

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 197/MP/2015

Subject : Petition under Regulation 7 read with Regulation 12 of the Central Electricity Regulatory Commission (Grant of Connectivity, long Term Open Access and Medium Term Open Access in the inter-State Transmission and related matters) Regulations, 2009.

Date of hearing : 23.9.2015

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Petitioner : The Indian Railways

Respondents : PGCIL and others.

Parties present : Shri M.G. Ramachandran, Advocate for petitioner
Ms. Ranjitha Ramachandran, Advocate for petitioner
Shri Shubham Arya, Advocate for petitioner
Shri Manish Tiwari, Indian Railways
Shri S.K. Saxena, Indian Railways
Shri M.Y. Deshmukh, Advocate, MSETCL
Ms. Jayantika Singh, Advocate, NLDC
Shri S.S. Barpanda, NLDC
Shri S.C. Saxena, NLDC
Shri Saswati Garnaik, RGPPL
Shri J.S. Chordia, RGPPL
Shri Vipin Kumar, RGPPL
Ms. Jyoti Prasad, PGCIL

Record of Proceedings

Learned counsel for the petitioner submitted as under:

(a) Section 14 of the Electricity Act, 2003 (Act) provides that the Appropriate Government shall be a deemed licensee to transmit or distribute electricity or undertake trading in electricity and is not required to take licence for the purpose. Since, Indian Railways is a Department of the Central Government, it is a deemed licensee for transmission and distribution of electricity.

(b) Learned counsel relied upon the judgment of the Hon`ble Supreme Court dated 9.2.2012 in Union of India Vs UP State Electricity Board and submitted that in this case, the scope of Section 11 (a) and (g) of the Railways Act, 1989 was considered. Section 11 (a) of the Railways Act, 1989 deals with the powers of Railway Administration to execute all necessary works of Railways. Section 11 (g) specifically empowers the Railway Administration to undertake erection, operate and maintain the electric traction equipment as well as power supply and distribution installation in connection with working of the railways. Further section 12 of the Railways Act, 1989 empowers the Railway to alter the Electric Supply lines. This statutory recognition is valid and effective and is not in any manner affected by the provisions of the Act which came into force on 10.6.2003. In this regard, Section 173 of the Act dealing with inconsistencies of the laws, specifically saved the Railways Act in case of any inconsistency between the provisions of the Act and the Railways Act, 1989.

(c) Learned counsel referred to Ministry of Power, Government of India letter dated 6.5.2014 and submitted that in this letter the position of “deemed licensee” status of Indian Railways under the Act has been clarified.

(d) On 5.3.2015, a PPA was entered between the Central Railways and Gujarat Urja Vikas Nigam Ltd. (GUVNL) for supply of 100 MW of electricity at GETCO periphery i.e. interconnection point between GETCO, STU and CTU System of Western Region. The transmission system of PGCIL would be available from such point to the periphery of the STU of the State where the electricity purchased is to be conveyed to the petitioner`s network. Thereafter, the transmission lines of MSETCL would be available for conveyance of electricity to the facilities of the petitioner. Further, the petitioner has also been allocated 500 MW of power from Ratnagiri Gas and Power Private Limited (RGPPL).

(e) On 19.1.2015, the petitioner made an application to MSETCL for grant of NOC for connectivity and for transfer of power through open access till the facilities the network of Indian Railways. In response, MSETCL vide its letter dated 4.2.2015 directed the petitioner to apply for connectivity at the traction sub-stations. Accordingly, on 17.3.2015, the petitioner made an application for grant of connectivity. However, MSETCL has not granted connectivity despite repeated reminders. On 24.7.2015, the petitioner further made an application to MSETCL for grant of NOC for open access. However, no reply has been received from MSETCL in this regard.

(f) POSOCO has filed its reply and in its reply, POSOCO has supported the contention of the petitioner.

2. In response to the Commission`s query regarding status of petition filed before MERC on the same issue, learned counsel clarified that the petitioner has withdrawn the petition from MERC. The Commission directed the petitioner to place on record the copy of the order of MERC.

3. The representatives of POSOCO submitted that in para 37 (b) of the petition, the petitioner has prayed that in connection with its working as railways across a number of States, the petitioner be treated as a separate participating entity like any other State entity in the deviation and settlement mechanism. The representative of the petitioner submitted the Indian Railways is connected to ISTS at two places i.e Dadri and Auraiya and has been treated as separate regional entity. In other places, Indian Railways is connected through the State system and therefore, should be treated as part of the States for the purpose of deviation settlement.
4. Learned counsel for the petitioner submitted that the Indian Railways is comfortable being treated as part of State entity where it is connected through the State system.
5. The representative of CTU supported the views of POSOCO.
6. Learned counsel for MSETCL requested for time to file reply to the petition. Leaned counsel further submitted that the petitioner should have approached MERC for grant of open access.
7. The representative of Ratnagiri Gas and Power Private Limited (RGPPL) submitted that RGPPL is connected with the State grid and as per allocation and scheme, Indian railways is a deemed licensee.
8. After hearing the learned counsels and the representatives of the parties, the Commission directed MSETCL to file its reply by 30.9.2015 with an advance copy to the petitioner who may file its rejoinder, if any, by 1.10.2015. The Commission directed that due date of filing the reply and rejoinder shall be complied with and no extension on that account shall be granted.
9. The Commission directed to list the petition for hearing on 5.10.2015 at 2:30 p.m.

By order of the Commission

**SD/-
(T. Rout)
Chief (Law)**