

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 35/MP/2018

**Coram:
Shri P. K. Pujari, Chairperson
Dr. M.K. Iyer, Member**

Date of Order: 19.03.2019

In the matter of:

Petition under Section 79 (1) (f) read with CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 seeking refund of the POC charges for 260 MW in Eastern Region granted under the Bulk Power Transmission Agreement dated 1.7.2016.

And

In the matter of:

M/S GMR Kamalanga Energy Limited
Building No. 302, New Shakti Bhavan,
Near Terminal 3 Indira Gandhi International Airport
Delhi – 110037

...Petitioner

Versus

1. Power Grid Corporation of India Limited
B-9, Qutub Industrial Area
Kawaria Sarai
New Delhi- 110016

2. Eastern Regional Load Despatch Center
14, Golf Club Road,
Tollygunge,
Kolkata -700 033

...Respondents

Parties Present:

Shri Matru Gupta Mishra, Advocate for GKEL
Shri Nishant Kumar, Advocate for GKEL
Shri Ajay Kumar Nathani, Advocate for GKEL
Ms. Suparna Srivasatva, Advocate for PGCIL
Shri Tushar Mathur, Advocate for PGCIL
Shri Ranjeet S. Rajput for PGCIL
Shri Swapnil Verma for PGCIL
Shri Anupam Kumar for PGCIL

ORDER

The Petitioner, GMR Kamalanga Energy Limited has filed the present Petition under Section 79 (1) (f) read with Central Electricity Regulatory Commission (Grant of Connectivity, Long- term Access and Medium – term Open Access in inter- State Transmission and related matters) Regulations, 2009 (hereinafter to be referred as Connectivity Regulations) seeking refund of the POC charges for 260 MW in Eastern Region granted under the Bulk Power Transmission Agreement (BPTA) dated 1.7.2016.

The Petitioner has made the following prayers:

- a. Hold and declare that the LTA of 260 MW is operationalised with effect from 2.8.2017; and
 - b. Direct the Respondent/ PGCIL to refund or adjust with future LTA bills, the LTA charges paid by the Petitioner under protest for the period 9.7.2017 to 2.8.2017 along with interest.
2. The Petitioner has mainly submitted as under:
- (a) The Petitioner has set up a thermal power plant with an installed capacity of 1050 MW. A supplementary Bulk Power Transmission Agreement (BPTA) dated 1.7.2016 was executed between PGCIL and the Petitioner for the supply of 260 MW power to Bihar Discoms on long term basis.
 - (b) The Petitioner furnished the Letter of Credit (LC) of Rs.16.26 crore on 17.6.2017 towards the payment security mechanism for PoC charges for 260 MW of LTA. Accordingly, pursuant to the furnishing of the LC, PGCIL vide its letter dated 7.7.2017 advised Eastern Regional Load Despatch Centre (ERLDC) to operationalise the LTA quantum of 260 MW.

(c) ERLDC failed to operationalise the LTA till 1.8.2017. The scheduling of power under LTA has started only from 2.8.2017. Since ERLDC failed to operationalise the LTA, the Petitioner continued to evacuate the power to Bihar Discoms through STOA till 1.8.2017 and has been paying STOA charges regularly. However, PGCIL vide letter dated 8.8.2017 raised POC invoice of Rs 5.74 crore for the month of July, 2017 towards 260 MW LTA granted under BPTA.

(d) The Petitioner vide its letter dated 11.8.2017 requested ERPC to revise the Regional Transmission Accounts (RTA) in the light of the fact that scheduling under LTA granted to the Petitioner has commenced only from 2.8.2017 and prior to this the scheduling was being done under STOA. PGCIL vide its letter dated 22.8.2017 informed the Petitioner that operationalisation of LTA from 2.8.2017 cannot be accepted as PGCIL vide its letter dated 7.7.2017 has already informed ERLDC about operationalisation of LTA after considering the processing time required by ERLDC for scheduling of power, the POC billing for the said LTA has commenced from 9.7.2017 and therefore, the Petitioner is liable to pay the transmission charges for the said LTA.

(e) Further, ERPC vide its letter dated 28.8.2017, in reference to the letter dated 11.8.2017 issued by the Petitioner and letter dated 22.08.2017 issued by PGCIL has stated that operationalisation of LTA by CTU is not linked with scheduling of power by ERLDC. ERLDC has further stated that LTA as and when operationalised by CTU and intimated through NLDC to ERPC is used for

preparation of Regional Transmission Accounts (RTA) and as such there is no requirement for revision of RTA for the month of July 2017.

(f) The operationalisation of LTA was not done by PGCIL/CTU, rather PGCIL has only advised ERLDC to operationalise the said LTA without even assigning any specific date i.e. from 9.7.2017. Further, the operationalisation of LTA w.e.f. 9.7.2017 was never communicated by ERLDC and the scheduling of power only commenced from 2.8.2017.

(g) The Petitioner vide its letter dated 6.10.2017 disputed the LTA bill raised for the month of July, 2017. However, in order to avoid any coercive measures, the Petitioner made the payment for the month of July, 2017 under protest.

3. Notices were issued to the Respondents to file their replies. ERLDC and PGCIL have filed their replies to the Petition vide their affidavits dated 3.5.2018 and 14.5.2018 respectively. The Petitioner has also filed its Rejoinder to the replies filed by ERLDC and PGCIL.

4. ERLDC in its reply has mainly submitted as under:

(a) As per the Electricity Act, 2003, ERLDC is entrusted with the responsibility of scheduling the LTA after operationalisation of LTA. In the present case, CTU has already operationalised the LTA vide its letter dated 7.7.2017 and ERLDC had in turn made provision in its web based scheduling software to punch the mutually agreed schedule by the Petitioner. The Petitioner was already punching the mutually agreed schedule for its another LTA to Haryana since

14.7.16. Therefore, the methodology of scheduling power under LTA was already known to the Petitioner.

(b) CTU had already informed the Petitioner about operationalisation of LTA. However, inspite of the operationalisation of LTA, the Petitioner did not punch the mutually agreed schedule with Bihar Discoms into the ERLDC web based scheduling portal and preferred to schedule under STOA mode. Therefore, in absence of scheduling request received from the Petitioner, the power could not be scheduled under LTA route.

(c) The Petitioner vide its email dated 1.8.2017 intimated ERLDC about scheduling of 260 MW power to Bihar Discoms under LTA and thereby, started punching the mutually agreed schedule for transaction from 2.8.17. Therefore it was always Petitioner's choice to schedule power under LTA or STOA route. ERLDC had never raised any objection against the choice of the Petitioner to schedule power under LTA or STOA route.

(d) The Petitioner in its affidavit dated 23.3.17 has submitted that as per article 4.5.2 of PPA between the Petitioner and BSPHCL- Bihar, the sale of Contracted Capacity to Third Party is allowed, which is not scheduled by Procurer. Accordingly, on the request of the Petitioner, ERLDC has given No Objection Certificate to trade in power market with the condition that the Petitioner is required to ensure that the maximum schedule contracted considering all LTA, MTOA and STOA (Collective & Bilateral) transactions should not exceed the quantum of 660 MW.

(e) ERLDC had never objected for scheduling of power under LTA and never compelled the Petitioner to transact in STOA mode.

5. PGCIL, vide its reply dated 14.05.2018 has submitted as under:

(a) The LTA as requested for was granted to the Petitioner vide intimation dated 24.6.2016. Pursuant to the said grant, the Petitioner entered into a Supplementary Bulk Power Transmission Agreement (BPTA) dated 1.7.2016 with the Respondent for supply of 260 MW of power to Bihar on long term basis and the Petitioner had agreed to pay to the Respondent, transmission charges in accordance with the Regulations and procedure of the Central Commission.

(b) CTU vide its letter dated 7.7.2017 advised ERLDC to operationalise the transfer of power as per LTA of 260 MW granted to the Petitioner. Once the LTA has been operationalised, it is the responsibility of the Petitioner to coordinate with ERLDC for scheduling of power under the LTA. However, the Petitioner continued to make daily STOA transactions even after the date on which CTU informed ERLDC on LTA operationalisation and the same was acknowledged by the Petitioner.

(c) As per Section 28 of the Electricity Act, 2003, the scheduling and dispatching of electricity through ISTS is the assigned function of the concerned RLDC, which is to be discharged in accordance with the contracts entered into by licensees or the generating companies operating in the region. CTU has made available access to ISTS on payment of the transmission charges, the actual

power flow by use of such open access takes place as per the scheduling and dispatch instructions of the concerned RLDC.

(d) As per Section 38 (2) of the Electricity Act, 2003 and the Connectivity Regulations, the obligation to pay for the open access is absolute. The payment towards the LTA charges has no relation whatsoever with the actual power flow as per the scheduling and despatching arrangements with the concerned RLDC.

(e) As per the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 (hereinafter to be referred as the Grid Code), once the LTA is operationalised, the entire responsibility pertaining to scheduling and dispatching of inter- State power vests with the RLDCs and the CTU has no statutory duty in this regard. The operationalisation of LTA and scheduling of power under LTA are not inter-linked and yet, the entire grievance of the Petitioner that rests on making operationalisation of LTA co- terminus with scheduling of power cannot be accepted.

(f) Regulation 11(9) of the Central Electricity Regulatory Commission (Sharing of inter State Transmission Charges and Losses) Regulations, 2010 (hereinafter to be referred as Sharing Regulations) provides for a mechanism of adjustment of charges paid by LTA customers against STOA charges. Therefore, the Petitioner's contention of making double payment under STOA and LTA is not acceptable.

6. The Petitioner has also filed the rejoinders to the replies filed by the ERLDC and CTU. The Petitioner in its rejoinders has mainly reiterated the submissions made in the Petition.

7. The Petitioner in its rejoinder to the reply filed by ERLDC has, apart from reiterating submissions in the petition also submitted as under :

(a) ERLDC did not inform the Petitioner with regard to operationalisation of LTA from 7.7.2017 and, therefore, the Petitioner was not able to schedule its power under LTA till 1.8.2017. ERLDC has a statutory duty to stop scheduling the power under STOA and start scheduling the power under LTA and to inform the Petitioner so that the Petitioner power gets scheduled under LTA for evacuation subsequent to the processing time taken for the scheduling of power.

(b) Regulation 6.2 of the Grid Code makes it clear that the Load Despatch Centres are responsible for coordinating the scheduling of a generating station. However, ERLDC never took initiative to coordinate with the Petitioner. On the contrary, the ERLDC continued to accept the STOA payment and scheduled power under STOA. It was only after Petitioner's email dated 1.8.2017, wherein the Petitioner requested the ERLDC to operationalise the LTA, the power got scheduled under LTA with effect from 2.8.2017. Therefore, it cannot be said that ERLDC has no role in operationalisation of LTA.

8. The Petitioner in its rejoinder to the reply filed by the PGCIL has, apart from reiterating submissions in the petition also submitted as under:

(a) PGCIL in its reply has submitted that it has advised ERLDC to operationalise the LTA vide its letter dated 7.7.2017. On the other hand, PGCIL

vide its reply has also submitted that it had directed the ERLDC to operationalise the LTA of the Petitioner. These two statements are contradictory in nature.

(b) As per provisions of the Electricity Act, 2003, PGCIL being the CTU has been entrusted with the task of taking into account the interest of the generators as well as other stakeholders. Therefore, it cannot be accepted on the part of CTU to contend that once the advisory for operationalisation of LTA has been issued by PGCIL, it is the responsibility of the Petitioner to take all measures to coordinate with ERLDC for scheduling of its power under the LTA.

(c) PGCIL has issued an advisory on 7.7.2017 and accordingly, advised ERLDC to operationalise the LTA qua the Petitioner. Even the said letter was actually addressed to ERLDC in which the Petitioner was marked a copy. Therefore, the whole matter of operationalising and scheduling was between PGCIL and ERLDC to which the Petitioner was a mere witness/ beneficiary. Hence, expecting the Petitioner to take an affirmative action in furtherance to letter of CTU dated 7.7.2017 is not envisaged under any provision of law. The said letter does not even intend any such affirmative action on the part of the Petitioner. Further, it is the duty of ERLDC to allow operationalise the transfer of power under LTA and to inform the generator about such operationalisation by CTU. However, in the present case, the transfer of power under such LTA commenced only on 2.8.2017 pursuant to which the Petitioner applied for scheduling of its power under LTA and not under STOA for supply to Bihar Discoms.

(d) PGCIL has raised the invoice towards the transmission charges for the period from 9.7.2017 to 31.7.2017, by choosing 9.7.2017, as the date of operationalisation of LTA based on its own protocol. As submitted by PGCIL, the same has been taken as the date for operationalisation of LTA considering the reasonable time required for processing the scheduling of power under the operationalised LTA. The reasonable time as submitted by PGCIL does not find any place in the regulatory framework and the same has been mentioned by PGCIL on its own imagination.

(e) As per Section 38(2) (b) (iv) & (v) of the Electricity Act, 2003, PGCIL being the Central Transmission Utility (CTU) is under the obligation to discharge all functions of planning and coordination relating to inter-State transmission system with the generating companies and the Regional Power Committees. Therefore, it was mandate of PGCIL to coordinate with the Petitioner and ERLDC to operationalise LTA and PGCIL has clearly failed to perform its function in this regard and has arbitrarily raised POC invoice of Rs. 5.74 crore for the month of July, 2017.

(f) In reference to claim of PGCIL that the Sharing Regulations, which provides for a mechanism of adjustment of charges paid by LTA customers against STOA charges, the Petitioner has submitted that the Petitioner has supplied power till 1.8.2017 under STOA transactions to the extent of available margin in the transmission corridor. The said supply was made under STOA since the LTA not being operationalised till 1.8.2017. Therefore, it is not possible to offset STOA charges from LTA charges. PGCIL is liable to refund the LTA charges

for 260 MW collected for the period 9.7.2017 to 1.8.2017 during which LTA was actually not operationalise.

Analysis and Decision

9. After hearing the learned counsels for the parties, the following issues arise for our consideration :

(a) What is the effective date of operationalisation of LTA?

(b) What will be treatment of the PoC bills raised for the period 9.07.2017 to 1.8.2017.

Issue No. (a) :What is the effective date of operationalisation of LTA?

10. The Petitioner has submitted that the Petitioner cannot be made liable to pay the LTA charges for the period 9.7.2017 to 1.8.2017 on account of the fact that the power of the Petitioner was scheduled under STOA since LTA was not operationalised up to 1.8.2017 and the Petitioner has already made the payment of the STOA charges as availed by the Petitioner. The petitioner has argued that it was not able to avail the LTA till 1.8.2017 due to failure on the part of CTU to coordinate with ERLDC and ERPC with respect to the operationalisation of LTA. Therefore, the non-availment of LTA cannot be attributed to the Petitioner in any manner whatsoever.

11. ERLDC has submitted that it was always the Petitioner's choice to schedule power either under LTA or STOA route. ERLDC had never raised any objection against the petitioner's choice to schedule power under LTA or STOA route.

12. PGCIL has submitted that it had vide its letter dated 7.7.2017 already advised ERLDC to operationalise the LTA and Petitioner had also been served a copy of the same. Once the LTA gets operationalised, the entire responsibility pertaining to scheduling and dispatching of inter- State power vests with the RLDCs and the CTU has no statutory duty in this regard. PGCIL has also submitted that as the LTA grantee, it was the responsibility of the Petitioner to take all measures to coordinate with ERLDC for scheduling of its power under the LTA. However, the Petitioner deliberately undertook STOA transactions for transfer of power to Bihar even after 7.7.2017.

13. We have considered the submissions of Petitioner and respondents. The relevant provisions of Connectivity Regulations. Regulation 14 of the Connectivity Regulation, reads as under :

“14. Communication of Estimate of Transmission Charges, etc.: While granting long term access, the nodal agency shall communicate to the applicant, the date from which long-term access shall be granted and an estimate of the transmission charges likely to be payable based on the prevailing costs, prices and methodology of sharing of transmission charges specified by the Commission.”

The reading of Regulation 14 makes it clear that it is obligatory upon the nodal agency i.e. CTU to communicate the date from which the long term access shall be granted. There is no escape from the said obligation and the nodal agency cannot pass over its obligation to any other authority. Therefore, the obligation is upon the nodal agency, which must be fulfilled.

14. We have also observed in our order dated 8.3.2018 in Petition No. 229/RC/2015 that CTU is required to inform the firm date to facilitate institution of Payment Security Mechanism. The relevant extract of the said order is reproduced as under :

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(b) Payment Security Mechanism is an important regulatory requirement for availing the transmission services and all Respondents are directed to open the LC for the required amount one month before the operationalization of LTA. CTU is directed to inform the firm dates to facilitate institution of Payment Security Mechanism.....”

The reading of above extract reveals that CTU is required to inform about the firm date for the purpose of operationalisation of LTA even for the purpose of facilitation of Payment Security Mechanism.

15. In the light of the above, we now proceed to analyze whether the CTU had informed the firm date of operationalisation of LTA to the Petitioner. The entire issue of operationalisation of LTA revolves around PGCIL letter dated 7.7.2017 addressed to ERLDC. CTU has stated that PGCIL in the said letter had advised ERLDC to operationalise the transfer of power as per the LTA of 260 MW granted to the Petitioner and the same was acknowledged by the Petitioner vide e-mail dated 7.7.2017. The relevant portion of the PGCIL's letter dated 7.7.2017 addressed to ERLDC is extracted as under :

“The LC of requisite amount is in place, towards such transfer.

The transfer of power may be operationalized in line with ED (NLDC) letter no. NLDCZPGCIL/1252 dated 13 Jan 2016.”

16. Relevant portions of the NLDC letter no. NLDCZPGCIL/1252 dated 13.1.2016. is extracted as under :

“... In view of the above, it is suggested that any intimation of LTA/ MTOA by CTU may be made available to the concerned RLDC/ NLDC at least two days prior to the date of delivery, so that the same can be accommodated duly in the scheduling process.

Therefore, one clear day notice (excluding the day of intimation) is required for operationalising any new long term long term/medium term- transaction.”

A reading of the above letter shows that CTU is required to inform the concerned RLDC/NLDC regarding operationalising of new long term access and medium term access at least in two days in advance from the date of delivery. We observe that above letter does not provide any firm date of operationalisation of Access. Further, copy of this letter was not even made available to the petitioner and as such, it could not be comprehended by the petitioner that LTA could be operationalised in two days.

17. It is stated on the part of PGCIL that the Petitioner in its email dated 7.7.2017 had acknowledged the operationalisation of LTA. The relevant portions of the Petitioner's email dated 7.7.2017 is extracted as under :

“Many thanks and we are grateful for the early action in operationalisation of the LTA.”

18. A combined reading of PGCIL's letter dated 7.7.2017 and the Petitioner's email dated 7.7.2017 does not lead to any inference that the CTU had informed the Petitioner about the firm date of operationalisation of LTA. CTU in its letter dated 7.7.2017 had only requested ERLDC to operationalise the LTA in line with ED (NLDC) letter no. NLDCZPGCIL/1252 dated 13.1. 2016. However, even at this stage CTU failed to inform ERLDC the firm date for the operationalisation of LTA.

19. Further, the Petitioner in its email dated 7.7.2017 has nowhere expressed its knowledge with regard to operationalisation of LTA. The Petitioner in the said email had only expressed its gratitude towards the early action towards the operationalisation of LTA. Therefore, in the absence of any effective date or firm date for the operationalisation of LTA, it cannot be assumed that the Petitioner had substantial

knowledge pertaining to operationalisation of LTA. CTU has referred to ED (NLDC) letter dated 13.1.2016 without enclosing its copy to the applicant. Even, the said letter does not refer to any firm date. In absence of firm date, it is very difficult to agree with the argument of CTU that petitioner was aware of the date of operationalisation.

20. We also observe that it was only after Petitioner's email dated 1.8.2017, wherein the Petitioner requested ERLDC to confirm about operationalising the LTA for Bihar Discoms from 2.8.2017 and only thereafter, the LTA of the Petitioner gets operationalised. The relevant extracts of the Petitioner's email dated 1.8.2017 is reproduced as under :

"Dear Sirs,

We have received a letter No. C/Comml/ERLDC/BIHAR/LTA-260 MW, dated -07.07.2017 (copy annexed) from Power Grid to ERLDC, Kolkata with a copy marked to GKEL about the grant and operationalization of LTA of 260 MW to Bihar (Bihar-Discoms).

In this regard, we request your good self to kindly help us with a line of communication in this regard for operationalizing the LTA for BSPHCL from '2nd August 2017, 00:00 Hrs' at your earliest so as to enable us to supply power to BSPHCL through LTA."

The reading of above email does not show that the Petitioner had any knowledge with regard to operationalisation of LTA with effect from 9.7.2017. It is only after the Petitioner has vide email dated 1.8.2017 requested for the operationalisation of LTA with effect from 2.8.2017 by giving reference to PGCIL letter dated 7.7.2017, that the same has been put into effect.

21. The Connectivity Regulations puts obligation upon CTU to inform firm date for the operationalisation of LTA, in coordination with RLDC/NLDC.

22. In view of the above discussion, we are of the view that the LTA granted to the Petitioner stands operationalised only with effect from 2.8.2017. .

Issue No. (b): What will be treatment of the PoC bills raised for the period 09.07.2017 to 02.08.2017?

23. We have already observed the date of operationalisation of LTA as 2.8.2017. Thus, the Regional Transmission Accounts (RTA) shall be revised by ERPC accordingly. Further, POC bills paid for the period from 9.7.2017 to 1.8.2017 already paid by the Petitioner shall be adjusted in the subsequent PoC bills of the Petitioner.

24. We have observed above that it was the duty of the CTU to inform the Petitioner about the operationalisation of LTA and therefore, the Petitioner is not liable to pay PoC bills accrued for the period from 9.7.2017 to 1.8.2017. However, CTU is entitled to recover the STOA charges paid by the petitioner for the STOA transactions for the period from 9.7.2017 to 1.8.2017 from the charges collected from STOA in future months.

25. The Petition No. 35/MP/2018 is disposed off accordingly.

Sd/-

**(Dr. M. K. Iyer)
Member**

Sd/-

**(P. K. Pujari)
Chairperson**