

**CENTRAL ELECTRICITY REGULATORY COMMISSION
New Delhi**

Petition No. 151/MP/2021

Subject	:	Petition under Section 79(1)(c) & 79(1)(f) of the Electricity Act, 2003 read with Regulation 32 and the detailed procedure as envisaged under the Central Electricity Regulatory Commission (Grant of Connectivity, long Term, Medium Term Open Access in Intra-State and related matters) Regulations, 2009.
Date of Hearing	:	17.9.2021
Coram	:	Shri P. K. Pujari, Chairperson Shri Arun Goyal, Member Shri P. K. Singh, Member
Petitioner	:	Jindal India Thermal Power Limited (JITPL)
Respondents	:	Northern Railway and Ors.
Parties Present	:	Shri Sajan Poovayya, Senior Advocate, JITPL Shri Pardeep Dahiya, Advocate, JITPL

Record of Proceedings

Case was called out for virtual hearing.

2. Learned senior counsel for the Petitioner submitted that the Petitioner is a generating company having its generation plant in the State of Orissa engaged in the business of generation and supply of power to various distribution companies within India. The instant petition has been filed for issuing direction to Northern Railway (NR), Respondent No.1, to obtain NOC from SLDC under Short Term Open Access (STOA) and take power from the Petitioner as per the terms of the contract upto 30.11.2021 or else NR be made liable for payment of fixed charge till 30.11.2021.

3. Learned senior counsel for the Petitioner submitted that the Petitioner signed Agreement for Procurement of Power (APP) dated 13.4.2016 with NR, Delhi for a period of 3 years i.e. from 1.3.2018 to 28.2.2021. Subsequently, Supplementary APP (SAPP) dated 19.8.2020 was signed for extending it by 9 months i.e. from 1.3.2021 to 30.11.2021. He submitted that Respondent No. 1 arranged NOC from SLDC, Delhi for getting connected to Intra-state system for period from 1.2.2018 to 31.1.2021, which the Petitioner forwarded to CTU and on the basis of which CTU vide letter dated 10.11.2017 granted MTOA for period from 1.2.2018 to 31.1.2021 i.e. for 36 months. Subsequently, the Petitioner requested NR to get NOC from SLDC, Delhi for the period from 1.2.2021 to 30.11.2021 so that MTOA could be sought from CTU for the said period. Thereafter, on 21.9.2020, the Petitioner requested NR to get NOC for the extended period from SLDC, Delhi. Subsequently, NR vide letter dated 20.11.2020, sought NOC from SLDC, Delhi for the extended period. However, SLDC vide letter dated



20.11.2020 rejected NR's request for grant of NOC for MTOA as MTOA is for a period of more than one year and less than 3 years and, accordingly, directed to apply for STOA.

4. Learned senior counsel for the Petitioner further submitted that the Petitioner through various correspondences dated 20.11.2020, 24.11.2020, 11.1.2021, 27.1.2021 requested NR to furnish NOC under STOA from SLDC, Delhi for the extended period. Later, NR vide letter dated 28.1.2021 has shifted the responsibility to procure NOC from SLDC, Delhi to the Petitioner and absolved itself from their obligation to take power on short term under the agreement.

5. Learned senior counsel for the Petitioner submitted that NR is obligated to obtain NOC from SLDC, Delhi as it is connected with SLDC, Delhi and NR being intra-state entity, could only procure NOC from SLDC, Delhi. Further, under clause 6.1.2.(a) of APP, NR is under an obligation to provide reasonable assistance to the supplier in procuring the applicable permits required from any governmental instrumentality for operation of the agreement. He further submitted that under the statutory framework, the Petitioner could not apply for NOC from SLDC, Delhi.

6. In response to the query of the Commission regarding the provisions from which the rights of the Petitioner emanates, the Petitioner relying on Clause 3.1 and 3.2 of the APP submitted that as per Clause 3.1.1 of the APP, at any time 3 months prior to the expiry of the contract period, the parties may with mutual agreement extend the Contract Period for such further period, but not exceeding lower than 25% of initial contract period or one year. Further, as per Clause 3.2 of the APP, in the event that extension of the contract period due to the supplier is not granted by the Utility for any reason, the Utility shall, within 30 days of the expiry of this Agreement, pay to the Supplier a lump sum amount computed in accordance with this clause 3.2 in lieu of the Fixed Charge that would have been payable to the Supplier.

7. After hearing the learned senior counsel for the Petitioner, the Commission admitted the instant petition and directed to issue notice to the Respondents. The Commission further directed the Respondents to file reply on affidavit by 18.10.2021 with copy of the same to the Petitioner and the Petitioner to file rejoinder, if any, by 31.10.2021. The parties are directed to comply with the directions within the timeline specified and no extension of time shall be granted.

8. The Commission further directed the Petitioner to submit the following information on affidavit, by 11.10.2021 with an advance copy to the Respondents:

- a. Copy of DERC (Terms and conditions of open access) Regulations, 2005 and DERC (Terms and Conditions for Open Access) (First Amendment) Regulations, 2017.
- b. Clarify whether power against contracted capacity was sold to buyer(s) other than Northern Railways as per clause 10.2.2 of the APP.
- c. Clarify who is responsible to obtain NOC from State SLDC as per terms and conditions of APP and SAPP.



9. The Petition will be listed for hearing in due course of time for which separate notice will be issued.

By order of the Commission

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(V. Sreenivas)
Deputy Chief (Law)

