Respondent No.3 failed to honour the said undertaking, the Petitioner in compliance of the directions of APTEL terminated the TSA of Respondent No.3 w.e.f. 9.8.2018. Even though Appeal No.205/2017 is pending adjudication before APTEL, Respondent No.3 is under the Corporate Insolvency Resolution Process before the National Company Law Tribunal (NCLT).

10. The Petitioner has submitted that it has continued to raise bills for transmission charges upon these IPPs as per the Regulations, pending settlement of Petitions/Appeals, without any payment being received for the same. The outstanding transmission charges from the Respondents thus remained unpaid except for realization of certain amounts as has been stated hereinabove. The position as it stands till filing of this petition is as under:

Name of the IPPs	LTA Quantum (MW)	Outstanding dues (Rs)	Period	Applicable Surcharge up to 28.02.2019	Total with Surcharge up to 28.02.2019	Remarks
Himachal Sorang Power Private Limited	100 MW	54.86 Cr.	Feb'16 to Sept'17	16.89 Cr.	71.75 Cr.	LTA relinquished
Ind Barath Energy (Utkal) Limited	616 MW	185.51 Cr.	Oct'16 to July'18	36.64 Cr.	222.45 Cr.	LTA relinquished
Simhapuri Energy Limited	446 MW	145.41 Cr.	Mar'17 to Aug'18	15.61 Cr.	161.02 Cr.	LTA relinquished
Total		368.08 Cr.		69.14 Cr.	455.22 Cr.	

11. The Petitioner has submitted that considering the fact that there is no generation from the plants of the Respondents and their TSAs have also been terminated, the Petitioner is unable to resort to any regulatory measures under the applicable Regulations such as regulation of power supply, invocation of LC, curtailment of STOA, etc. Consequently, the transmission charges are not being recovered and the deficit in the PoC continues to increase. The position has become dismal, more so when these IPPs have become insolvent, making the possibility of recovery of the dues in the near future remote.

12. The Petitioner has submitted that users of assets, quantum of power flow, timings and mode of access (LTA, MTOA or STOA) to the ISTS network, methodology of recovery from the users and further sharing with other users, termination of user rights on default, are done as per provisions of various Regulations. However, the Petitioner or other ISTS licensees have to suffer the consequences of all these actions over which it has no control. Moreover, in case the defaulting LTTCs resort to legal process against the billing that prolongs for a long period or due to stay Orders, the adverse financial consequences for the ISTS licensees accentuates further.

13. The Petitioner has further submitted that as recovery from the IPPs is not foreseen in immediate future and the PoC pool is suffering from huge under recoveries, the Petitioner be allowed to adjust the outstanding dues from STOA charges and as soon as the IPPs liquidate the pending dues, the Petitioner will put such recovered amount back into the PoC pool for disbursement to the LTA customers of the relevant period.

**Hearing dated 11.12.2019**

14. The matter was heard on 11.12.2019, where Learned counsel for the Petitioner, submitted that the Petitioner has sought to invoke the Commission's power to remove



difficulty and power to relax so as to permit the Petitioner to recover the outstanding dues of the Respondents through adjustment of Short-term Open Access charges and for the removal of difficulty being faced by the Petitioner in complying with the regulatory mandate of Regulation 5 of the 2010 Sharing Regulations for recovery of Yearly Transmission Charges (YTC) of the ISTS licensees. After hearing the learned counsel for the Petitioner, the Commission reserved order in the Petition.

### **Analysis and Decision**

15. We have considered the submission of the Petitioner. The Petitioner has expressed its inability to recover the outstanding LTA charges from the Respondents since their TSAs have been terminated and there is no generation from their plants and as such could not be regulated for recovery of the charges. Accordingly, the Petitioner has prayed for issue of directions for recovery of the outstanding dues of the Respondents from the STOA charges (collected and being passed on to the LTA customers) in three monthly installments. We notice that STOA charges collected from the STOA customers are disbursed among the LTA customers in proportion to the monthly transmission charges payable by them in terms of Regulation 25 (2) of the Central Electricity Regulatory Commission ( Open Access in Inter-State Transmission) Regulations, 2008, as amended from time to time. There is no provision in any of the Regulations to permit recovery/ reimbursement of outstanding LTA charges in respect of defaulting LTA customers from the STOA charges. In our view, CTU should take all necessary steps to recover the outstanding charges from the Respondents as permissible under law including projecting the claims before NCLT in those cases wherever applicable. Further, in order to ensure recovery of outstanding LTA charges from Respondents, we direct that the Respondents shall not be granted long term access, medium term open access and short term open access in future unless they clear the outstanding LTA charges. If Petitioner is unable to

recover the charges after making all reasonable efforts, it may approach the Commission for appropriate directions.

16. The Petition No. 394/MP/2019 is disposed in terms of the above.

**Sd/-**

**(I. S. Jha)  
Member**

**Sd/-**

**(Dr. M.K. Iyer)  
Member**

**Sd/-**

**(P.K Pujari)  
Chairperson**