

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 350/MP/2024

- Subject : Petition under Section 79(1)(c), 79(1)(f) of the Electricity Act, 2003 read with Regulation 41, 42, 44 of the Central Electricity Regulatory Commission (Connectivity and Generation Network Access to the Inter-State Transmission System) Regulations, 2022 and amendments thereof read with Clause 56 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2023 seeking deferment of effective date of General Network Access of 100 MW; alternatively, seeking additional 100 MW GNA through intra-State transmission system of State Transmission Utility connected to the ISTS till the completion of the commissioning of the overhead line by the Petitioner.
- Petitioner : India Power Corporation Limited (IPCL)
- Respondents : Central Transmission Utility of India Limited (CTUIL) and Anr.
- Date of Hearing : **30.9.2024**
- Coram : Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member
- Parties Present : Shri Arijit Maitra, Advocate, IPCL
Shri K. Biswal, Advocate, IPCL
Shri Rakesh Pandey, Advocate, IPCL
Ms. Pallavi Maitra, Advocate, IPCL
Ms. Suparna Srivastava, Advocate, CTUIL
Ms. Divya Sharma, Advocate, CTUIL
Ms. Kavya Bhardwaj, CTUIL

Record of Proceedings

Learned counsel for the Petitioner submitted that the present Petition had been filed *inter alia* praying for deferral of the date of effectiveness of the GNA from 1.10.2024 till the completion of the overhead line by the Petitioner / Licensee in accordance with the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 ('the GNA Regulations'). Learned counsel further referred to the 'List of Dates' and mainly submitted as under:

- (a) The Petitioner is a deemed distribution licensee supplying power in the Asansol-Raniganj area of West Bengal.
- (b) Back in 2017, the Petitioner had applied to CTUIL/PGCIL for the grant of connectivity to the ISTS system, which was denied by CTUIL/PGCIL. Accordingly, the Petitioner was constrained to approach this Commission in Petition No.168/MP/2017, and consequent to the Commission's order dated 29.1.2018 therein, CTUIL/ PGCIL granted the connectivity for 200 MW at PGCIL's Maithon S/s from the Petitioner's proposed Debipur S/s.

(c) Thereafter, for the purpose of constructing the Maithon (ISTS)-Debipur 220 kV line, the Petitioner applied for prior approval of the Central Government under Section 68 of the Electricity Act, 2003 which was denied by the CEA on 14.12.2018 on the ground of jurisdiction. The Petitioner was, therefore, constrained to approach the Hon'ble High Court of Delhi in WP No. 6450/2019 on the issue of who shall be the "Appropriate Government" to issue Section 68 Approval in the case of the Petitioner.

(d) In the meantime, the Commission notified the GNA Regulations. Pursuant thereto, the Petitioner applied to CTUIL for the transition of the 100 MW connectivity and grant of the GNA under the provisions of the GNA Regulations, which was granted by CTUIL on 15.9.2023.

(e) On 4.12.2023, the Petitioner also requested a change in location from its proposed sub-station at Debipur to Chalbalpur, and the said request was approved by the CTUIL vide intimation dated 1.2.2024.

(f) Pertinently, the WP No. 6450/2019 filed by the Petitioner before the Hon'ble High Court of Delhi was decided only on 30.4.2024, wherein the Hon'ble High Court directed the CEA/ Ministry of Power, Government of India, to consider the Petitioner's application for Prior Approval under Section 68 of the Act.

(g) Consequently, the Petitioner was granted the Section 68 Approval by the Central Government for the construction of Maithon (ISTS)-Chalbalpur 220 kV D/c line only on 18.6.2024. The Petitioner is already in the process of having the said dedicated line constructed by PGCIL as per the provision of Regulation 12.5 of the GNA Regulations and is in discussion with PGCIL and expects to have the said line completely commissioned only by December 2026. The delay in the construction of the said line is attributed to factors beyond the control of the Petitioner.

(h) Hence, the Petitioner is faced with an impossibility of 1.10.2024 as the date of effectiveness of GNA as indicated by CTUIL, especially when the approval of a change in location of direct connectivity of line to Chalbalpur S/s was granted by CTUIL only on 1.2.2024 and especially when the Petitioner has received the Central Government's Prior Approval under Section 68 of the Act only on 18.6.2024.

(i) By its letter dated 8.8.2024, the Petitioner had requested CTUIL for deferment of the start date of GNA as the Petitioner is facing an impossibility to effectuate the GNA w.e.f. 1.10.2024. However, by letter dated 22.8.2024, CTUIL rejected the said request on the specious ground that there is no such regulatory provision in the GNA Regulations.

(j) According to the Petitioner, GNA Regulations permit the deferment of the start date of GNA for cases such as the instant one. Regulation 12.5 of the GNA Regulations provides that in case of an entity covered under Regulation 17.1(iii), which includes a distribution licensee seeking to connect to ISTS directly, the line to connect such an entity to ISTS and necessary augmentation for providing connection to ISTS shall be constructed and maintained by a licensee at the cost of such entity. Further, Regulation 22.4(B) specifically provides for a revision in the grant date of GNA for the entities covered under Regulation 17.1 in view of the COD of the augmentation identified at the time of grant of GNA.

(k) In the Minutes of the 40th Joint Co-ordination Committee meeting of Eastern Region held on 21.6.2024 also, it has been recorded and acknowledged that the Petitioner will require a minimum of 12 months to construct the said overhead line. As such, the Petitioner cannot be compelled to perform an impossible act, i.e.,

construction of the said line prior to 1.10.2024, and in this regard, the reliance was placed on Section 56 of the Indian Contract Act.

(l) In any case, physical connectivity to the grid is a pre-requisite to GNA, and since the Petitioner will be physically connected to ISTS at Maithon (ISTS) S/s only after the construction of Maithon (ISTS)-Chalbalpur line, its GNA cannot be made effective prior to that.

(m) In the above circumstance, the Petitioner is also pressing for urgent protection. The Commission may consider issuing directions to CTUIL to defer the GNA billing for the above 100 MW. Pertinently, PGCIL's Maithon (ISTS) S/s has not been constructed specifically for the Petitioner, and hence, there will not be any loss of transmission charges. Also, the Petitioner is currently using the temporary GNA over an alternate segment comprising ISTS and West Bengal STU's network and is also paying the T-GNA charges. Hence, if the protection is not granted to the Petitioner, the liability to pay monthly GNA charges for this 100 MW will also be fastened upon the Petitioner in addition to the monthly T-GNA charges, leading to the double levy.

2. Learned counsel for the Respondent, CTUIL, mainly submitted as under:

(a) The effective date of the GNA has been requisitioned by the Petitioner itself. In the 26th CMETS-ER meeting held on 27.12.2023 also, the Petitioner *inter alia* confirmed the effective date of GNA as 1.10.2023. Despite being completely aware of its pending WP before the Hon'ble High Court of Delhi since 2019, the Petitioner chose neither to bring out such details nor to defer the effective date of the GNA at that point in time.

(b) The GNA Regulations provide only limited flexibility insofar as the revision/change in the effective date of GNA is concerned. While Regulation 22.4(c) provides for the advancement of the effective date subject to the availability of the transmission system, Regulation 22.4(b) provides for revision in the effective date in view of the COD of the augmentation identified at the time of grant of the GNA. The Petitioner's case is not covered by the provision of Regulation 22.4(b) as contended by the Petitioner.

(c) It is a well-settled principle of statutory construction that the express inclusion of one thing is the exclusion of all others. Hence, deferment of the effective date of GNA on the ground of non-readiness of its line, is excluded from the GNA Regulations. In this regard, the reliance was placed on the judgment of the Hon'ble Supreme Court in Mohd. Allauddin Khan v. Karam Thamarjit Singh, [(2010) 7 SCC 530].

(d) In the Petition, the Petitioner has also sought to invoke the inherent powers of this Commission for allowing its prayers. However, as already held by the Hon'ble Supreme Court, the inherent power of the Commission is available to it for exercise only in those areas where the Act or Rules are silent. In the present case, the GNA Regulations specifically exclude the deferment of the effective date of the GNA on the grounds alleged by the Petitioner. In this regard, the reliance was placed on the judgment of the Hon'ble Supreme Court in the case of Gujarat Urja Vikas Nigam Limited v. Solar Semiconductor Power Co. (India) Pvt. Ltd. and Anr., [(2017) 16 SCC 498].

(e) By seeking deferment of the effective date of the GNA till the commissioning of its Maithon (ISTS)- Chalbalpur line, the Petitioner cannot seek the reservation/blocking of 100 MW capacity without any consequential liability.

(f) CTUIL may be permitted three weeks' time to file a detailed reply in the matter.

3. In rebuttal, the learned counsel for the Petitioner submitted that in the alternative, the Petitioner, without prejudice, has also prayed to allow it to avail of an additional 100

MW GNA through the intra-State transmission system (InSTS) of STU connected with the ISTS. Learned counsel also opposed the interpretation of Regulation 22.4(b) as advanced by CTUIL and submitted that the expression “augmentation” employed therein would not only include the necessary augmentation for providing the connection to ISTS but also the line to connect the entity covered under Regulation 17.1(iii) to the ISTS, as envisaged in Regulation 12.5. Learned counsel submitted that insofar as blocking of 100 MW capacity is concerned, CTUIL has, as such, not produced any documentary evidence indicating the stranding of such capacity.

4. In response to the specific query of the Commission regarding the Petitioner had, so far, approached the concerned State Utility in regard to the availing additional 100 MW GNA through the intra-State transmission system, the learned counsel for the Petitioner replied in negative.

5. Considering the submissions made by the learned counsel for the Petitioner and the Respondent, CTUIL, the Commission ordered as under:

- (a) Admit and issue notice, subject to just exceptions;
- (b) The Respondents to file their respective replies within three weeks with a copy to the Petitioner, who may file its rejoinder within three weeks thereafter.
- (c) Insofar as the grant of any interim protection/relief(s) is concerned, the Commission declined to grant any such direction at this stage. The Commission observed that the Petitioner may approach the concerned State Utility for availing additional 100 MW GNA through InSTS as per its prayer (c).

6. The Petition will be listed for the hearing on **19.11.2024**.

By order of the Commission
Sd/-
(T.D. Pant)
Joint Chief (Law)