

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
New Delhi**

**Petition No. 389/MP/2018**

**Subject** : Petition for the recovery of charges from PGCIL under Clause 6.0(d) of the Bulk Power Transmission Agreement dated 24.2.2010 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

**Date of Hearing** : 11.11.2021

**Coram** : Shri P. K. Pujari, Chairperson  
Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri P.K. Singh, Member

**Petitioner** : GMR Kamalanga Energy Limited (GMRKEL)

**Respondents** : Power Grid Corporation of India Ltd. (PGCIL)

**Parties Present** : Shri Amit Kapur, Advocate, GMRKEL  
Shri Matrugupta Mishra, Advocate, GMRKEL  
Ms. Ritika Singhal, Advocate, GMRKEL  
Ms. Ishita Thakur, Advocate, GMRKEL  
Shri Yashaswi Kant, Advocate, GMRKEL  
Ms. Suparna Srivastava, Advocate, PGCIL  
Shri Tushar Mathur, Advocate, PGCIL  
Ms. Soumya Singh, Advocate, PGCIL  
Shri Mukesh Khanna, PGCIL  
Shri J. Mazumder, PGCIL  
Shri V. Srinivas, PGCIL  
Shri V. C. Sekhar, PGCIL  
Shri Swapnil Verma, CTUIL  
Shri Shyam Sunder Goyal, CTUIL  
Shri Siddharth Sharma, CTUIL  
Shri Ranjeet Singh Rajput, CTUIL

**Record of Proceedings**

Case was called out for virtual hearing.

2. The learned counsel for the Petitioner submitted that the instant petition has been filed seeking direction to PGCIL to pay an amount of Rs.4,68,02,06,946/- to the Petitioner towards liability of PGCIL under Clause 6.0(d) of the Bulk Power Transmission Agreement (BPTA) dated 24.2.2010 for delay in commencement of Long Term Agreement (LTA) alongwith applicable interest till the actual payment is made.



3. Learned counsel for the Petitioner referring to the Note of Arguments (NOA) made the following submissions regarding the background and circumstances which led to the filing of the instant petition:

- a. GMR Kamalanga Energy Limited (GMRKEL) has setup a 1050 (3x350 MW) (Phase I) coal based thermal power plant (TPP) at Village Kamalanga in Dhenkanal District, Odisha. For the purposes of evacuation of power from the power project, the Petitioner entered into a BPTA dated 24.2.2010 with PGCIL for evacuation of 800 MW from the project on Long Term basis. The said Agreement with PGCIL was executed along with 3 other Long Term customers and the regulatory approval was granted by the Commission vide order dated 24.2.2010 in Petition No. 233/2009.
- b. The BPTA dated 24.2.2010 provided for construction of dedicated transmission line by the Petitioner and augmentation of the transmission system by PGCIL. He submitted that since BPTA is a statutory document and defines the compensation mechanism payable by the parties in case of delay in meeting the timelines mentioned in BPTA, the same is binding upon the parties and accordingly, the Petitioner is entitled to compensation. Clause 6.0(d) of the BPTA provides that in case of delay in COD of transmission system, PGCIL shall pay transmission charges to the concerned Long Term Customer proportionate to the generation capacity commissioned.
- c. The Petitioner achieved COD of its plant on 25.3.2014 and of the 400 kV D/C dedicated transmission line from its power plant to Angul Pooling Station of PGCIL on 21.12.2014. However, PGCIL could operationalize LTA qua the Petitioner only on 14.7.2016. Since there is a delay of 19 months on the part of PGCIL, the Petitioner is entitled to compensation for the same in accordance with the provisions of BPTA.
- d. The Petitioner vide letter dated 19.6.2018 sent a computation statement to PGCIL for transmission charges payable to the Petitioner by PGCIL for delay in commencement of LTA, amounting to Rs. 4,68,02,06,946/-.
- e. The Commission vide its order dated 21.2.2018 in Petition No. 73/MP/2017 has also recognised that the Petitioner's generation asset was ready to evacuate 800 MW of power, under LTA by utilizing its dedicated transmission line.
- f. The Petitioner vide letter dated 23.12.2014 had informed PGCIL about COD of its transmission asset and requested operationalisation of LTA. However, PGCIL failed to commission the concerned transmission system as required under BPTA and could operationalize LTA qua the Petitioner on 14.7.2016, after a lapse of 19 months.
- g. No alternative arrangement was made by PGCIL and the contention of PGCIL that alternative arrangement in form of ISTS LILO of Meramundli-Bolangir/Jeypore 400 kV S/C line at Angul for sale of power on short term basis is denied.
- h. Reliance has been placed by the Petitioner on the Commission's order dated 10.5.2019 in Petition No. 96/MP/2018 and requested the Commission to follow a similar approach as adopted in the Petition No. 96/MP/2018.
- i. There has been no communication either of opening of Letter of Credit (LC) or for communicating the firm date of operationalisation from PGCIL to the Petitioner from September 2015 till 12.7.2016. The Commission in the order dated 8.3.2018 in Petition No. 229/RC/2015 has observed that the opening of LC is not a condition precedent for operationalisation of LTA.

4. Learned counsel for the Respondent submitted that the issue of opening of LC has already been settled by the Commission and the same may not be reargued in the instant petition and the arguments of the Petitioner should be restricted to the pleadings. She



submitted that the Petitioner was aware, on the date of applying and grant of LTA, that there would be a mismatch between COD of the transmission system under the scope of PGCIL and commissioning of the generating system and had accordingly suggested alternative arrangements for the evacuation of power so that the power from its generating station is not stranded. In the various meetings which was attended by the representative of the Petitioner, it was clearly informed that till the time the complete transmission system was not implemented, power transfer was to take place on short/ medium-term basis. Learned counsel submitted that as per Clause 6.0(d) of BPTA, if the transmission system of PGCIL is not ready on the date of commissioning of the generation project, alternate arrangements are to be made by PGCIL for evacuation of power. The only question to be determined in the instant petition is whether alternate arrangement for evacuation of power was ready or not. After the commissioning of generation project, power was evacuated by the Petitioner through the agreed interim arrangement i.e. LILO of one ckt. of Talcher-Meramundali 400 kV D/C line at the Petitioner's end and the interim arrangement of LILO of one circuit of Talcher-Meramundali 400 kV line was disconnected on 18.12.2014. She submitted that the Petitioner has not placed on record any information on Short Term Open Access (STOA) transactions during that period. Accordingly, the provisions of Clause 6.0(d) of BPTA are not attracted.

5. In response to the contention of the Respondent that power was evacuated through STOA under an alternate arrangement, the learned counsel for the Petitioner submitted that LTA cannot be equated or substituted by STOA.

6. In response to the query of the Commission regarding quantum of losses suffered by the Petitioner due to non-readiness of transmission system by PGCIL, the learned counsel for the Petitioner submitted that as per Section 74 of the Indian Contract Act, 1872 (in short, 'the 1872 Act'), in case of breach of contract, there is no requirement for proving actual damage or loss suffered by a party and this principle has been recognised by the Hon'ble Supreme Court in various cases like Fatechand Vs. Balkishan Das, Kailash Nath Associates Vs. DDA & Anr., etc. He submitted that the instant case falls within the purview of Section 74 of the 1872 Act as Clause 6.0(d) of the BPTA specifically provides that in case of breach by either party there is no requirement to prove loss/ damage. In response, learned counsel for PGCIL submitted that Section 74 of the 1872 Act comes into play only when there is a breach. In the instant case, no breach has been caused by the Respondent as PGCIL had provided for an alternative arrangement for evacuation of power.

7. The Commission permitted the parties to file short submissions by 22.11.2021 with a copy to the other and observed that no further extension of time will be allowed and directed the parties to comply with the specified timeline.

8. Subject to the above, the Commission reserved the order in the mater.

**By order of the Commission**

sd/-  
(V. Sreenivas)  
Deputy Chief (Law)

