

**CENTRAL ELECTRICITY REGULATORY COMMISSION
New Delhi**

Petition No. 525/MP/2020

- Subject** : Petition under Section 79 read with Regulations 20 and 21 of the Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010 read with Regulation 33A and 33B 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 and Regulations 111 and 112 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 invoking the jurisdiction of the Commission for inter-alia resolving discrepancies arising on account of conflict between the SCOD under the PPA and the date of operationalisation of connectivity and long term access, for seeking recognition of Change in Law and Force Majeure events impacting the implementation of the Project by the Petitioner and seeking appropriate reliefs with regard to exemption from payment of transmission charges, opening a Letter of Credit for PoC charges and quashing of Default Notice issued by CTU.
- Petitioner** : Sprng Renewable Energy Private Limited (SREPL)
- Respondents** : Power Grid Corporation of India Limited and Anr.
- Date of Hearing** : 9.3.2022
- Coram** : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Parties Present** : Shri Deep Rao, Advocate, SREPL
Ms. Harneet Kaur Advocate, SREPL
Shri Gaurav Sood, Advocate, SREPL
Ms. Parichita Chowdhary, Advocate, SREPL
Shri M. G. Ramachandran, Senior Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Poorva Saigal, Advocate, SECI



Ms. Suparna Srivastava, Advocate, CTUIL
Mr. Tushar Mathur, Advocate, CTUIL
Ms. Soumya Singh, Advocate, CTUL
Shri Shashank Kumar, SREPL
Shri Avinash Mirajkar, SREPL
Shri Sumit Jodge, SREPL
Shri Gaurav Sood, SREPL
Shri Avinash Mukherjee, SREPL
Shri V. Srinivas, CTUIL
Shri P.C Garg , CTUIL
Shri Ashok Pal, CTUIL
Shri Yatin Sharma, CTUIL
Shri Swapnil Verma, CTUIL
Shri Anil Kr. Meena, CTUIL

Record of Proceedings

Case was called out for virtual hearing.

2. The learned counsel for the Petitioner made the following submissions:
 - a. The issue for consideration in the instant case is whether the Ministry of Power (MoP) order dated 21.1.2021 exempts the Petitioner from the liability of transmission charges that may be levied under Regulations 13(7) of the Central Electricity Regulatory Commission (Sharing of Inter-State transmission charges & losses) Regulations, 2020 (“2020 Sharing Regulations”).
 - b. As per PPA, the original SCOD of the generation Project was 28.2.2020. The Petitioner sought extension of the original SCOD due to “*force majeure*” and “Change in Law” events and SECI extended and revised the SCOD of the Project to 13.7.2021.
 - c. The MoP order dated 21.1.2021 is a statutory document binding CTUIL and the Petitioner. MoP order amounts to “statutory change”. Further, CTUIL has itself incorporated references to government orders in LTAA dated 20.9.2018 i.e. Recital I, L. Thus, the intention of the CTUIL was clear that if there is a statutory change, then CTUIL will not hold the Petitioner to the terms of contract/Agreement.
 - d. There is no delay in commissioning of the project by the Petitioner in terms of the extension granted by SECI and the applicable MoP order. Thus, it is not liable to bear the transmission charges in terms of the 2020 Sharing Regulations.



e. In terms of the Hon'ble Supreme Court's judgment in the case of Hind Construction of Contract Vs. State of Maharashtra, if the government of India does not stipulate any penalty for delay by the renewable generator who has received valid extension from SECI, the CTUIL cannot claim such penalty contrary to the terms of the LTAA read with MoP order.

3. In response to the query of the Commission regarding the link between the MoP order and Regulation 13(7) of the 2020 Sharing Regulations, the learned counsel for the Petitioner submitted that the MoP order grants extension of COD to renewable energy generator and Regulation 13(7) of the 2020 Sharing Regulations imposes liability of transmission charges for the mismatch in the COD of the generating station and start date of LTAA. Therefore, if there is an extension of COD by the competent authority, the commencement and the period of the LTAA (i.e. granted by CTUIL) also gets extended. No liability for mismatch can arise in such circumstances.

4. In response to another query of the Commission regarding who will bear the transmission charges for the period of mismatch between the commissioning of the generation and start of LTA, the learned counsel for the Petitioner submitted that no one is liable to pay the transmission charges for the period of mismatch, as the transmission system was put into commercial operation in 2012 and capex is being recovered. As regards any agreement with CTU or transmission licensee and existence of "*force majeure*" clause, he submitted that there is a standard Transmission Service Agreement (TSA) dated 20.9.2018 entered with CTUIL in which "*force majeure*" clause has been incorporated and the Petitioner has invoked the same in the instant petition.

5. In response to another query of the Commission as to why the Petitioner has not premised his case and advanced its arguments on the provisions of "*force majeure*" clause, the learned counsel for the Petitioner submitted that it has invoked the "*force majeure*" clause in its petition. He further submitted that CTUIL has imposed the liability of transmission charges not on the basis of the TSA but as per the provisions of the 2020 Sharing Regulations.

6. Learned counsel for CTUIL referring to the LTA grant intimation letter dated 24.8.2018, submitted that the start date of LTA was 30.11.2019. Hence, the reliance placed by the Petitioner on the MoP order is misplaced as the LTAA has already been operationalised on 30.11.2019, much before the start of Covid-19 pandemic. Referring to the Minutes of the 25th Meeting of Southern Region Constituents regarding LTA and Connectivity Applications in Southern Region on 17.8.2018, learned counsel submitted that the grantee of the LTA was informed and was made fully aware of the fact that the transmission charges shall be applicable from the start date of LTA i.e. 30.11.2019. Further, referring to letters dated 5.11.2019 and 19.12.2019, she submitted that through various such correspondences the Petitioner had been informed about the liability of transmission charges which would ensue on LTA operationalization and that the liability of transmission charges was not contingent upon the commissioning of the generating project.



7. Learned counsel for CTUIL further submitted that the Petitioner on 11.2.2020 sent “*force majeure*” notice to CTUIL intimating that the delay in commissioning of the project was due to delay in acquisition of land for constructing the 300 MW project in Tamil Nadu. Therefore, the only question for determination is whether the delay in land acquisition can be regarded as a “*force majeure*” event? She submitted that the instant case has to be examined in the light of Regulation 13(7) of the 2020 Sharing Regulations and Commission’s order dated 5.2.2020 in Petition No.195/MP/2019 and order dated 6.8.2018 in Petition No.172/TT/2018. She submitted that the liability of the Petitioner to pay transmission charges is absolute and needs to be discharged in terms of 2010 and 2020 Sharing Regulations and the invocation of “*force majeure*” clause stands redundant.

8. In response, the learned counsel for the Petitioner submitted that the MoP order dated 15.1.2021 is applicable to all the renewable generating capacity commissioned on or before 30th June, 2023. The 2010 Sharing Regulations are not same as the 2020 Sharing Regulations as the methodology for computation of transmission charges is different. He requested the Commission to grant two weeks’ time to file its written submissions.

9. Learned counsel for the CTUIL also submitted that it has been explicitly stated in MoP order dated 15.1.2021 that the said order shall be applied prospectively i.e. from the date of issue of the order. She further submitted that the principle of the 2010 Sharing Regulations and the 2020 Sharing Regulations is the same.

10. Learned counsel appearing on behalf of SECI, Respondent No. 2, submitted that the reply has been filed in the matter and requested the Commission to consider the same. She submitted that no relief has been sought against SECI.

11. The Commission directed the Petitioner to submit its written submissions by 28.3.2022, with a copy to the Respondents, who may file their comments, if any, by 10.4.2022.

12. Subject to above, the Commission reserved order in the matter.

By order of the Commission

sd/-
(V. Sreenivas)
Joint Chief (Legal)

