

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 214/MP/2019

- Subject : Petition under Sections 79(1)(c) and 79 (1)(f) of the Electricity Act, 2003 read with Regulation 32 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 impugning the wrongful rejection of open access.
- Date of Hearing : 3.9.2021
- Coram : Shri P. K. Pujari, Chairperson
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Tata Power Trading Company Limited (TPTCL)
- Respondents : Power Grid Corporation of India Limited and 2 Ors.
- Parties Present : Shri Amit Kapur, Advocate, TPTCL
Shri Vishrov Mukerjee, Advocate, TPTCL
Shri Rohit Venkat, Advocate, TPTCL
Shri Damodar Solnaki, Advocate, TPTCL
Ms. Suparna Srivastava, Advocate, CTU
Ms. Soumya Singh, Advocate, CTU
Shri Tushar Mathur, Advocate, CTU
Shri Swapnil Verma, CTU
Shri Siddharth Sharma, CTU
Shri Laxmi Kant, CTU
Shri Alok Kumar, POSOCO
Shri Nadim Ahmed, POSOCO

Record of Proceedings

Case was called out for virtual hearing.

2. The learned counsel for the Petitioner circulated a note of arguments and made detailed submissions in the matter. The learned counsel, relying upon the provisions of the 'Guidelines for Import/Export of Electricity' dated 18.12.2018 issued by the Ministry of Power ('MoP Guidelines'), the Central Electricity Regulatory Commission (Cross Border Trade of Electricity) Regulations, 2019 ('CBTE Regulations') and 'Procedure for Approval and Facilitating Import/Export (Cross Border) of Electricity by Designated Authority' dated 26.2.2021 issued by CEA ('the Procedure'), *inter alia*, submitted as under:

(a) Cross-border sale of electricity from Dagachhu Hydro Power Corporation, Bhutan ('DHPC') to the Petitioner pre-dates MoP Guidelines, CBTE Regulations, 2019 and the Procedure and is, therefore, saved by paragraph 1.2 of the MoP Guidelines, Regulation 3(3) of the CBTE Regulations and Clause 1.5 of the Procedure;

(b) Since sale of power by TPTCL to West Bengal State Electricity Distribution Company Limited ('WBSEDCL') is not 'in course' of cross border trade, it does not require any approval of Designated Authority (DA). CBTE Regulations do not apply to the TPTCL - WBSEDCL transaction.

(c) CBTE Regulations are not applicable for grant of Medium Term Open Access ('MTOA').

(d) Supply of power to WBSEDCL is a domestic transaction and not import. In this regard, reliance was also placed on the decision of Appellate Tribunal for Electricity dated 18.2.2009 in Appeal No. 15/2009 in the matter of PTC v. CERC.

3. Learned counsel for the Respondent No.1, CTU made detailed submissions and, *inter alia*, submitted as under:

(a) Subsequent to its application for MTOA dated 22.5.2019, which was closed by the Respondent on 22.6.2019 in absence of approval of DA for the transaction, no new application for MTOA has been filed by the Petitioner till date.

(b) Transaction involving procurement of power under PPA between a trading licensee in India with a generating company situated in neighbouring country and a transaction involving selling of power under PSA between the said trading licensee with distribution licensee in India constitutes a single transaction and qualifies to be a cross-border transaction inasmuch as imported power is being sold to the entities of India through trading licensee. Such trading licensee is bound by CBTE Regulations.

(c) As per the MoP Guidelines, any 'Entity' (including the trading licensee/ Petitioner) proposing to import or export electricity may do so only after taking approval of the DA.

(d) Since any transaction carried out after issuance of CBTE Regulations are required to be in accordance with the provisions of the said Regulations, any fresh application for connectivity or open access into the Indian grid is required to be made as per the provisions of CBTE Regulations.

(e) Since MTOA sought by the Petitioner being a fresh transaction of power import from Bhutan to be supplied to WBSEDCL, the Petitioner is required to seek approval of DA and is also required to make an application in accordance with Regulation 12 of CBTE Regulations.

3. In rebuttal, the learned counsel for the Petitioner submitted that 'Cross Border Trade of Electricity' means transaction involving import/export of electricity between India and any of the neighbouring countries. However, the MTOA application of the Petitioner clearly indicates the injection and drawl point of power in West Bengal/ Eastern Region i.e. within India. Also, as per the PPA entered into with DHPC, the 'delivery point' is the nearest interconnection point between the Bhutan grid and Indian grid and resultantly, the title transfers to TPTCL at the delivery point, which is within India. Therefore, the transaction between the Petitioner and WBSEDCL is purely a domestic transaction. The learned counsel also added that the agreement entered into between the Petitioner and WBSEDCL is PPA and not the PSA and that

under the said PPA, the Petitioner is selling power to WBSEDCL which has already landed in India.

4. After hearing the learned counsels for the Petitioner and Respondent No.1, CTU, the Commission reserved the matter for order.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**