

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 243/MP/2024 along with IA Nos. 58/2024 & 79/2024

Subject : Petition under Section 79 of the Electricity Act, 2003 seeking for quashing / setting – aside of the bill/ invoice dated 12.3.2024 issued by the Central Transmission Utility of India Limited (CTUIL) for alleged relinquishment compensation upon the Petitioner i.e. Adani Wind Energy Kutch One Limited, amongst other reliefs.

Petitioner : Adani Wind Energy Kutchh One Limited (AWEKOL)

Respondent : Central Transmission Utility of India Limited (CTUIL)

Petition No. 309/MP/2024

Subject : Petition under Section 79(1)(f) of the Electricity Act, 2003 seeking quashing of the invoice dated 12.3.2024 raised by the Respondents on the Petitioner towards relinquishment charges pursuant to the order dated 8.3.2019 passed by this Commission in Petition No. 92/MP/12015.

Petitioner : MEIL Anpara Energy Limited (MAEL)

Respondents : Powergrid Corporation of India Limited and Ors.

Petition No. 304/MP/2024 along with IA No.75/2024

Subject : Petition under Section 79(1)(c) & section 79(1)(f) of the Electricity Act, 2003 read with Regulation 32 of Central Electricity Regulatory Commission (Grant of Connectivity, Long Term And Medium Term Open Access in Inter State Transmission and Related Matters) Regulations, 2009 along with Regulation 24 and 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 challenging the levy of relinquishment charges by Power Grid Corporation of India Limited and seeking return of Bank Guarantee.

Petitioner : Torrent Power Limited (TPL)

Respondent : Central Transmission Utility of India Limited (CTUIL)

Date of Hearing : **29.1.2025**

Coram : Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member

Parties Present : Shri Sanjay Sen, Senior Advocate, MAEL & AWEKOL
Shri Hemant Singh, Advocate, AWEKOL
Shri Sourav Roy, Advocate, AWEKOL

Shri Harshit Singh, Advocate, AWEKOL
Shri Divansh, Advocate, AWEKOL
Shri Avijeet Lala, Advocate, MAEL
Shri Chandan Kumar, Advocate, MAEL
Ms. Ritika Singhal, Advocate, MAEL
Ms. Ruth Elwin, Advocate, MAEL
Ms. Neha M. Dabral, Advocate, MAEL
Ms. Divya Chaturvedi, Advocate, TPL
Shri Saransh Shaw, Advocate, TPL
Shri Jai Dhanani, Advocate, TPL
Ms. Suparna Srivastava, Advocate, CTUIL
Ms. Arshiya, Advocate, CTUIL
Shri Shaswat Dubey, Advocate, CTUIL
Ms. Kavya Bhardwaj, CTUIL
Shri Ranjeet Rajput, CTUIL
Shri Hari Babu V, CTUIL
Shri Yogeshwar, CTUIL

Record of Proceedings

As these matters involved a similar issue, i.e., a challenge to the bill/invoice raised by CTUIL towards the relinquishment charges, they were taken up for the hearing together.

2. Learned senior counsel for the Petitioners, AWEKOL, and MAEL, circulated his notes of arguments, and made detailed submissions in the matters. Learned senior counsel *inter alia* submitted as under:

(a) Impugned invoice dated 12.3.2024 is barred by the limitation as AWEKOL relinquished its Long-Term Open Access on 31.7.2020 (qua 250 MW) and 29.12.2020 (qua 300 MW). However, the said invoice was issued on 12.3.2024 i.e., after a lapse of 3 years of limitation from the aforesaid dates of relinquishment.

(b) Instead of filing a civil suit for recovery, CTUIL has sought to circumvent the provisions of the Limitation Act by placing the belated invoices/bills on the PRAAPTI Portal by relying upon the LPS Rules. However, LPS Rules cannot sidestep the provisions of the Limitation Act.

(c) As per the Petitioners, time-barred dues or dues that are no longer enforceable cannot be included in the LPS Rules. In this regard, the reliance was placed on the judgments of the Hon'ble Supreme Court in the State of Kerala and Ors. v. V.R Kalliyankutty and Anr., [(1999) 3 SCC 657] and K. P Khemka and Anr. v. Haryana State Industrial Development Corp. Limited and Others. [(2024) 8 SCC 391].

(d) No relinquishment compensation can be levied upon such generator whose transmission system is not operationalized or put to use.

(e) Also, no relinquishment compensation is payable by the RE Generators as the same is in the nature of transmission charges and such generators are exempted from the payment of transmission charges.

(f) The order dated 8.3.2019 in Petition No. 92/MP/2015 stipulates that in case of relinquishment made prior to the LTA start date, the relinquishment charges are to be computed only from the effective date of start of the LTA. In AWEKOL's case, the last element of the LTA, i.e., LVTL line was commissioned only on 28.1.2023, and CTUIL being well aware of the aforesaid events as on the date of raising of invoice (12.3.2024),

it ought to have computed the stranded capacity *qua* relinquishment charges as on the said date.

(g) The impugned invoice also suffers from the computational error. CTUIL appears to have apportioned the relinquishment compensation to the extent of a net relinquished capacity of 170 MW and not 58 MW of stranded capacity. CTUIL also appears to have wrongly apportioned the cost of the elements, which were not even part of the AWEKOL LTAs. The elements mentioned at Row Nos. 1 & 2 of the table placed in the aforesaid letter dated 24.5.2024 were never a part of the AWEKOL's LTA elements. In the case of MAEL, CTUIL has not provided a detailed computation of the relinquishment charges worked out by it.

3. Learned counsel for the Petitioner in Petition No.304/MP/2024 adopted the submissions made by the learned senior counsel for the Petitioners as above. Learned counsel also added that the GNA Regulations do not provide for recovery of any relinquishment charges from the RE generators.

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

(a) The issue regarding the stranded capacity and relinquishment charges has been adjudicated by this Commission in an order dated 8.3.2019 in Petition No. 92/MP/2015, wherein it has been recognized the payment of relinquishment charges is a statutory obligation arising under Regulation 18 of the Connectivity Regulations when the LTA rights are relinquished.

(b) As per the said order, whenever the LTA rights are relinquished prior to the start date of the LTA, the relinquishment charges are to be computed from the effective date of operationalisation of the LTA. Since the LTAs of the Petitioner, AWEKOL, have been relinquished prior to their operationalisation, the LTA effectiveness date for calculation of the stranded capacity has been taken as 31.3.2022, i.e., the expected date of commissioning of the last element.

(c) The issue of liability of the RE generator for the payment of relinquishment charges has already been examined by the Commission in the order dated 15.5.2020 in Petition No. 187/MP/2020, wherein it has held that while there is an exemption from the payment of transmission charges by the eligible RE generators, there is no exemption for RE generators from the payment of relinquishment charges and the same is payable in accordance with Regulation 18 of the Connectivity Regulations.

(d) Pursuant to the order dated 8.3.2019, the relinquishment charges for the Petitioners' relinquished LTAs had been computed in accordance with the said order and were also uploaded on the Respondent's website on 24.12.2021 itself. The Petitioners neither challenge the order dated 8.3.2019 nor their liability to relinquishment charges as notified by CTUIL.

(e) The Limitation Act only places a bar on the time limit for availing legal remedies and does not extinguish the right to which the remedy relates. Therefore, while the provisions of the Limitation Act are applicable in a suit for recovery of the payable amount, they do not extinguish the right to raise invoices/bills for the said payable amount.

(f) In the case of relinquishment, when such invoices are raised and remain unpaid, then the prescribed mechanism in law is not for filing a suit for recovery of the unpaid relinquishment charges but for regulating the power supply by the defaulting entity as per the provisions under the LPS Rules. The Hon'ble Supreme Court has also reinforced the principle in various judgments that the statute of limitation only bars the remedy and not

the right to debt. In this regard, the reliance was placed on the judgments of Punjab National Bank & Ors. v. Surendra Prasad Sinha [AIR 1992 SCC 1815], Bombay Dyeing & Mfg. Co. Ltd v. State of Bombay [1957 SCC OnLine SC 7] and Khadi Gram Udyog Trust v. Ram Chandraji Virajman Mandir, Kanpur, [1978 1 SCC 44].

(g) At the time when the order dated 8.3.2019 was passed, CTUIL was pursuing the available remedies with respect to the levy of the GST on the relinquishment charge invoices. The issue came to be settled only vide order dated 15.10.2023 passed by CESTAT in Service Tax Appeal No. 50718 of 2021, and subsequent thereto, invoice for the relinquishment charges has been raised on the Petitioners. The delay in raising the invoice(s), owing to the various developments as indicated by CTUIL, was not beyond the reasonable time.

5. After hearing the learned senior counsel and learned counsel for the parties, the Commission directed the CTUIL to provide the computation of the relinquishment charges to the Petitioners, if not provided already, within two weeks. The parties were also permitted to file their written submissions/ additional written submissions, if any, within three weeks.

6. The matters remained part-heard and will be listed for the hearing on **25.3.2025**.

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