

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 428/MP/2019

Coram:

Shri I. S. Jha, Member

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 3.07.2023

In the matter of:

Under Section 79(1)(c) of the Electricity Act, 2003 and Regulation 32 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-Term Access and Medium-Term open access in Inter-State transmission and related matters) Regulations, 2009, praying to quash the demand for relinquishment charges by Central Transmission Utility against the conditional grant of Medium Term Open Access on 14-04-2015 and 19-08-2015 to avail power under Long Term Power Purchase agreements entered with Maithon Power Limited on 30-12-2013 and 29 -6-2015.

And

In the matter of:

Kerala State Electricity Board Limited,
Vydyuthi Bhavanam,
Pattom, Thiruvananthapuram-695004

....Petitioner

Vs

1. Central Transmission Utility of India Limited,
Having its Registered office at
Plot No.2, Sector 29, Gurugram, HARYANA -122001

Respondent No -1

2. Maithon Power Limited,
No -2
Having its Registered office at 34,

Respondent



Sant Tukaram Road, Camac Bunder, Mumbai -400009
Represented by its Mangaing Director

Parties Present:

Shri Prabhas Bajaj, Advocate, KSEBL
Ms. Poorva Saigal, Advocate, CTUIL
Shri Ravi Nair, Advocate, CTUIL
Shri Swapnil Verma, CTUIL
Shri Ranjeet S. Rajput, CTUIL
Ms. Himanshi, CTUIL
Shri Akshayvat Kislay, CTUIL
Shri Anand Kumar Shrivastava, Advocate, MPL
Shri Ishita Jain, Advocate, MPL

ORDER

1. Kerala State Electricity Board Limited (KSEB), the petitioner has filed the present petition under Section 79(1)(c) of the Electricity Act, 2003 and Regulation 32 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-Term Access and Medium-Term open access in Inter-State transmission and related matters) Regulations, 2009 ('2009 Connectivity Regulations ') and has prayed to quash the demand for relinquishment charges by Central Transmission Utility against the conditional grant of Medium Term Open Access on 14-04-2015 and 19-08-2015 to avail power under Long Term Power Purchase agreements entered with Maithon Power Limited on 30-12-2013 and 29 -6-2015.

2. The Petitioner has made the following prayers in the present petition:

- a) *Quash the demand for relinquishment charges by Respondent no.1 vide invoice dated 10-11-2015 and 14-7-2017.*
 - b) *Pass such other order(s) as this Hon'ble Commission deems fit and necessary in the facts and circumstances of the present case in the interest of justice.*
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3. Petitioner while filing the petition in 2019, has made PGCIL as the Respondent No.1. However, vide affidavit dated 21.10.2022, petitioner has filed an amended memo of parties and has made CTUIL as the Respondent No. 1, consequent to separation of CTUIL from PGCIL as per direction of MoP. Accordingly, submissions made by PGCIL, wherever referred to in the petition, shall be construed as that of CTUIL.

Submissions of the Petitioner

4. Petitioner has made the following submissions:

a) KSEB, is the deemed distribution licensee in the State of Kerala and also is responsible for generation and purchase of power for the entire consumers of the State of Kerala.

b) Petitioner executed two long term Power Purchase Agreements (PPAs) with Maithon Power Limited (MPL):

a. PPA 1 (150MW) on 30-12-2013 for procuring RTC power from Maithon Right Bank Thermal Power Project in Jharkhand. The PPA is valid till 31-12-2038.

b. PPA2 (150 MW) on 29-6-2015 for procuring RTC power from Maithon Right Bank Thermal Power Project in Jharkhand for the period from 1-6-2016 to 31-5-2041

LTA and MTOA for PPA 1 with Maithon Power Ltd.

c) The Petitioner had applied for LTA to Respondent No.1 on 31-12-2013 for the supply of 140.5MW (PPA 1) from 01-01-2014 to 31-12-2038. Respondent No.1 vide agenda note dated 15-01-2014 informed that ATC of 250 MW was only available for allocation w.e.f 01.08.2014 to the pending LTA applicants totaling



1090.5 MW till that date. The grant of LTA was proposed on pro-rata basis from 01.08.2014 onwards.

- d) Petitioner was granted part LTA of 32MW from 01-08-2014, 59MW from 01-12-2015, 83 MW from 01-01-2016, 96MW from 01-01-2016 and 140.5MW (full quantum) from 16-06-2016 onwards.
- e) Petitioner had also contracted 100MW and 300MW power on medium term basis under case-1 bidding route with M/s.PTC and M/s.NVVN for the period from 2014 to 2017. M/s.PTC and M/s.NVVN on behalf of the petitioner were applying for MTOA for the said contracted power with the Respondent 1 during this period.
- f) Petitioner had filed a petition (Petition No.92/MP/2014) before this Commission praying for issuing necessary direction to CTU to strictly follow the regulations and procedures approved by this Commission from time to time for granting MTOA and LTA. Specific prayers for granting the MTOA applications made in June 2013 were also raised.
- g) As per the order of this Commission dated 16.2.2015 in Petition No.92/MP/2014, part LTA shall not be granted to LTA applicants when the available capacity is inadequate to accommodate all LTA applications received during a month. The part LTA granted to the Petitioner (PPA 1) vide agenda note dated 15-01-2014 had become invalid. The processing of LTA and MTOA applications made since June 2013 upto December 2014 including that of Maithon PPA 1 was set aside and the Respondent no.1 was directed to reprocess the applications. Both MTOA applications and LTOA applications against the same PPA can be considered by CTU for different time horizons, if the operationalization of LTA is getting delayed.
- h) The Petitioner applied for MTOA of 140.5MW for PPA1 from 01-08-2015 to 31-05-2018 or till grant of LTA, based on the order dated 16-02-2015. On 14-4-2015, the Respondent No.1 intimated the grant of MTOA to the Petitioner for



140.5 MW from 01-01-2016 to 31-05-2018 onwards subject to the availability of (i) Gooty-Madhugiri-Yelhanka 400 KV D/c lines (ii) Salem- Somanhally 400KV D/c line and (iii) Mysore-Kozhikode 400KV D/c line. On 7-5-2015, MTOA agreement was executed by the Petitioner with the Respondent No.1 for 140.5 MW.

- i) Respondent No.1 filed a petition (Petition No.92/MP/2015) before Commission seeking directions with regard to difficulties in implementing some of the directions given in the Order dated 16.2.2015 in Petition Nos. 92/MP/2014. On 3-7-2015, Commission issued an interim order on this petition. The Respondent No.1 held a special meeting on 15-7-2015 and decided to grant notional LTA of 140.5MW to MPL- PPA1 from 01-04-2015 onwards. The same was communicated to the Respondent on 22-7-2015.
- j) Subsequent to the grant of notional LTA, the Petitioner requested for relinquishment of the MTOA and the Respondent No.1 on 5-11-2015 confirmed the relinquishment of MTOA with immediate effect, in line with the provisions of CERC regulations and further requested the Petitioner to make payment towards relinquishment charges for 140.5MW for a period of 30 days. On 10-11-2015, the Respondent No.1 raised an invoice of Rs.3,10,67,500/- on account of relinquishment charges.
- k) MTOA for 140.50MW conditionally granted on 14-4-2015 from 01-01-2016 to 31-05-2018, subject to commissioning of various transmission elements, was never operationalized, nor the corridor for the said quantum was blocked for subsequent applicants, since the processing of all LTA & MTOA applications received from June 2013 onwards were in a flux during this period of reprocessing of applications, consequent to intervention of this Commission to set right the anomalies in processing of these applications by the Respondent No.1.
- l) Petitioner obtained LTA based on application dated 31-12-2013 (to be processed atleast by 30-6-2014 as per the Regulations of Commission) with



effect from the month of March 2015, The Petitioner would have never applied for MTOA in February 2015 for PPA1. The petitioner was compelled to file application for MTOA as a result of the faulty procedure followed by the Respondent no.1. Petitioner never availed the granted MTOA as the LTA got granted prior to the operationalization of MTOA with the implementation of the orders of Commission.

- m) Mysore-Kozhikode 400KV D/C line got commissioned on 16-10-2015. Gooty-Madhugiri-Yelhanka 400KV D/C lines got commissioned on 1-12-2015. Salem-Somanahally 400KV D/C line is not yet commissioned. Therefore the effective grant of MTOA for MPL PPA1 and its operationalization would not have occurred at all.
- n) The Respondent no.1 had reprocessed MTOA/ LTA applications received from November 2013 to December 2014 and processed the MTOA applications made in June 2015 during the meetings convened on 15-07-2015, 6-8-2015 and 13-08-2015. Respondent no.1 has not reprocessed the MTOA applications received during January 2015 to May 2015 (which include the MTOA application of the petitioner made in February 2015), which was necessary in view of the changes in balance ATC due to grant of LTA and MTOA to prior applicants based on directions of Commission. If the Respondent had reprocessed these applications also as per the orders of Commission, no ATC would have been available for allocation to the MTOA applications received during Feb 2015, including that of Maithon PPA 1 made by the Petitioner since there was about 858 MW (558 MW of Coastal Energen Pvt.Ltd. and 300MW of KSK Mahanadi Power Company Ltd.) of valid MTOA applications in the month of January 2015.
- o) The corridor getting freed on expiry of ongoing MTOA during December 2015 and January 2016 (the latest date that can be considered for February 2015 MTOA application) had already been completely utilised while reprocessing LTA/MTOA applications having higher priority than February 2015 MTOA application of the Petitioner. In the minutes of the LTA/MTOA meeting held on 6.8.2015 it is recorded by the Respondent no.1 that, while processing the LTA



and MTOA applications received during November 2014, the ATC from the period of 1st April, 2015 to 31st Dec, 2015 has been utilized for grant of MTOA applications of Oct'2014 and the next ATC would be available from 1st June, 2016 only. Since no ATC was left as on 1.1.2016/1.2.2016 for granting MTOA for February 2015 applicants, the MTOA granted to the Petitioner for PPA1, which is liable to be reviewed (based on Commission's order dated 3-7-2015), had become infructuous.

- p) Due to non-compliance of the Regulations by the Respondent no.1, the Petitioner was forced to apply for MTOA in February 2015, which was first granted conditionally, without properly processing the LTA application made in December 2013. The conditional grant itself never materialized nor it could be materialized due to non-commissioning of identified transmission lines by Respondent No.1. Further, had the Respondent No.1 fully complied with the orders of this Commission dated 3-7-2015 and reprocessed the MTOA application made from January 2015 onwards, the grant of MTOA made in April 2015 for applications made in February 2015 would have become invalid.

LTA and MTOA for PPA 2 with Maithon Power Ltd.

- q) The Petitioner executed long term power purchase agreement for 150MW RTC power (PPA 2) on 29-06-2015 with Maithon Power Ltd (MPL) for supply of power from 01-06-2016 onwards. Application for LTA for drawing power as per this contract was made before Respondent No.1 on 30-6-2015.
- r) The Petitioner in order to avail the corridor of 542 MW getting freed from 1st June, 2016 upon expiry of ongoing MTOA of KSK, NETL and Shree Cements, applied for MTOA also for drawing power from Maithon Power in June 2015 with request for start date of MTOA as June 1st, 2016. The start date from which MTOA was requested coincided with the start date of LTA. In the meeting held on 13-8-2015, the MTOA application made in June 2015 for drawing power from Maithon Power Ltd.(140.5MW)(PPA 2) along with other MTOA applications were also processed and MTOA was granted to the petitioner for 122MW from 1-6-



2016 to 31-5-2019. On 19-8-2015, the Respondent no.1 granted MTOA for 122MW to the Petitioner from 01-06-2016 onwards and MTOA agreement was executed on 15-09-2015. The Petitioner started availing 122MW RTC power from 01-06-2016 onwards.

- s) During a meeting held by Respondent no.1 on 29-12-2015, the LTA application of KSEBL for PPA 2 was discussed and LTA grant was proposed. On 8-6-2016, the Respondent No.1 intimated the Petitioner about the grant of LTA for 140.5 MW from 01-04-2017 onwards subject to conditions (i) granted MTOA should be relinquished as per the CERC regulations (ii) progress of enhancement of ATC subject to progress of commissioning of lines specified in attached Annexure provided in the intimation. On 5-7-2016, LTA agreement was executed by the Petitioner for 140.5 MW and relinquished the MTOA of 122MW. The LTA of 140.5MW was operationalized by PGCIL on 01-05-2017.
- t) On 14-7-2017, the Respondent raised an invoice for Rs.3.05 crore against the Petitioner against relinquishment charges as per Regulation 24 of the the 2009 Connectivity Regulations.
- u) The demand was in violation of the amendment to the regulation notified by CERC on 17-2-2017. The relinquishment of MTOA of PPA2 occurred after CERC issued sixth amendment to the 2009 Connectivity Regulations which at Regulation 15 B makes it clear that Regulation 24 is not applicable in the case of termination/downsizing of the MTOA by LTC upon operationalization of their LTA. Payment of relinquishment charges irrespective of any loss/damage to PGCIL would lead to its unjust enrichment and as per the amended regulation, the Petitioner is not liable to pay relinquishment charges for the relinquishment of MTOA of PPA2.
- v) MTOA application for PPA2 was made in June 2015. The grant of MTOA for the applications made in June 2015 were made by the Respondent no.1 in the meeting held on 13-8-2015, wherein the LTA applications of December 2014 were also processed. The processing of Dec'14 LTA applications had an impact



on Jun'15 MTOA applications. The LTA applications of Dec-14 for power transfer to SR were that of the Petitioner. Out of the LTA applications received in Dec'14 which were seeking total power transfer of 727 MW from NEW Grid to SR grid, 299.25MW was for power transfer to SR from Dec'16 and 427.5MW from Oct'17.

- w) After assessing the available transfer capability and the non availability of the corridor for accommodating the entire capacity of 727MW, the Respondent no.1 granted LTA to the Dec'14 applications from (a) the date from which LTA has been sought or (b) from the date of commissioning of "Angul-Srikakulam-Vemagiri 765kV D/c line along with Constraints in 400kV bay extensions at Vemagiri" or "Wardha - Maheshwaram 765kV D/c link with anchoring at Nizamabad", whichever is later between (a) & (b).
- x) While assessing the Available Transfer Capacity between NEW grid to SR grid, the Respondent no.1 assessed that a corridor 838MW LTA has already been granted on target region basis, which can only be released against MTOA, so that as and when beneficiaries are firmed up the said LTA can be operationalized. It was explained that ATC between NEW grid and SR is likely to enhance to 5900MW in the time frame of consideration of these applications. After considering the existing allocation, already granted LTA up to Dec'13, LTA granted against target beneficiaries (838MW) and quantum for which LTA approved against applications received from Jan'14 to Nov'14, available ATC for LTA for applications made in December 2014 would be about 189MW (5900-4873-838) only. As the available capacity was less than the LTA quantum, LTA could only be accommodated upon commissioning additional transmission system.
- y) It was assessed that LTA of Dec'14 applications could be granted only with the enhancement of Capacity between NEW grid and SR, the balance ATC of 542 MW (available from Jun'16) as well as 92.25 MW (getting available after reduction of LTA quantum by Kerala in Apr'14 LTA application) was earmarked for grant of MTOA for June 2015 applications on pro rata basis. Accordingly, the



Petitioner was granted MTOA for 122MW for MPL PPA2, along with Jindal Power Ltd. For 165MW and KSK Mahanadi Power Company Ltd. For 347MW.

- z) In the above allocation process, the Respondent no.1 had reserved 838MW of corridor capacity to SR in favour of very old target region LTA customers who failed to submit firm PPAs to the intended regions. The Petitioner had challenged the said action of the Respondent no.1 through Petition No.249/MP/2015.
- aa) The Respondent vide affidavit dated 12-4-2016 in Petition No .249/MP/2015 submitted before this Commission that 538MW of target region application got relinquished already. The commissioning of Angul-Srikakulam-Vemagiri 765 kV D/c line, was expected by August 2016, and this along with opening of Nunna Vemagiri 400 kV line under high loading condition, ATC was expected to increase by about 500 MW. Based on this, the Respondent no.1 granted LTA for the Dec-14 applications of the Petitioner from the date sought in the LTA applications, i.e. from 1st Dec 2016 and from October 2017.
- bb) Had the Respondent no.1 accounted this actual position of relinquishment of target region LTA for arriving at the corridor availability at the time of processing of Dec-14 LTA applications itself, additional ATC of 538MW (through relinquishment of target region LTA) would have been available for grant of Dec 2014 LTA applications. This additional ATC of 538MW would result in available ATC of 727MW (538 MW + 189MW capacity accepted by respondent no.1 and grant of LTA applications aggregating to 727MW made in December 2014.
- cc) The MTOA of 122MW of MPL PPA2 would have granted from 1-6-2016 to 30-11-2016 only and from 1st December 2016, i.e the date of operationalization of Dec-14 LTA applications, there would not be any MTOA grant against MTOA application made in June 2015. In such case relinquishment of MTOA of MPL PPA2 would not have arisen as the MTOA would have got terminated automatically. Thus, it is evident that the claim for relinquishment charges is against non-existent corridor and is not valid.



- dd) Regulation 24 of the Connectivity Regulations, 2009 stipulates the exit option for medium term customers and the detailed procedure approved by Commission vide the notification no. L-1/(3)/2009-CERC dated 31st December, 2009 also stipulates the condition for exit/downsizing of the granted MTOA.
- ee) The relinquishment charges are infact transmission charges and are applicable only for those MTOA customers who are relinquishing their granted MTOA in full or in part. In PPA2, there is no reduction or downsizing in the quantum of power by relinquishing the MTOA and availing the LTA. Rather it is only a switch over from MTOA to LTA at an increased quantum/same quantum of power and there is no change in injection/drawal points. The period for which MTOA is granted is clearly submersed in the LTA period requested. The switch over from MTOA to LTA will create no difficulties /bottlenecks for any of the utilities/CTU on account of relinquishment by the Petitioner.
- ff) The regulations provide for relinquishment charges for MTOA in view of the fact that grant of MTOA results in availability of corresponding transmission corridor in favor of the grantee, and the short term open access transactions are scheduled subject to such lien. the lien of any MTOA or STOA customer is not affected due to the switch over from MTOA to LTA by the Petitioner as no transmission capacity allocation gets changed or downsized. In the instant case surrender of capacity by the petitioner neither render transmission capacity to be stranded nor does it affect the liability of others for payment of PoC charges. Infact in the instant case the MTOA had overlapped with the LTA and relinquishment charges clearly amounts to double billing of the petitioner.
- gg) KSEBL had to avail MTOA for drawing the contracted power due to non availability of transmission corridor for granting LTA for which KSEBL is not liable. The MTOA application of KSEBL was against target LTA which got subsumed in processing of prior LTA applications.
- hh) Commission Order dated 21.2.2014 in petition no. 63/MP/2013 in the matter of Lanko Kondapalli Power Limited had permitted the petitioner to relinquishment
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of LTA without any payment. Finding of the Commission in this order is that it is a well settled principle of law that no compensation is payable if there is no stranded capacity created on account of relinquishment.

- ii) The monthly transmission charges payable as per the PoC mechanism are same for both LTA and MTOA. The Petitioner continued to use PGCIL's system and to pay the same transmission charges against the LTA. Paying relinquishment charges for changeover from MTOA to LTA will result in an LTA applicant paying for both MTOA charges and LTA charges on the same transmission corridor/region. This would result in double charging of transmission charges and would be detrimental to the generators, Discoms and end users.

- jj) Insertion of Regulation 15 B makes it clear that Regulation 24 is not applicable in the case of termination/downsizing of the MTOA by LTC's upon operationalization of their LTA. Payment of relinquishment charges irrespective of any loss/damage to PGCIL would lead to its unjust enrichment.

- kk) Commission in order dated 8-3-2019 in Petition No.92/MP/2015, wherein Commission has ordered that no relinquishment charges are payable for change in Target Region, if the effective date of start of LTA in the changed region is the same as date of relinquishment in original region and the change in region is sought for entire capacity relinquished.

- ll) The matter was discussed in various forums like SRPC and OCC meetings.

Hearing dated 23.06.2020

- 5. The matter was admitted and Commission directed CTU not to take any coercive action against the Petitioner till next date of hearing.



Additional Submission by Petitioner

6. Petitioner vide affidavit dated 09.07.2020 submitted that Salem- Somanahally 400 KV D/C transmission line was commissioned only on 30/03/2019 i.e. after the period for which the conditional MTOA was granted for PPA 1.

Submission of Respondent No -2 Maithon Power Ltd on 20.07.2020

7. Maithon Power Ltd vide affidavit dated 20.07.2020 has submitted that it is liable to supply power to the Petitioner till the delivery point which is the outgoing terminal of its own power station and is not responsible for any acts/omissions beyond the delivery point and MPL at most, may be treated as a 'proper/pro forma party' as per the settled law and not a necessary party.

Submission of Respondent No-1 PGCIL(CTU)

8. PGCIL(CTU) vide affidavit dated 01.10.2020 has mainly submitted the following:
 - a) The relinquishment charges have been duly claimed in terms of the CERC Connectivity Regulations 2009.
 - b) PGCIL(CTU) has correctly claimed an amount of Rs. 3,10,67,500/- in regard to PPA – 1 (MTOA of 140.5 MW granted for period of 01.01.2016 to 31.05.2018) and Rs. 3,05,49,898/- in regard to PPA-2 (MTOA of 122 MW granted for period of 01.06.2016 to 31.05.2019) towards relinquishment charges.
 - c) The condition of stranded capacity or losses suffered is not a pre-condition for payment for relinquishment charges under Regulation 24 of the Connectivity Regulations. Nor does the Regulation 24 permit any exemption if the capacity covered under MTOA is utilized for LTA.
 - d) This issue has already been settled by Commission in the following cases:



- a. GMR Warora Energy Limited v. Power Grid Corporation of India Limited in Petition No. 153/MP/2016 dated 17.10.2017
- b. Thermal Powertech Corporation India Limited v. Power Grid Corporation of India Limited in Petition No. 240/MP/2016 dated 31.10.2017.
- e) The above has been upheld by the Tribunal in Appeal No. 363 of 2017 and Appeal No. 16 of 2018 dated 11.04.2019 in case of GMR Warora and Sembcorp Energy India Limited (previously Thermal Powertech Corporation India Limited). Commission and Tribunal have held that the Regulation 24 is mandatory and rejected the contention of the Generators/Open Access Customers that they were merely switching over from MTOA to LTA.
- f) MTOA and LTA are separate and independent forms of open access. Each form has its own conditions and liability and procedure for relinquishment.
- g) There is no provision in the 2009 Connectivity Regulations to switch or migrate from MTOA to LTA. The only mode available is to relinquish one form of access by paying relinquishment charges and apply for another form of access subsequently.
- h) The Petitioner chose to seek both LTA and MTOA rights from Respondent to “secure” the transmission corridor for the PPAs executed by it.
- a. PPA 1 - While the LTA application was still pending and was to be re-processed in terms of Order dated 16.02.2015, the Petitioner on 24.02.2015 applied for the MTOA.
- b. PPA 2 - The Petitioner simultaneously applied for both LTA and MTOA on 29.06.2015.
- i) The Petitioner was granted MTOA for a specific period and there was no exemption granted to it for MTOA to be relinquished without relinquishment charges in case of grant of LTA. The MTOA was validly granted and had to be relinquished since it related to the same PPA prior to LTA grant.



- j) Petitioner itself had vide Letter dated 01.08.2015 requested for relinquishment of MTOA granted for 140.5 MW against PPA1 and had agreed to relinquish MTOA of 122 MW granted against PPA 2 and pay the applicable relinquishment charges in the 19th SR LTA meeting held on 29.12.2015. This was also stated in the Letter dated 08.06.2016 wherein the grant of LTA was subject to relinquishment of MTOA of 122 MW.
- k) Petitioner vide Letter dated 09.04.2017 informed that it has enhanced the LC to requisite amount for the LTA of 140.5 MW and is relinquishing the MTOA of 122 MW of Maithon Power from the date of operationalization of LTA of 140.5 MW.
- l) Answering Respondent had made it consistently clear that any relinquishment of MTOA would be subject to relinquishment charges:
- a. Minutes of Meeting of ER, SR and WR Constituents held on 06th August 2015.
 - b. Minutes of Meeting of Eastern, Southern and Western Region constituents held on 13.08.2015
- m) In other meetings involving other open access applicants such as GMR Warora wherein Petitioner was also present, the issue was discussed and it was noted that MTOA would have to be relinquished and applicable relinquishment charges was to be paid as and when the LTA for the application was operationalised.
- n) The Sixth Amendment to the Connectivity Regulation 2009, effective from date of its Gazette Notification i.e. 10.03.2017, is not applicable to the present case. In the case for PPA 1, the relinquishment of MTOA from 05.11.2015 was prior to the Amendment and therefore there is no question of the same being made applicable.
- o) The Amendment refers to an existing LTA customer who avails MTOA on account of non-operationalization of LTA granted to it. This is not the case in PPA 2 where the MTOA was relinquished from 01.05.2017. The Petitioner had



applied for and been granted MTOA (applied in June 2015 and granted in August 2015) prior to grant of LTA (applied in June 2015 and granted in June 2016). It cannot be said that it had availed MTOA due to non-operationalization of LTA. Petitioner applied for MTOA and LTA on the same date i.e. 29.06.2015 and MTOA was processed and granted to the Petitioner much prior to the grant of LTA. Even after the grant of MTOA, the Petitioner had an option not to execute the MTOA Agreement with CTU. The Petitioner acted on the grant of MTOA and proceeded to sign the MTOA Agreement dated 15.09.2015, endorsing its obligations to abide by the Regulations.

- p) It was the choice made by Petitioner to apply for MTOA being well aware that its Application for LTA would be considered. Further the Petitioner had applied for and been granted MTOA and LTA prior to the Amendment. That being so, the Petitioner could not subsequently contend applicability of the Sixth Amendment so as to evade its statutory liability of payment of transmission charges.
- q) The LTA applications were to be reprocessed and this included the LTA application of the Petitioner made in Dec'13 based on the PPA with Respondent No. 2. The reference to MTOA/LTA with regard to same PPA is for application for the access in different time horizons. Once the MTOA and/or LTA had been applied and granted in terms of the Regulations, the subsequent consequences upon relinquishment also followed in terms of the Regulations.
- r) There is no benefit or exemption granted in the Order dated 16.02.2015 or otherwise for MTOA/LTA. MTOA was applied on 24.02.2015 by the Petitioner after the Order dated 16.02.2015 and with the knowledge that the LTA applications were to be re-processed by the Answering Respondent. The MTOA was considered and granted for the period from 01.01.2016 to 31.05.2018 and the conditions applicable to such MTOA are as per the Connectivity Regulations 2009 including the exit option. It may be noted that the Petitioner had knowingly applied for MTOA from 01.01.2016. Even subsequent to the notification of the Sixth Amendment to the Connectivity Regulations which introduced Regulation 15B, the waiver of relinquishment charges in case of switch from MTOA to LTA



is applicable subject to qualification of the certain pre-requisites, which are not fulfilled in the case of the Petitioner.

- s) There was no blocking of the corridor or that there was a flux during this period. The MTOA had been granted to the Petitioner and the said capacity was kept reserved for the Petitioner. The fact that the Petitioner sought to relinquish the capacity before the operationalization is irrelevant. The Regulation 24 permits relinquishment of MTOA by 30 days notice and with payment of transmission charges for period of 30 days.
- t) Payment of charges under Regulation 24 is not subject to any notion of stranded capacity and is a fixed sum to be paid. There is no provision for any exemption under the said Regulations.
- u) The commissioning of the lines/operationalization of the MTOA is irrelevant. Regulation 24 makes no distinction for exit option from MTOA which has been operationalized and MTOA which has not been operationalized. If the LTA for the same capacity could be operationalized with the commissioned ISTS elements, the corresponding MTOAs for the same (or lesser) quantum could also have been operationalized. The Petitioner's distinct MTOA and LTA grants could not be scheduled separately in any case, as they were based on the same PPAs. In any case, there was no question of operationalization of MTOA since the same had already been relinquished.
- v) The processing of LTA and MTOA applications since June 2013 up to December 2014 had been the subject matter of various court cases before a number of judicial authorities (CERC, APTEL & Madras High Court). Based on the directions of these authorities, CTU had undertaken progressively re-processing of MTOA applications from June, 2013 to Dec, 2014 and LTA applications from Nov'13 to Dec'14. The processing of LTA or MTOA applications received in January 2015 and subsequent months had neither been stayed nor directed to be re-processed in any of the order or ROP of CERC.



- w) As per the directions of Commission vide order dated 03.07.2015, the LTA & MTOA application received from Jun' 2013 upto Dec, 2014 were to be processed as per their priority on the calculation of notional ATC as per the information available in the processing time frame. Petitioner's application dated 26.02.2015 was processed in real time as per the actual availability of the ATC. Therefore, there cannot be any comparison of ATC drawn from the calculation of notional ATC (for processing of LTA/MTOA applications received between the months of November 2013 to December 2014) and the actual ATC (considered for processing of LTA/MTOA applications from January 2015 onwards) is misconceived. The notional ATC calculated in terms of the directions of the Commission's Order dated 16.02.2015 in Petition No. 92/MP/2014 could not be considered for allocation while processing Petitioner's MTOA application of Feb, 2015.
- x) The decision in Petition No. 92/MP/2015 is not applicable to the facts of the present case and is on an entirely different issue. The said issue relates to shift of region under the same LTA and not from MTOA to LTA. Any interpretation of stranded capacity in relation to LTA cannot be applied to MTOA where no such provision exists.

Hearing

9. The matter got reserved during hearing held on 10.11.2022.

Submission of Respondent No-1 CTU

10. CTU vide affidavit dated 09.12.2022 has mainly submitted the following:

- a) LTA application details (KSEB PPA 1):

LTA Application date	31.12.2013
LTA grant date	22.07.2015 (granted as per CERC order dated 16.02.2015 in Petition No. 92/MP/2014)
LTA Start date	Notionally w.e.f. 01.04.2015



LTA end date	31.12.2038
LTA Quantum	140.5
LTA operationalization Date	16.12.2015 (with the enhanced ATC on commissioning of Narendra – Kolhapur 765kV D/c line initially charged at 400kV)

b) MTOA application details (KSEB PPA 1):

MTOA Application date	26.02.2015 (sought 140.5 MW from 01.08.2015 to 31.05.2018)
MTOA Grant Date	14.04.2015
MTOA Start date	01.01.2016*
MTOA end date	31.05.2018
MTOA Quantum	140.5
MTOA operationalization Date	MTOA was relinquished by KSEB vide letter dated 01.08.2015 before start date of MTOA upon grant of LTA vide intimation dated 22.07.2015

**The grant of MTOA from 01.01.2016 was based on the available capacity and was subject to fulfilment of the conditions which were specified at Note (4), (5) and (6) of the MTOA Intimation.*

c) LTA application details (KSEB PPA 2):

LTA Application date	30.06.2015 (sought from 01.06.2016)
LTA grant date	08.06.2016
LTA Start date	01.04.2017 or progressive enhancement in ATC with commissioning of lines part of common transmission system*
LTA end date	31.05.2041
LTA Quantum	140.5
LTA operationalization Date	01.05.2017 (with the enhanced ATC on commissioning of Wardha – Nizamabad 765kV D/c line on 24.04.2017)

**LTA granted subject to condition that earlier granted MTOA should be relinquished as per CERC regulations.*



d) MTOA application details (KSEB PPA 2):

MTOA Application date	30.06.2015 (sought 140.5 MW)
MTOA Grant Date	19.08.2015
MTOA Start date	01.06.2016*
MTOA end date	31.05.2019
Quantum of MTOA granted	122 MW against application of 140.5 MW
MTOA operationalization Date	MTOA was operationalised from 01.06.2016 which was subsequently relinquished from 01.05.2017 on operationalization of LTA, on request of KSEB vide it's letter dated 18.04.2017 & 19.04.2017

**The grant of MTOA was subject to fulfillment of conditions specified at Note 4 of the intimation.*

e) Status of COD of:

<u>Transmission Line</u>	<u>COD</u>
Mysore – Kozhikode 400kV D/c line	16.10.2015
Gooty – Madhugiri 400kV D/c line	01.12.2015
Salem – Somanhally 400kV D/c line	30.03.2019
Madhugiri – Yelhanka 400kV D/c line	02.02.2020

MTOA of 122 MW & both the LTAs of 140.5 MW each (PPA1 & PPA2) have been operationalized with the enhancement of import capability of Kerala with the commissioning of Mysore – Kozhikode 400kV D/c line and Gooty – Madhugiri 400kV D/c line. Mysore – Kozhikode 400kV D/c line provided direct feed to Kerala from Southern Region grid for meeting its import requirements.

Submission of KSEBL on 23.12.2022

11. KSEBL affidavit dated 23.12.2022 has mainly submitted the following:



- a) MTOA Agreement was executed between the Petitioner and Respondent no. 1 on 07.05.2015 wherein the aforesaid essential conditions have also been incorporated in the MTOA Agreement. It is the settled position of law that the words “subject to” used in any provision or agreement, makes it clear that the enforceability of any such provision / agreement is conditional upon the mandatory pre-condition attached with the phrase “subject to”.
- b) The reliance placed by Respondent No.1 on the judgment dt. 11.04.2019 of APTEL in GMR Warora Energy Ltd. Vs. Central Electricity Regulatory Commission is entirely misconceived, misplaced and unsustainable. In the said case of GMR Warora Energy Limited, the MTOA was operationalized with evacuation of power to TANGEDCO and TANGEDCO had requested for closure of MTOA for the balance period of grant. The grant of MTOA to TANGEDCO was unconditional. Similarly, in the case of Thermal Powertech Corporation of India Limited, the MTOA grant was unconditional and MTOA was operationalized.

Analysis and Decision

12. We have considered the submissions of the Petitioners and have also perused the facts on record. The Petitioners have filed the present petition specifically to quash the demand for relinquishment charges by Respondent no.1 vide invoice dated 10-11-2015 and 14-7-2017. The only issue which arise for our consideration is whether relinquishment charges towards relinquishment of MTOAs against PPA-1 and PPA-2 are applicable for petitioner or not?

13. Petitioner has entered into two PPAs with Maithon Power Limited for 150 MW each as per following details:

PPA Details:

	Signing date	quantum	Validity period
PPA-1	30.12.2013	150 MW	1.01.2014-31.12.2038
PPA-2	29.6.2015	150 MW	1.06.16 - 31.5.2041



14. Petitioner has applied both LTA and MTOA consequent to signing these PPAs, which were granted by CTU. Petitioner subsequently relinquished MTOA. CTU has demanded relinquishment charges from Petitioner vide invoice dated 10-11-2015 and 14-7-2017 which the petitioner has disputed under the instant petition.
15. Petitioner has submitted that with respect to PPA-1, it had applied for LTA on 31.12.2013 for supply of 140.5 MW for the period from 01.01.2014 to 31.12.2038 which was granted in parts i.e. LTA of 32 MW from 01.08.2014, 59 MW from 01.12.2015, 83 MW from 01.01.2016, 96 MW from 01.06.2016 and 140.5 MW (full quantum) from 16.06.2016 onwards. The said grant of part LTA was set aside by Commission vide Order dated 16.2.2015 in Petition No. 92/MP/2014 and CTU was asked to reprocess the applications as per the regulations. Due to uncertainty on reprocessing time of LTA and the timeline of PPA-1, Petitioner applied for MTOA on 26.2.2015 from 01.01.16 to 31.05.2018 for PPA-1 which was granted by CTU subject to commissioning of certain transmission lines. Out of those lines, Salem – Somanhally line, which was one of the essential conditions for the MTOA granted to the Petitioner under PPA-1, got commissioned only on 30.03.2019 and that the conditional MTOA, which was granted to the Petitioner for the period from 01.01.2016 to 31.05.2018 – could never have been operationalized during the entire period of the said conditional MTOA as one of the essential conditions of the MTOA, operationalizing of the Salem –



Somanhally line, was not met. MTOA was relinquished by Petitioner vide letter dated 01.08.2015 before start date of MTOA upon grant of LTA vide intimation dated 22.07.2015.

PPA-2

16. Petitioner made application for LTA as well as MTOA on 30.06.2015 with a request for the start date of LTA as well as MTOA as 01.06.2016. MTOA was granted by PGCIL/CTU on 19.08.2015 under PPA-2 for the period from 01.06.2016 to 31.05.2019. LTA was granted on 08.06.2016, for 140.5 MW capacity from 01.04.2017 onwards subject to, inter alia, relinquishment of the MTOA granted to the petitioner. On 18.04.2017, Petitioner submitted its confirmation for relinquishment of the MTOA from the date of operationalization of the LTA for the same PPA-2. The LTA was operationalized by Respondent No. 1 on 01.05.2017.

17. Petitioner has submitted that relinquishment charges is in the nature of compensation for any transmission line remaining stranded on account of relinquishment of LTA/MTOA by any entity. In the present case, there was no occasion or permissibility whatsoever for the Respondent No. 1 to seek / demand relinquishment charges from the petitioner for the conditional MTOA granted on 14.04.2015 since the essential conditions of the MTOA which had been stipulated by the Respondent No. 1 itself were not fulfilled during the entire period of the conditional MTOA.



18. Respondent No. 1 CTU has submitted that Regulation 24 of the 2009 Connectivity Regulations is mandatory, making it clear that the relinquishment charges have to be borne by the MTOA customer without any exemptions. The payment is not dependent on any stranded capacity or any other circumstances. Further, no proof is required under Regulation 24 to show any loss for payment of relinquishment charges. The abovementioned issues have already been settled by this Commission in the following cases: -

- a. GMR Warora Energy Limited -v- Power Grid Corporation of India Limited in Petition No. 153/MP/2016 dated 17.10.2017 [Paras 17, 18];
and
- b. Thermal Powertech Corporation India Limited v. Power Grid Corporation of India Limited in Petition No. 240/MP/2016 dated 31.10.2017 [Paras 8, 13, 21 to 23].

19. Petitioner has submitted that reliance placed by Respondent No.1 on the GMR Warora Energy Ltd. Case and Thermal Powertech case is entirely misconceived, misplaced and unsustainable. The facts of the said case are clearly distinguishable. In the said case of GMR Warora Energy Limited, the MTOA had operationalized with evacuation of power to TANGEDCO and TANGEDCO had requested for closure of MTOA for the balance period of grant. The grant of MTOA to TANGEDCO was unconditional. Similarly, in the case of Thermal Powertech Corporation of India Limited, the MTOA grant was unconditional and MTOA was operationalized.



20. We have considered the submissions of Petitioner and Respondents. Regulation 24 of the 2009 Connectivity Regulations reads as under:

“24. Exit Option for medium-term customers

A medium-term customer may relinquish rights, fully or partly, by giving at least 30 days prior notice to the nodal agency:

Provided that the medium-term customer relinquishing its right shall pay applicable transmission charges for the period of relinquishment or 30 days whichever is lesser”

21. Further Regulation 15B as inserted vide sixth amendment to Connectivity regulation, 2009 notified on 17.2.2017 provides as follows:

“15B. Firming up of Drawl or Injection by LTA Customers:

(1) The Long Term Access Customer who has been granted long term access to a target region shall, after entering into power purchase agreement for supply of power to the same target region for a period of not less than one year, notify the Nodal Agency about the power purchase agreement along with copy of PPA for scheduling of power under LTA:

Provided that scheduling of power shall be contingent upon the availability of last mile transmission links in the target region:

Provided further that on receipt of the copy of the PPA, CTU shall advise concerned RLDC for scheduling of power at the earliest, but not later than a period of one month:

Provided also that if the capacity required for scheduling of power under LTA has already been allocated to any other person under MTOA or STOA, then MTOA or STOA shall be curtailed in accordance with Regulation 25 of these Regulations corresponding to the quantum and the period of the PPA:

Provided also that where capacities under existing MTOA are curtailed for considering scheduling of power under the PPA of the Long term Access Customer, such MTOA customer shall be permitted to relinquish its MTOA without any relinquishment charges.

(2) An LTA Customer who is availing MTOA on account of non-operationalization of LTA granted to it, shall not be required to pay relinquishment charges towards relinquishment of MTOA if the LTA is operationalized during the subsistence of MTOA.”



As per above relinquishment charges towards relinquishment of MTOA are not required to be paid if the LTA is operationalized during the subsistence of MTOA.

Analysis of MTOA for PPA-1

22. We observe that Petitioner has availed LTA and MTOA for the same PPA. For PPA-1, the LTA availed by Petitioner was granted in parts which was set aside by the Commission as against the regulations vide Order dated 16.2.2015 in Petition No. 92/MP/2015. The petitioner has stated that since PPA-1 was already signed and there was uncertainty in reprocessing of LTA, it applied for MTOA against the same PPA-1. Further MTOA was granted from 01.01.16 to 31.05.2018 subject to commissioning of Salem – Somanhally line, which was commissioned only on 30.03.2019 i.e. after expiry of term of MTOA.
23. CTU has submitted that Regulation 24 of 2009 Connectivity Regulations is unconditional with respect to payment of relinquishment charges. CTU has referred to Orders in Petition No. 153/MP/2016 dated 17.10.2017 and Petition No. 240/MP/2016 dated 31.10.2017. We observe that in both the cases referred by CTU, MTOA was operationalized and after availing MTOA for certain time period it was relinquished. Hence the MTOA relinquished under PPA-1 in the instant case is distinguishable from the referred cases.
24. We observe that since MTOA under PPA-1 was subject to commissioning of Salem – Somanhally line, which was commissioned only on 30.03.2019 i.e. after



expiry of term of MTOA, Petitioner's MTOA would not have operationalized at all since it was expiring on 31.5.2018. Keeping in view the typical facts and circumstances of the case where MTOA would not have operationalized at all, we direct that Petitioner shall not be required to pay relinquishment charges for relinquishment of such MTOA.

Analysis of MTOA for PPA-2

25. Petitioner made application for LTA as well as MTOA on 30.06.2015 with a request for the start date of LTA as well as MTOA as 01.06.2016. MTOA was granted by CTU on 19.08.2015 for the period from 01.06.2016 to 31.05.2019 and the LTA was granted on 08.06.2016, for 140.5 MW capacity from 01.04.2017 onwards subject to, inter alia, relinquishment of the MTOA granted to the petitioner. Petitioner submitted its confirmation for relinquishment of the MTOA on 18.4.2017 from the date of operationalization of the LTA and the LTA was operationalized by Respondent No. 1 on 01.05.2017.

26. We observe that LTA for PPA-2 was granted subject to relinquishment of MTOA since both MTOA and LTA were for same PPA-2. Regulation 15B, inserted vide sixth amendment to the 2009 Connectivity regulation notified on 17.2.2017, provides that an LTA Customer who is availing MTOA on account of non-operationalization of LTA granted to it, shall not be required to pay relinquishment charges towards relinquishment of MTOA if the LTA is operationalized during the subsistence of MTOA.



27. CTU has submitted that petitioner had agreed to relinquish MTOA of 122 MW granted against PPA 2 and pay the applicable relinquishment charges in the 19th SR LTA meeting held on 29.12.2015 as follows:

“With regard to KSEB availing MTOA from June, 2016 till May, 2019, it was also informed that KSEB need to relinquish granted MTOA & pay the applicable relinquishment charges in line with the CERC regulations as and when the subject LTA is operationalized for which KSEB agreed.”

CTU has also stated that the Petitioner had applied for MTOA in June 2015 and was granted MTOA in August 2015 i.e. prior to grant of LTA which was applied in June, 2015 and granted in June, 2016 and therefore, it cannot be said that it had availed MTOA due to non-operationalization of LTA.

28. We observe that in the instant case LTA was operationalized on 1.5.2017 when MTOA was subsisting. Further LTA and MTOA both were sought for same PPA-2. The applications for LTA and MTOA were made on the same date i.e. 30.6.2015 and were sought to start from same date i.e. 1.6.2016. The LTA was sought from the same date but was granted from 1.4.2017 and MTOA was granted from 1.6.2016. Regulation 15B was effective as on the date when Petitioner relinquished MTOA in April 2017.

29. We observe that since both LTA and MTOA were availed for the same PPA, applied on same date and that MTOA was relinquished on account of LTA getting operationalized against the same PPA makes it a fit case under Regulation 15B. The reliance placed by CTU on petitioner agreeing to pay relinquishment charges during meeting held in December 2015 does not hold ground since the sixth amendment to the 2009 Connectivity Regulations were



notified much later in February 2017 and the petitioner is seeking applicability of same for the petitioner's case. In light of these discussions, we direct that the petitioner shall not be required to pay relinquishment charges for relinquishment of MTOA under PPA-2 as per provisions of Regulation 15B of the 2009 Connectivity Regulations.

30. Accordingly, the invoices raised by CTU dated 10-11-2015 and 14-7-2017 are set aside.

31. The Petition No. 428/MP/2019 is disposed of in terms of the above.

Sd/
(P. K. Singh)
Member

Sd/
(Arun Goyal)
Member

Sd/
(I. S. Jha)
Member

