

**BEFORE THE CENTRAL ELECTRICITY REGULATORY
COMMISSION, NEW DELHI**

PETITION NO. OF 2016

IN THE MATTER OF:

Petition under Section 79 (1) (c) & (f) of the Electricity Act, 2003 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, seeking directions in respect of LTA granted for Budhil Hydro Electric Project in terms thereof.

AND IN THE MATTER OF:

Greenko Budhil Hydro Power Pvt. Ltd.
(Formerly known as Lanco Budhil Hydro
Power Private Limited)

...Petitioner

Versus

Power Grid Corporation of India & Anr.

...Respondents

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....Petitioner

Versus

1. Power Grid Corporation of India
(Govt. of India undertaking)
Registered Office: B-9, Qutab Institutional Area,
Katawaria Sarai, New Delhi-110016.
2. PTC India Ltd,
2nd floor, NBCC Tower 15,
Bhikaji Kama Place,
New Delhi-110066.

....Respondents

**PETITION UNDER SECTION 79 (1) (c) & (f) OF THE
ELECTRICITY ACT, 2003 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.**

MOST RESPECTFULLY SHOWETH:

1. The present petition is being filed by the Petitioner, Greenko Budhil Hydro Power Pvt. Ltd., which is a power generating company within the meaning of Section 2 (28) of the Electricity Act, 2003. The Petitioner owns and operates a 70 MW Hydro Power Plant located at Village Budhil, on Budhil stream, a major tributary of Ravi River, in Chamba District, Himachal Pradesh. The Petitioner was earlier known as M/s Lanco Green Power Pvt. Ltd. Thereafter, the name was changed to M/s Lanco Budhil Hydro Power Pvt. Ltd. on 06.08.2013. Finally, the Petitioner was renamed to its present name on 20.11.2014.

2. In the present petition, the Petitioner herein, aggrieved by the inaction of Respondent No-1 i.e. PGCIL, in honouring its commitments as per agreement entered into between the parties as evidenced by the minutes of the meeting dated 25.04.2012 to change the existing BPTA/ change the drawee after entering into a new Power Purchase Agreement with another DISCOM (UPCL). Despite repeated requests for the change of Drawee from Haryana Power Generation Company Ltd (herein referred to as HPGCL) to Uttarakhand Power Corporation Ltd (herein referred to as UPCL), the respondent no.1 failed to act even after respondent no. 2 herein has given its no objection for change of drawee. Therefore the Petitioner is seeking directions to the Respondent no.1. to modify the existing BPTA for a change in the Drawee and drawl location. The Petitioner is also seeking a declaration that Petitioner is not liable to pay the transmission charges as claimed by the Respondent No-1 because of deliberate and wilful breach of its contractual and statutory obligations by the Respondent No-1 -PGCIL under BPTA dated 18.10.2007 read with the minutes of the meeting dated 25.04.2012 and also under the extant Regulations. Further in the present Petition, the Petitioner is also impugning invoices issued by the Respondent No 1 PGCIL, being

issued in breach of contractual and statutory obligations by the Respondent No-1 -PGCIL and without any authority of law. In the following paragraphs the petitioner is submitting background facts, leading to the filling of the present petition.

BACKGROUND FACTS

3. The Petitioner was allotted Budhil Hydro Power Project (2x35MW, hereinafter referred to as 'the power project') by the State Government of Himachal Pradesh under letter dated 04.08.2004 on develop, build, own, operate and maintain basis. Thereafter, the petitioner entered into a long term Power Purchase Agreement dated 30.03.2005 (hereinafter referred to as 'PTC PPA') with the Respondent No.2/PTC India Ltd. The PPA was valid for a period of 35 years from the agreed date of commercial operation, under which the entire saleable power and energy from the power project was to be purchased by the Respondent No. 2.

4. The Respondent No.2 entered into a Power Sale Agreement dated 21.09.2006 (hereinafter referred to as 'PSA') with the Haryana Power Generation Corporation Ltd. (HPGCL).

5. For the purposes of transfer of power from the Petitioner's Budhil Hydro Electric Plant (BHEP) to Haryana state, the respondent no.2. - PTC obtained long term open access transmission rights from PGCIL in the year 2005. Further at the instance of the Respondent No.1, Power Grid Corporation of India Ltd. (PGCIL), the Petitioner and the Respondent.no.2 – PTC signed a Bulk Power Transmission Agreement on 18.10.2007 (herein after referred to as 'BPTA'). A copy of the BPTA is annexed herein and marked as **ANNEXURE-A**.

6. It is further submitted that the Petitioner on 18.12.2009, terminated the PPA dated 30.03.2005 with PTC on happening of certain force majeure events making the PPA impossible to perform. When, HPGCL wanted to challenge the termination of the PTC PPA before Haryana State Regulatory Commission (“HERC”), the matter of jurisdiction came up and in the matter of adjudication on that issue, Hon’ble Appellate Tribunal held that HERC has no jurisdiction over the matter as there was no nexus between PTC PPA and PSA and the matter is now before Supreme Court. However, there is no stay on the termination of PTC PPA and as on date, it stood terminated and the Petitioner has been selling power to third parties.

7. Prior to the commissioning of the Petitioner’s Power Plant, the Petitioner entered into an Agreement titled as “Connection Agreement” on 30.03.2012 with PGCIL and NHPC. In terms of the said Agreement:

- (a) The Petitioner applied to the CTU (PGCIL for connecting its 70 MW Budhil HEP to CTU’s Transmission System through NHPC’s (Facilitator) Transmission System to transmit electricity from its Power Plant.
- (b) CTU and Facilitator agreed to give connection to the Petitioner’s Power Plant at the connection point so that the Petitioner can transmit electricity through CTU’s Transmission & Communication System. Inter se rights and obligations of the parties under the Connection Agreement shall be governed by terms and conditions of this Agreement read with the Connectivity Regulations, 2009 as amended.

A Copy of the Connection Agreement dated 30-03-2012 is annexed hereto and marked as **ANNEXURE- B.**

8. On 25.04.2012, a meeting was held in the chamber of Member (PS), CEA in the presence of representatives from POSOCO, PGCIL, NRLDC, HPSLDC, the Petitioner and PTC regarding commissioning of 70 MW Budhil HEP. In the said meeting, PTC agreed to surrender its Long Term Access (LTA) right. The Petitioner was willing to apply for fresh LTA for full maximum injection envisaged for a target region or for a new beneficiary as the case may be. In the interim, it was agreed that the Petitioner would reimburse the LTA charges till the decision of the Standing Committee of Power System Planning on the Petitioner's application for LTA. It was also decided that the Budhil HEP may be treated as a regional entity. It was agreed that the Petitioner (the then Lanco Budhil) shall complete the registration formalities with NRLDC for getting registration as a regional entity. It was also decided that the Petitioner would approach CERC for upfront information and necessary direction.

9. Pursuant to the meeting, the Petitioner submitted an application on 03.05.2012 for necessary directions. Further, the Petitioner also sought to bring the Minutes dated 25.04.2012 on record of the CERC. A copy of the Application dated 03.05.2012 along with a copy of the Minutes of the Meeting dated 25.04.2012 is annexed hereto as **ANNEXURE-C. (colly)**

10. The Petitioner has been paying the transmission charges as agreed in the Minutes dated 25.04.2012 at the rate of approximately above Rs 1.35 Crore per month to PGCIL even though the Petitioner is not using the said Long Term Access to the transmission system connected for transmission of power to HPGCL because of the termination of its PPA with PTC. A detailed statement of the

payments made to PGCIL on account of PoC charges from May 2012 till date is enclosed herewith as **ANNEXURE-D**.

11. In the meanwhile, the Petitioner also completed registration formalities with the NRLDC as a regional entity, which it was required to do under Para 7 of the said Minutes of the Meeting dated 25.04.2012. An application was also filed before this Hon'ble Commission as per the meeting dated 25.04.2012. The Petitioner further agreed to follow up with and to do all such compliances as are required as per the minutes of the meeting dated 25.04.2012.

12. It is submitted that the Petitioner's power plant (Unit 1 & Unit 2) were commissioned on 30-05-2012. Pursuant thereto, since the Petitioner did not have the long term PPA for the sale of power generated from its power plant, the Petitioner started selling the power on short term basis to various purchasers by obtaining Short Term Open Access (STOA) from the Respondent No-1. In this regard the Petitioner was paying the STOA charges in addition to the payment of transmission charges for Long Term Access in respect of transmission system under BPTA dated 18.10.2007, even though the Petitioner has not used the said LTA right from the inception. Thus from the COD to till date the Petitioner paid Long Term Access charges amounting **(From April 2014 to February 2016) Rs.23.99 Crores** to PGCIL in addition to the payment of STOA charges. Statement showing the details of the payments made by the Petitioner in this regard is already enclosed herewith as **ANNEXURE-E**.

13. On 15.03.2016, the Petitioner brought to the notice of the Respondent No.1 PGCIL that as per BPTA dated 18.10.2007, Haryana Power Generation Corporation Ltd. (HPGCL) had been provided as Drawee Utility and its drawl location had been specified as all points

where interconnection between HPGCL and Power Grid / PGCIL system exists. The Petitioner further informed respondent PGCIL that it has entered into a PPA with Uttarakhand Power Corporation Ltd. (UPCL) for long term supply of power to the state of Uttarakhand from its Budhil HEP. A copy of the PPA was submitted to PGCIL along with said letter. Accordingly, the Petitioner requested PGCIL to change Drawee Utility to UPCL and drawl location to all points where interconnection between UPCL and Power Grid / PGCIL system exists. A copy of the letter dated 15.3.2016 is annexed hereto as **ANNEXURE-F.**

14. PGCIL vide its letter dated 11.04.2016 to PTC stated that PGCIL received a request from the Petitioner for change of name of Drawee utility from HPGCL to UPCL pursuant to the signing of the PPA with UPCL. PGCIL further stated in the said letter that since the subject LTA was granted based on the application submitted by PTC, it is requesting PTC to give its comments on the subject. In the said letter, it was also stated that since the original grantee for the subject LTOA is PTC, it would be appropriate that a formal request from PTC may also be made for change of Drawee Utility as well as name of injecting utility. A copy of the letter dated 11.04.2016 of PGCIL is annexed hereto as **ANNEXURE-G.**

15. M/s PTC responded vide its letter dated 18.04.2016 to the aforesaid letter of PGCIL by narrating the chain of events up to the termination of PPA dated 30.03.2005 which ultimately resulted in litigation pending in the Hon'ble Supreme Court. In the said letter, PGCIL also stated that an interim arrangement reached between the parties on 25.04.2012 to which PGCIL was also a party and referred to its earlier request to PGCIL vide its letter dated 31.01.2013 for change

of LTOA in the name of the Petitioner. Further, PTC stated the Petitioner's power plant were commissioned in 2012 but no power was supplied to PTC from the said power plant. Accordingly, PTC requested PGCIL that subject LTOA granted to PTC for Budhil Hydro Electric Power Project be changed in the name of the Petitioner without any liability on PTC. A copy of the letter dated 18.04.2016 of PTC is annexed hereto as **ANNEXURE-H.**

16. It is further submitted that the Petitioner continued its efforts to persuade PGCIL to change the name of the drawee and the drawl locations as aforesaid. In this process, the Petitioner submitted yet another letter being letter dated 17.05.2016 to PGCIL wherein the Petitioner reiterated the facts and submitted that no stay was granted on the termination of the PPA with PTC on 26.12.2009. The termination had happened much before the COD of the power plant. Further the Petitioner agreed to indemnify PGCIL, NRLDC or NLDC from all damages, losses, claims and any other legal or commercial liabilities arising out of decisions of this Hon'ble Commission, Hon'ble APTEL or Hon'ble Supreme Court, as the case may be, in this regard. A copy of the said letter dated 17.05.2016 is hereto annexed as **ANNEXURE- I.**

17. PGCIL vide its letter dated 14.06.2016 finally responded to the Petitioner's request *inter alia* stating that from the referred communications, it had come to know that the matters regarding dispute on the PPA and the authority to settle this dispute are sub-judice before the Hon'ble Supreme Court. Further, it had learnt that the petition filed by PTC on the issue before this Hon'ble Commission had also been disposed of with the direction that PTC may decide its future course of action in the light of the decision of the Hon'ble

Supreme Court. Accordingly, PGCIL stated in the said letter that the request made by the Petitioner – Greenko Budhil Hydro Power Pvt. Ltd. cannot be acceded to under the extant CERC Regulations. PGCIL further stated in the said letter that under such a situation, it would not be prudent to take any action towards LTA, which is primarily based on the PPA in question. A copy of the letter is annexed hereto as **ANNEXURE- J.**

18. It is pertinent to mention here that PGCIL refused the request of the Petitioner to submit a fresh application for its Budhil Power project with UPCL as a drawee on the ground that until and unless PTC surrenders its LTA as agreed in the minutes dated 25.4.2012, it will not entertain new application from the Petitioner. This is clearly in gross violation of extant Regulations provide for the same.

19. The Petitioner received the following bills from Respondent no.1 – PGCIL which are clearly contrary to contractual and statutory position and are untenable and therefore the Petitioner has impugned the same in the present Petition also seeking an interim direction to PGCIL not to take any coercive action for non-payment of the following bills and future bills:

a) Bill No. 91101881 & 91101880 dated 05.04.2016 for the month of March 2016 amounting to Rs.1, 43, 68,726;

b) Bill No. 91101990 & 91101989 dated 10.05.2016 for the month of April 2016 amounting to Rs.1, 67, 20,050;

c) Bill No. 91102100 & 91102099.dated 03.06.2016 for the month of May 2016 amounting to Rs.1,66,32,149;

d) Bill No. 91102215 & 91102214 dated 06.07.2016 for the month of June 2016 amounting to Rs.1, 66, 67,155;

e) Bill No. 91102318 & 91102317 dated 06.07.2016 for the month of July 2016 amounting to Rs.1, 32, 67,556;

f) Bill No. 91102425 & 91102424 dated 06.09.2016 for the month of August 2016 amounting to Rs.1, 32, 09,724;

20. The Petitioner further submits that on the one hand the respondent No-1 PGCIL turned a deaf ear so far as the request of the petitioner for the change of drawee and drawl location despite which is statutory and contractual obligation of the respondent No-1. On the other hand the respondent No -1 PGCIL abusing its dominant position went on issuing demand letter to the petitioner demanding payment of POC charges. A copy of the letter dated 20-9-16 is annexed herewith as **ANNEXURE-K**. The respondent No-1 did not stop there and it has sent an email communication on 28-9-16 threatening to encash letter of credit submitted by the petitioner in the event of the alleged outstanding are not paid. A copy of the email is also annexed herewith as **ANNEXURE-L**. It is submitted that the respondent No-1 has no right whatsoever to claim these amount as it had deliberately and wilfully not performed its contractual and statutory obligations and thereby has not changed the drawee and drawl location as has been requested by the petitioner.

21. The Petitioner is gravely prejudiced by the illegal and arbitrary actions and inactions of the Respondent No.1, is preferring present petition on the following grounds amongst others, which are in the alternative and without prejudice to one another:

Regulations applicable to the present petition

22. It is submitted that the BPTA dated 18.10.2007 was entered as per CERC (Open Access in Inter State Access) Regulations 2004, which regulations so far as it applies to long term customers stood repealed and superseded by CERC (Grant of Connectivity for Long Term Access and Medium Term Open Access in Inter State Transmission and Related Matters) Regulations 2009, as amended from time to time. (Hereinafter referred to as 'Connectivity Regulations').

It is settled position of law *that a regulation under Sec 178 of The Electricity Act intervenes and overrides the existing contracts between the regulated entities in as much as it casts a statutory obligation on the regulatory entities to align their existing and future contracts with the said regulations* (Refer to *PTC India Ltd vs CERC Supreme Court Judgement in 2010 (4) SCC 603*).

Therefore the present BPTA is to the extent to which it is inconsistent with Connectivity Regulations stood amended accordingly.

23. It is further submitted that as per Regulation 26 of the Connectivity Regulations, transmission charges for the use of interstate transmission system shall be recovered from long term customers and medium term customers in accordance with the terms and conditions of the tariff specified by the Commission from time to time.

The Transmission Charges were earlier determined under CERC (terms and conditions of tariff) 2009. However, by virtue of CERC (Sharing of Interstate Transmission Charges and losses) Regulations 2010 (herein after referred to as "Sharing Regulations"), Regulation 33 of 2009 Tariff Regulations stood repealed. Sharing Regulations have come into with effect from 01-07-2011.

In the present case, since the transmission system in question was admittedly commissioned on 01-11-2011, the transmission charges to be levied for the use of the transmission system for the LTA granted shall have to be determined in accordance with 2009 tariff regulations but shall have to be levied in accordance with 2010 Sharing Regulations.

Thus the net effect of the above Regulatory regime on the present BPTA is that

- a) Transmission Charges under the BPTA can be levied only when the transmission system is in use and not otherwise; and
- b) The transmission charges under the BPTA for the LTA granted shall have to be determined in accordance with 2009 tariff regulations but shall have to be levied in accordance with 2010 Sharing Regulations.

24. The Petitioner is gravely prejudiced by the illegal and arbitrary actions / inactions of respondent no.1 is preferring present petition on the following grounds amongst others which are in alternative and without prejudice to each other:

GROUND

- A. **BECAUSE** the inaction of Respondent No.1 is totally contrary to the ethos of the Connectivity Regulations whose objective is to ensure that the transmission systems are utilized to their full capacity by minimizing the possibilities of stranded transmission capacity.
- B. **BECAUSE** For all purposes, the Respondent No.2 PTC has relinquished access rights and it is incumbent on the Respondent No.1 to follow up with the necessary statutory

requirement mandated by the Act and Regulations to ensure that the additional transmission capacity on account of the relinquishment is utilized.

C. **BECAUSE** the Petitioner has been making payment of transmission charges to the tune of around Rs.1.35 Crore per month even though it is not required to pay any such charges. The said payments are made solely on the threat of Respondent No.1 PGCIL to take coercive action by if the payments are not made.

D. **BECAUSE** the Connectivity Regulations have envisaged the consequences of the termination of the Power Purchase Agreement. Reference in this regard may be made to the first proviso to Regulation 15A of the Connectivity Regulations for ready reference:

“Provided that in the event of mutual termination of PPA or non-utilization of long term access by the long term access customer for a period exceeding one year from the scheduled date of commencement of long term access, the Central Transmission Utility or the transmission licensee, as the case may be, may ask such long term customer to surrender the long term access after being satisfied that because of such long term access, any other generation project, which has applied for long-term access, is likely to get stranded.”

In the instant case, there has been non-utilization of long-term access customer for a period exceeding one year from the

commencement of long term access since May, 2012. The Respondent No.1 is mandated to ask the long term customer to surrender the long term access.

- E. **BECAUSE** the Respondent No.1 has not carried out its statutory obligation on a ground which is totally extraneous to the scheme of the Act and the Regulatory regime. The main reason for the Respondent No.1 not taking any action is the pendency of litigation proceedings between the parties to the PPA. This is notwithstanding the fact that there is no stay order which has been passed in the said proceedings despite a prayer is being made for the same.
- F. **BECAUSE** the Respondent No.1 has failed to appreciate that the PPA being terminable, the Courts cannot direct the Petitioner to continue with the agreement. Assuming without conceding that the case of the Respondent No.2 is sound in law, the only remedy which the Respondent No.2 would have is of damages.
- G. **BECAUSE** the Respondent No.2 has anyway agreed to relinquish the long term access rights and, therefore, even if the respondent No.2 were to succeed in the pending litigation, it would not give any right to the respondent No.2 to claim the long term access right because of such relinquishment.
- H. **BECAUSE** the pendency of the appeal in the Supreme Court no way controls or affects the long term access rights of the Respondent No.2 and therefore refusal of the request of the Petitioner for change of Drawee location or provision of LTA for the identified beneficiary as per MoM dated 25-Apr-2012

and otherwise also is wholly untenable Further the Respondent No.1 is refusing to allow relinquishment of the said long term access on extraneous grounds.

- I. **BECAUSE** on account of such inaction, PGCIL is being unjustly enriched at the cost of the Petitioner.
- J. **BECAUSE** the Respondent No.1 has deliberately overlooked the fact that the Petitioner is ready and willing to make a fresh application for long term access. Because in addition to the LTA charges that have been paid by the Petitioner under constraints outlined hereinabove, the Petitioner is also paying short term open access charges to PGCIL without being provided with the credit for the STOA charge in the monthly LTOA charges being paid.
- K. **BECAUSE** the refusal of the Respondent No.1 to change the drawee utility to UPCL and all drawl locations to all points where there is interconnection between UPCL and the Power Grid Corporation of India Ltd. is wholly arbitrary.
- L. **BECAUSE** the Respondents being instrumentalities of the State and further being endowed with statutory obligations under the Electricity Act, 2003 are expected to act and perform their obligations fairly and in accordance with law in respect of all commercial contracts that they engage in.
- M. **BECAUSE** it is well established that even though the State or an instrumentality of the State is a party to a contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. In the present case, the Respondents have acted arbitrarily and

abdicated their statutory obligations thereby causing huge losses to the Petitioner for no fault of it.

- N. **BECAUSE** PGCIL had failed to appreciate in the Minutes of the Meeting dt.25.04.2012 the Petitioner agreed to pay the transmission charges under BPTA in the place of PTC as an interim measure only. It was also agreed by the Parties as per the said minutes that **PTC would surrender the subject LTA under this BPTA and thereupon the Petitioner will apply for fresh LTA for the target region for which it acquired LTA. To this extent, the Petitioner also filed an application before this Hon'ble Commission on 03.05.2012 for placing on record the Minutes of the Meeting dt.25.04.2012 and sought suitable directions from this Hon'ble Commission.** **(emphasis supplied)**

In terms of para 7 of the minutes of the meeting, the Petitioner complied with its obligations, i.e. the Petitioner completed registration formalities with NRLDC as a regional entity. In terms of the said minutes the Petitioner also filed an application to this Hon'ble Commission seeking appropriate direction in this regard. Further the Petitioner is continued to pay LTA charges even though it is not using the said ISTS under BPTA. Whereas as per the minutes till date PGCIL has not acted upon despite the understanding in the minutes and despite its obligations under Connectivity regulations 2009.

- O. **BECAUSE**, PGCIL had failed to appreciate that the Petitioner's Power Project was commissioned in the month of May 2012, i.e. on 30th of May 2012 and since then the Petitioner has been making the payment of transmission

charges even though it is not liable to make such unreasonable charges as the said transmission system was never used by the Petitioner right from the beginning since the PPA for which BPTA was entered was terminated on account of Force Majeure conditions.

P. **BECAUSE** PGCIL had failed to act on PTC's request to change of name as also requested by the Petitioner. Such a change is permissible under the BPTA and under the Act and no prejudice would be caused to PGCIL as a result of such change. However PGCIL has not acted upon the request of petitioner and PTC. In the meanwhile as agreed in the minutes, the Petitioner was constrained to pay transmission charges to PGCIL at the rate of about Rs.1.35 crore per month for the last four years even though it was an interim arrangement as per the minutes dated 25.04.12 and even though it has no occasion to use the said transmission system.

Q. **BECAUSE** the respondents being instrumentalities of the state and further being endowed with statutory obligations under the Electricity Act 2003 to act as CTU and Transmission Licensee for PGCIL and for PTC to act as a Trading Licensee, are expected to act perform their obligations fairly and in accordance with law even in respect of all commercial contracts that they engage with third parties. In this regard, it is pertinent to mention here that the Hon'ble SC in the case of *ABL International Ltd. & Anr vs Export Credit Guarantee*, (referring to its earlier decision, i.e. *Kumari ShriLekha Vidyarthi & Ors. vs. State of U.P.& Ors. [1991 (1) SCC 212]*) wherein held that,

"The impact of every State action is also on public interest. It is really the nature of its personality as State which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters."

It is clear from the above observations of this Court, once State or an instrumentality of State is a party to the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Whereas in the present, the respondents acted arbitrarily and abdicating their statutory obligations and thereby are causing huge losses to the Petitioner for no fault of it.

- R. **BECAUSE** Regulation 26 of the Connectivity Regulations provides that transmission charges for use of the inter-State transmission system for long-term customers and medium term customers shall be recovered in accordance with the terms and conditions of tariff specified by the Commission from time to time. The Commission framed the Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010 (the Sharing Regulations) with effect from 1.7.2011. The Sharing Regulations were amended vide notification dated 24.11.2011, and have come into effect on 25.11.2011, the date of their publication in the Official Gazette. Regulation 11 of the

Sharing Regulations provides that for levying the demand of POC charges on Generators where there is no identified beneficiary. The Petitioner informed way back in 2012 that it had terminated PPA due to force majeure conditions and therefore will not be supplying power to PTC using this ISTS of PGCIL. However, it was made liable to make payments towards LTA in terms minutes dated 25.4.2012. The Petitioner vide its several letters as aforesaid had requested PGCIL to change its Drawee from HPGCL to UPCL. However, PGCIL arbitrarily rejected request of the Petitioner. As such the Petitioner is not liable to pay LTA charges as demanded by PGCIL every month.

- S. **BECAUSE** PGCIL refused the request of the Petitioner to submit a fresh application for its Budhil Power project with UPCL as a drawee on the ground that until and unless PTC surrenders LTA as agreed in the minutes dated 25.4.2012, it will not entertain new application from the Petitioner, even though extant Regulations provide for the same.

- T. **BECAUSE** the respondent - PGCIL which is the Central Transmission Utility (CTU) has utterly failed to perform its statutory and contractual obligations in terms of proviso 4 to the Regulation 12 of Connectivity Regulations, 2009 as amended the generating companies when the Petitioner notified to the CTU i.e. PGCIL vide its letter dt.15.03.2016 informed CTU that it had entered into long term Power Purchase Agreement with Uttarakhand Power Corporation Limited and also submitted a copy of the PPA to PGCIL which is also the nodal agency for long-term access.

- U. **BECAUSE** there is complete dereliction of its obligations by PGCIL in as much as PGCIL was well aware of the fact that earlier PPA was terminated for which LTA was taken by PTC. In terms of Regulation 15A, as CTU, PGCIL is under obligation to ask such long term customer who's PPA was terminated to surrender the long term access after being satisfied that because any other generating project had applied for long term access. Further second proviso to Regulation 15A stipulate that the CTU can also approach the Commission to seek directions in this regard. Whereas in the present case PGCIL did not ask PTC which is admittedly original grantee of the LTA covered under BPTA to surrender LTA and thereby CTU deliberately with malafide intentions and ulterior motives in order to enrich itself unjustly at the cost of the Petitioner herein has been forcefully extracting/collecting transmission charges since the commissioning of petitioner's Power Project in 2012.
- V. **BECAUSE** PGCIL failed to appreciate that there was no legal or contractual impediment that prevented it from asking PTC to surrender the LTA. As submitted above the Hon'ble SC thought it appropriate not to grant stay of termination notice issued by the Petitioner despite specific prayer to that effect by PTC. Thereby even though the matter regarding jurisdiction of HERC is pending, the effect of termination notice terminating PPA had come into effect and all parties are bound by the same subject to the final outcome of the lis before the Hon'ble SC. Under the circumstances, PTC in all fairness ought to have surrendered the LTA in 2011 itself when its efforts to obtain stay on the said PPA termination did not find favour with the

Hon'ble SC. In the all party meeting held on 25.4.12, PTC agreed to surrender the LTA, but it did not do so. Even after expiry of more than 3 years the CTU i.e. PGCIL has not asked PTC even once to surrender the LTA, despite its statutory obligation to do so. As a result, the Petitioner which is a no match to big public sectors behemoth like PTC and PGCIL and has no equal bargaining power, is saddled with the liability of payment of LTA charges amounting to about Rs. 1.35 cr per month.

- W. **BECAUSE** the respondent no.1 had utterly failed to comply with Regulation 16 A of the Connectivity Regulations which stipulate that – on receiving the intimation regarding termination of Power Purchase Agreement, or surrender of long term access in accordance with the provisions of Regulation 15A of these regulations and after considering the applications for long term access and medium- term open access , as mentioned therein, PGCIL which is the nodal agency shall inform the Regional Load Despatch Centre and State Despatch Centre concerned to consider the remaining capacity for processing the request for short term open access in accordance with the Central Electricity Regulatory Commission(open Access in inter –State Transmission) Regulations, 2008, as amended from time to time, till long term access or medium term open access is granted to some other applicant.
- X. **BECAUSE** the respondent PGCIL failed to appreciate that PTC in its letter dated 18.4.2016 took the stand that without prejudice to the issue of legality of termination of PPA which

is sub judice before the SC, the subject LTA may be changed in the name of the Petitioner. Meaning thereby it was stated by PTC that the issue of termination of PPA and obligations under the BPTA are intricately interdependent and termination of PPA on force majeure reasons would consequently make BPTA frustrated. Therefore the Petitioner and / or respondent no.2 will not have obligation to pay LTA charges to PGCIL as has been claimed and paid to PGCIL presently either by mistake of fact or law. Even the PGCIL - CTU in its letter 14.06.2016 stated that BPTA is primarily based on PPA which is terminated by the Petitioner, which termination is under challenge in the SC and no stay orders have been passed in the same. Therefore, since the PPA itself is not in existence and obligations under the same have been extinguished due to force majeure reasons, even BPTA also will also stand terminated and rights and obligations under BPTA also stand extinguished.

Y. **BECAUSE** the respondent- PGCIL is deliberately not acting on the request of the change of drawee on one pretext or other in as much as in its letter dated 14.06.2016, PGCIL, inter alia stated that the request of the Petitioner cannot be acceded under extant regulations. Assuming but not admitting that extant regulations do not provide for change of drawee without filing a fresh application, in all fairness and in the spirit of provisions of Section 38 of the Act to provide non-discriminatory open access, PGCIL i.e. the CTU ought to have considered that Petitioner is entitled to the change of Drawee because of peculiar facts and circumstances of this case. In this case, there are three main parties i.e. the Original grantee of

LTA i.e. PTC, the CTU- PGCIL and the Petitioner. The Petitioner is at receiving end in a helpless situation in as much as either for surrender of LTA or for change of drawee PGCIL is insisting for PTC's consent. PTC's conditional consent is not acceptable to PGCIL. Even the Petitioner's undertaking to indemnify PGCIL did not please PGCIL to accept the request of the Petitioner. The extant Regulations i.e. 2009 Connectivity Regulations did not provide for a situation where the grantee of LTA refuses to surrender and PGCIL do not act on the same and as a result third party like the Petitioner is made to suffer. Therefore where the extant regulations are found wanting to address situation like this, the respondent no.1 – PGCIL which is also CTU ought to have approached this Hon'ble Commission to address the issue. This Hon'ble Commission in exercise of its regulatory powers is empowered to direct PGCIL to allow change of Drawee as requested by the Petitioner or in the alternative direct the PTC to surrender the LTA covered under the BPTA. Thereafter, Petitioner's case for grant of LTOA can be considered by the CTU independent of the extant Regulations. In any event the Petitioner cannot be penalized for no fault of it and PGCIL cannot be allowed to be unjustly enriched at the cost of the Petitioner for not doing its obligations under the Act. Under the above circumstances, the Petitioner is not liable to pay the transmission charges as claimed by PGCIL under the BPTA or otherwise.

Z. **BECAUSE** inaction on the part of PGCIL is totally inexplicable as to why PGCIL as the CTU which has a statutory obligation to act but has not acted upon despite being fully aware that the transmission system for which the

transmission charges were paid is not in use by the Petitioner and also fully aware of the fact that Petitioner entered into a new arrangement with UPCL. The least PGCIL could have done is that to ask PTC to surrender LTA and ask the Petitioner make a fresh application. On the contrary, the respondent PGCIL chose to reject petitioner's request for change of drawee based on irrelevant considerations.

AA. **BECAUSE** PGCIL failed to appreciate that under the facts and circumstances of this case three alternate scenarios emerge under the facts and circumstances of the case and in either of these scenarios, PGCIL and PTC ought to have acted on the request of the Petitioner. That is to say, **if** BPTA is primarily based on terminated PPA as admitted by PTC & PGCIL, then the natural corollary would have to follow which is that BPTA would also get frustrated like PPA and then the Petitioner is under no obligation to pay amounts under BPTA as claimed by PGCIL or otherwise;

In the alternative if BPTA is a separate commercial contract and is governed by extant regulations, the subject LTA, upon termination of PPA, which act of termination even though sub judis and since no stay order is in operation stopping the effect of such termination during pendency of litigation, ought to have been surrendered in 2011 itself or in 2012 as agreed by it PTC.

Third alternative scenario is if there is no effect of termination of PPA on BPTA, since extant regulations do not provide for change of drawee, in peculiar facts and circumstances of this case, the Petitioner is entitled to change of drawee as requested

under the provisions of EA 2003 and inherent powers of the Commission under Conduct of Business Regulations to prevent abuse of process of law and in the interest of justice and fair play.

BB. **BECAUSE** the transmission charges that are being paid by the Petitioner under circumstances which are in the nature of coercion and undue influence as the Petitioner is also paying short term open access charges to PGCIL. Even though as per the extant regulations, PGCIL is under obligation to give credit of the excess amounts paid by the Petitioner under long term open access the PGCIL is refusing to do the same. On the contrary, PGCIL resorted to illegal vesting of amounts to the Petitioner by adjusting the same against its purported claims under BPTA dated 18-10-2007.

25. Under Section 79(1) (c) and (f) of the Electricity Act, 2003, this Hon'ble Commission has powers to regulate inter-state transmission of electricity and disputes which arise thereunder. The present petition is bona fide and has been made in the interest of justice.

26. The Petitioner craves leave of this Hon'ble Commission to add such other submissions and documents and to amend prayer clause, if necessary, in furtherance if reliefs sought by the Petitioner herein.

27. The balance of convenience lies completely in favour of the Petitioner and against PGCIL. The prima facie case is also in favour of the Petitioner, in terms stated herein. Further, the Petitioner would suffer irreparable loss and injury in the event the

PGCIL is not stopped from collecting LTA charges from Petitioner and PGCIL is not directed to change drawee as requested by the Petitioner.

28. The present petition / application is bonafide and is being made in the interest of justice.

P R A Y E R

In view of the above facts and circumstances, it is most respectfully prayed that this Hon'ble Commission may be pleased to:

- a) Direct the Respondent No.2 to surrender its long-term access rights from Budhil Hydro Electric Plant (BHEP) to the Haryana State; and
- b) Direct Respondent No.1 to permit change of drawee as requested by the Petitioner vide its letter dated 15.03.2016; and
- c) Or in the alternative, Direct the Respondent No.1 to accept fresh application from the petitioner for long term access without any demand for payments under the BPTA dated 18.10.2007; and
- d) Declare that the Petitioner is not liable to pay the amounts under BPTA in terms BPTA dated 18.10.2007 from May 2012 onwards; and
- e) Restrain PGCIL from taking any coercive steps for recovery of LTA charges from the Petitioner in terms of invoices as per Annexure K, L;

- f) Direct PGCIL to return the amount of Rs.23,99,95,492/- (April 2014 to February 2016) with interest illegally collected from the Petitioner;
- g) Pass interim orders in terms of prayer (c) above during the pendency of the present petition; and/or
- h) Pass such other order (s) as this Hon'ble Commission deem fit in the facts and circumstances of the case.

Filed through:

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Dated: 30.09.2016
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