

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Date of hearing: 5.3.2019

Petition No.122/MP/2017

- Subject : Petition for relinquishment of 250 MW of Long Term Access Agreement dated 4.12.2011 under Regulation 18 read with Regulation 32 of Central Electricity Regulatory Commission (Grant of Connectivity, Long-Term Access and Medium Term Open Access in inter-State Transmission system and related matters) Regulations, 2009 (Connectivity Regulations) of the identified transmission system by the Essar Power Gujarat Limited (4X660 Phase-II) Thermal Power Plant at District Jamnagar in the State of Gujarat.
- Petitioner : Essar Power Gujarat Limited (EPGL)
- Respondents : Power Grid Corporation of India Limited and Others
- Coram : Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member
Shri I.S. Jha, Member
- Parties present : Shri. Prashanto Sen Gupta, Senior Advocate, Essar Power
Shri Sumant Nayak, Advocate, Essar Power
Ms. Kritika Angrish, Advocate, Essar Power
Shri. Aslam Ahmed, Advocate, Essar Power
Shri. Prashanto Sen Gupta, Advocate, Essar Power
Shri. Kaustubh singh, Advocate, Essar Power
Ms. Shruti Verma, Essar Power
Shri M.G. Ramachandran, Advocate, GUVNL
Ms. Ranjitha Ramachandran, Advocate, GUVNL
Ms. Suparna Srivastava, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL

Record of Proceedings

Learned senior counsel for the Petitioner argued at length and submitted that since, LTA granted to the Petitioner has become frustrated on account of force majeure events, namely, delay in grant of environment clearance, the Petitioner is entitled to relinquish the 250 MW LTA without any liability for payment of the relinquishment charges. Learned senior counsel, in support of his contention, relied upon the Hon'ble Supreme Court judgment in the case of Energy Watchdog Vs. Central Electricity Regulatory Commission and others, the Commission's order dated 25.6.2018 in Petition No.216/MP/2016 in the case of Bhopal Dhule Transmission Company Ltd Vs. Chhattisgarh State Power Trading Company limited, provisions of Connectivity Regulations and the minutes of 7th and 13th JCC meetings.

2. Learned counsel for PGCIL argued at length and submitted that the issue regarding force majeure events has already been decided by the Commission in its order dated 11.10.2017 in Petition No.187/MP/2015.

3. Learned counsel for GUVNL submitted that the PPA with GUVNL is a completely different contract and force majeure events in the PPA are not ipso facto applicable to the Transmission Service Agreement. Learned counsel further submitted that it is well settled that force majeure can be claimed for unforeseen or unanticipated event and not for an event which can be foreseen or which could be reasonably known and could be anticipated. Learned counsel, in support of his contention, relied on the Hon'ble Supreme Court judgment in the case of Satyabrata Ghose Vs. Mugneeram Bangur and company.

4. After hearing the learned senior counsel for the Petitioner and learned counsel for the Respondents, the Commission directed the parties to file their written submissions by 15.3.2019, with copy to each other. Subject to the above, the Commission reserved the order in the Petition.

By order of the Commission

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