

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.122/2011**

**Coram: Dr. Pramod Deo, Chairperson  
Shri S.Jayaraman, Member  
Shri V.S.Verma, Member  
Shri M.Deena Dayalan, Member**

**Date of Hearing: 19.5.2011**

**Date of Order: 6.9.2011**

**In the matter of:**

Petition under Section 79 (1)(c) and (f) of the Electricity Act, 2003 read with Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Access to Inter State Transmission and related matters) Regulations, 2009 for considering Korba STPS Stage-III as ISGS its beneficiary States/UTs as long term customers with effect from the date of commercial operation.

**And**

**In the matter of:**

NTPC Limited, New Delhi

... **Petitioner**

**Vs**

1. Power Grid Corporation of India, Gurgaon
2. Western Regional Power Committee, Mumbai
3. Power System Operation Company Limited  
(Western Regional Load Despatch Centre, Mumbai)
4. Madhya Pradesh Trading Company Limited, Jabalpur
5. Maharashtra State Electricity Distribution Company Limited, Mumbai
6. Gujarat Urja Vikas Nigam Limited, Vadodara
7. Chhatisgarh State Power Distribution Company Limited, Raipur
8. Government of Goa through Electricity Department, Panaji
9. Electricity Department, Administration of Daman & Diu, Daman
10. Electricity Department, Administration of D&NH, Silvassa .....**Respondents**

**Following were present:**

1. Shri MG Ramachandran, Advocate, NTPC Ltd
2. Shri S K Sharma, NTPC
3. Shri AS Pandey, NTPC
4. Shri SK Samui, NTPC
5. Shri Sachin Jain, NTPC
6. Shri SK Sonee, CEO, POSOCO
7. Shri Y K Sehgal, PGCIL
8. Shri Subir Sen, PGCIL
9. Shri PJ Jani, GUVNL
10. Shri Manoj Dubey, MPPTCL



## ORDER

NTPC Ltd., the petitioner herein, has filed this petition under sections 79 (1) (c) and (f) of the Electricity Act, 2003 (hereinafter “the Act”) read with Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Open Access to inter-state Transmission and related matters) Regulations, 2009 (hereinafter “Connectivity Regulations”) for considering Korba Super Thermal Power Station Stage – III as an Inter-State Generating Station (ISGS) and the beneficiaries as long term customers of the generating station and accordingly for allowing scheduling and dispatch of power with effect from the date of its commercial operation. The petitioner has also sought a direction to Western Regional Power Committee (WRPC) and Western Regional Load Despatch Centre (WRLDC) to accordingly revise/prepare energy and Unscheduled Interchange accounts in respect of the generating station with effect from the date of commercial operation.

2. The petitioner has submitted that Korba Super Thermal Power Station Stage –III (hereinafter referred to as “Korba-III”) having an installed capacity of 500 MW has been set up by the petitioner in the State of Chhattisgarh, adjacent to the existing Korba Super Thermal Power Station Stage I and Stage II(3 x 200 MW + 3 x 500 MW). Ministry of Power, Govt. of India by letter No. 5/51/2010-Th-II dated 9.12.2010 has allocated 70 % of power from Korba-III to the beneficiaries of the Western Region (Respondent Nos.4 to 10 in the petition), set aside 15% power as unallocated quota of GOI and



allocated 15% power to NTPC. The petitioner has entered into a separate PPA with Chhattisgarh State Power Distribution Co. Ltd. for sale of this 75 MW power. Member Secretary, Western Region Power Committee vide letter dated 22.03.2011 has issued a follow-up allocation of power from Korba-III including the distribution of unallocated quota amongst beneficiaries of Western Region. The petitioner entered into Power Purchase Agreements (PPAs) with the beneficiaries of the Western Region (Respondent Nos.4 to 10) on 23.12.2010 for supply of power from Korba-III. The PPAs are long term agreements for supply of power for 25 years from the date of commercial operation of the generating station. Korba-III was declared under commercial operation with effect from 21.3.2011.

3. The petitioner has submitted that subsequent to the allocation made by Government of India, Western Regional Power Committee in its 57<sup>th</sup> Commercial Committee Meeting on 11.1.2011 held at Mumbai discussed about the detailed methodology for scheduling and energy accounting of power to be generated and sold to the long term customers from Korba-III. In the said meeting, the representatives of WRLDC stated that beneficiaries would have to apply for Short Term Open Access for scheduling of power from Korba-III. However, the petitioner and the beneficiaries of Korba-III had maintained and advised WRLDC that since power had been allocated by GOI, the power from Korba-III should be evacuated on first priority basis utilizing the existing transmission capacity of Korba (2100 MW) which had been developed and the associated cost was being serviced by the existing beneficiaries of the Western Region.

4. The petitioner has further submitted that as per Regulation 2(m) of Connectivity Regulations, long term customer includes “a person who has been allocated central sector generation that is electricity supply from a generating station owned or controlled by the Central Government”. The beneficiaries of the Western Region who have been allocated power by the Government of India from Korba-III, a generating station owned or controlled by the Central Government, should be treated as the long term customers and are entitled for long term access. The Standing Committee on Transmission in its meetings dated 26.3.2010 and 8.7.2010 discussed the issue of evacuation of power from Korba-III and the petitioner was assured that power from Korba-III would have priority over other short term customers and other power generators desiring to use the transmission lines. In the 16<sup>th</sup> meeting of the Western Region Power Committee held on 12.2.2011, WRLDC confirmed that the existing system had a margin of 800 MW for evacuation of power but insisted that the petitioner or the beneficiaries would be required to apply for short term open access for scheduling of power from Korba-III till the commissioning of the 400 kV Korba-Raipur transmission line which was contested and disputed by the beneficiaries of Korba-III. The petitioner has further submitted that Western Regional Power Committee suggested the following in the said meeting:

- (a) The State beneficiaries would submit a formal request letter to CTU for LTA on the basis of their allocated shares from the station.
  
- (b) The State beneficiaries in view of the available margins and as State beneficiaries are serving the system would request CTU to examine

and convene a meeting of Standing Committee of Western Region to consider the date of LTA from the date of COD of Korba-III.

(c) PGCIL would do the needful at their end to review the date of LTA on the above grounds.

Based on the above decision, the long term beneficiaries of Korba-III namely, Maharashtra, Madhya Pradesh, Chhatishgarh and Gujarat have written letters to the CTU for treating them as long term customers. The petitioner had also requested CTU to resolve the deadlock and facilitate the evacuation of power from Korba-III considering the beneficiaries as long term customers.

5. The petitioner has submitted that CTU convened a special meeting of the WR constituents, CEA, NTPC, WRPC and WRLDC both CTU and WRLDC on 10.3.2011. In the said meeting, CTU and WRLDC refused to reconsider their stand that power can only be scheduled through STOA inspite of the suggestion made by the constituents beneficiaries and the petitioner to consider them as long term customers under the regulations of the Commission and GOI has also granted them the status of long term customers and inter-State generator. Subsequently, WRPC convened a meeting on 15.3.2011 at Mumbai, in which the CTU and WRLDC insisted that during the short duration between availability of 400 kV Korba-Raipur D/C line and commercial operation of Korba-III, power from the unit could only be scheduled through STOA. The petitioner has submitted that on

account of the rigid and unreasonable stand of CTU and WRLDC and realizing that cheap and long term power from Korba-III may entirely get stranded and to avoid power shortage in the summer months/agricultural season, the beneficiaries were constrained to provisionally apply for STOA. The petitioner has further submitted that since power from Korba-III has been forced to be scheduled under STOA in contravention of the existing regulations of the Commission, the petitioner and MPPTCL have been vigorously pursuing the matter with WRPC, CTU and WRLDC through several letters.

6. Referring to the distinction between the terms 'beneficiary' and 'buyer' and between 'generating station' and 'seller' in Central Electricity Regulatory Commission (Unscheduled Interchange charges and related matters) Regulations, 2009, the petitioner has submitted that NTPC is a generating company and power being sold from Korba-III shall be at a tariff to be determined by the Commission under section 62 of the Act and the power has been allocated to the beneficiaries by GOI on long term basis and therefore, insistence by WRLDC to schedule the power under STOA is not correct. The petitioner has also relied upon the provisions of clauses 6.4.9, 6.4.10, 6.4.16 and 6.4.18 of Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2009 relating to scheduling of inter-State generating stations in support of its contention. The petitioner has submitted that since coal is allocated by Government of India for this station, it is subject to the price cap in case of unscheduled interchange as per the UI regulations whereas STOA is being forced upon the petitioner and revisions

of schedule are not being allowed as applicable to ISGS. The petitioner has further submitted that the stand taken by WRLDC and CTU is contrary to the essence and spirit of the Commission's order dated 11.1.2010 in Petition No. 134/2009 wherein it has been clarified that the generating stations governed by the tariff regulations of the Commission shall schedule and the beneficiaries can requisition power as per the provisions of IEGC. The petitioner has also submitted that the stand taken by CTU, WRLDC and WRPC has resulted in severe restrictions being placed on the generating station in regard to the declaration and revision of schedules based on the capability to generate and on the beneficiaries who are long term customers of the station, in availing their requirement from the station in spite of the station being capable to supply such power. This has also resulted in bottling up of cheaper power and denial of opportunity to the beneficiaries to avail their requirement on merit order basis apart from violating the regulations of the Commission. The petitioner has sought a direction to WRLDC to consider the beneficiaries of Korba-III as long term customers for scheduling and dispatch of power from Korba-III with effect from the date of commercial operation in accordance with the Connectivity Regulations and to direct WRPC to revise the Regional Energy Accounts accordingly.

#### **SUBMISSIONS OF WRLDC**

7. WRLDC in its reply filed vide affidavit dated 16.5.2011 has submitted the following:

- (a) Section 10(3) of the Electricity Act, 2003 (the Act) specifies the duties of a generating company to co-ordinate with the Central Transmission

Utility (CTU) or the State Transmission Utility (STU) as the case may be for transmission of the electricity generated by it.

(b) Non-discriminatory open access is one of the cornerstone principles of the Act. The Commission has notified the Central Electricity Regulatory Commission (Open Access in Inter State transmission) Regulations 2004 (2004 Open Access Regulations), the Central Electricity Regulatory Commission (Open Access in Inter State Transmission) Regulations 2008 (2008 Open Access Regulations) and 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 (Connectivity Regulations) to facilitate open access.

(c) The petitioner applied to CTU for Long Term Open Access (LTOA) for Korba-III. Based on the system studies conducted by the CTU, LTOA was granted by the CTU which was to become effective after commissioning of 400 kV Korba-Raipur D/C line as a dedicated transmission system to be constructed by the petitioner. Based on the LTOA, a Bulk Power Transmission Agreement (BPTA) was signed between the petitioner and the CTU on 28.4.2009. Reliable evacuation of power from Korba-III required commissioning of 400 kV Korba-Raipur D/C lines as the existing system was not capable of handling the additional generation.



(d) For utilizing the existing margins in the transmission system, the petitioner should have sought short term open access as per the 2004 Open Access Regulations and 2008 Open Access Regulations pending the start of LTOA to be effective after commissioning of 400 kV Korba-Raipur D/C line. When the CTU and the CEA have clearly stated that LTA/LTOA cannot be granted without commissioning of the 400 kV Korba-Raipur D/C line, WRLDC can only consider scheduling through STOA.

(e) The allocation letter of GOI stipulated that the allocation is subject to any other directives/guidelines issued by the Government of India/Central Electricity Regulatory Commission from time to time which indicates that the 2004 Open Access Regulations and 2008 Open Access Regulations should be honoured.

(f) The issue of scheduling of Korba-III was discussed in the following meetings wherein CEA, CTU and WRLDC were of the view that STOA route needed to be followed till the above mentioned line is made available.

- a. WRPC meeting on 16<sup>th</sup> Feb 2011
- b. Meeting at CEA on 10<sup>th</sup> March 2011
- c. Meeting at Mumbai NTPC on 15<sup>th</sup> March 2011
- d. 58<sup>th</sup> Commercial Comm. meeting of WRPC at Lonavala on 7<sup>th</sup> April 2011.

(g) Member Secretary, WRPC had also made a reference to the



Commission on this subject vide letter dated 11<sup>th</sup> April 2011. WRLDC and CEA have also made communication on the issue vide letter dated 26<sup>th</sup> April 2011 and 28<sup>th</sup> April 2011 respectively to NTPC.

- (h) In response to the petitioner's insistence that scheduling of power from Korba-III as STOA is inconsistent with the two part tariff for Korba-III, WRLDC has submitted that two part tariff cannot work if there is transmission uncertainty since there is no way the declared capability of the generator can be tested. Regulation 6.5 of the Indian Electricity Grid Code 2010 specifies scheduling in two part manner for transactions arranged through long term access and medium term open access only. Hence STOA has to be on energy contract only. NTPC has to accordingly modify its Power Purchase Agreement (PPA) with its beneficiaries to take care of scheduling under STOA in accordance with the judgement of the Supreme Court of India in dated 15<sup>th</sup> March 2010 in civil appeal no 3902 of 2006 (PTC India Ltd. versus CERC in the Fixation of Trading Margin Regulations 2006).
- (i) For scheduling under long term, two conditions have to be satisfied viz. Long Term Access (LTA) to the Inter State Transmission System (ISTS) as well as a Long Term Power Purchase Agreement (PPA). Absence of any one of these two conditions would mean scheduling through STOA. The LTA has been granted to several generators in and around Korba complex based on CERC Regulations and studies carried out by the CTU. Allowing Korba-III to be scheduled as a long

term transaction merely on the strength of having an allocation or long term PPA would mean jumping the LTA queue and would be a discriminatory approach. If allowed, it could also lead to a similar demand by many other generators, including private generators.

- (j) Treating Korba-III as a long term customer when its associated transmission system has not yet been commissioned and LTA is not yet effective as per the BPTA with POWERGRID would amount to discrimination (jumping the LTA queue). Likewise giving any preferential treatment to Korba-III over the surplus capacity in the ISTS would also amount to discrimination. The only way in which the petitioner could have got any preference or long term status was in case it had applied for Medium term Open Access (MTOA) to the CTU and had the same been approved. The Commission has already provided MTOA as an alternative in transmission access.
  
- (k) It has been suggested in some discussions that Korba-III could be granted long term status but curtailed first in case of any congestion. Having two categories of high and low priority within LTA is against the existing law and would upset the entire market design. MTOA is the right product already defined by the Commission.
  
- (l) WRLDC has denied that scheduling Korba-III through STOA has resulted in bottling up of cheaper power and scheduling of Korba-III through STOA is proceeding smoothly and no power is being bottled up.

## SUBMISSIONS OF CENTRAL TRANSMISSION UTILITY

8. The CTU has made the following submissions:
- (a) NTPC had applied for the long-term open access in September 2006 as per 2004 Open Access Regulations for transfer of power from Korba–III generation project to be developed as a merchant plant without any long-term PPAs with the commissioning schedule as April 2009. As per the LTOA application, indicative future sale was to Maha DISCOM, Gujarat UVNL, MPSEB and CSEB.
  - (b) LTOA was granted to NTPC with identified system strengthening i.e., Korba–III – Raipur 400 KV DC line to fulfill transmission planning criterion in the Grid Code, 2004. Date of commencement of LTOA was from the date of commissioning of the transmission system. It was decided that NTPC would sign BPTA with POWERGRID for sharing of regional transmission charges corresponding to 500 MW and to apply for STOA till the transmission system planned for Korba- III was commissioned.
  - (c) Korba –III generation project was envisaged as a merchant plant, accordingly, WR constituents expressed reservation for signing of BPTA for sharing of transmission charges of the ATS of Korba-III. However, to take up implementation of the strengthening scheme, POWERGRID requested NTPC to provide a comfort letter confirming that in case constituents did not agree to share the charges, NTPC would bear the same. Govt. of India while giving prior approval under Section 68 of the Electricity Act, 2003 to POWERGRID had indicated that as the Korba-III was a merchant plant of NTPC, POWERGRID would have to ensure that NTPC agrees to bear full transmission charges for Korba-III – Raipur 400 KV DC line along with other regional transmission charges and

sign the BPTA with NTPC so that there is no ambiguity at a later date on this account.

- (d) NTPC signed BPTA with POWRGRID in April 2009 to bear full transmission charges of Korba-III – Raipur 400 KV DC line along with other regional transmission charges. Subsequently, NTPC signed indemnification agreement with POWERGRID with “zero” date of commissioning of above line as 01.07.2011. As the commissioning of 400 KV Korba-Raipur DC line (about 215km) would take about 28 months, upon signing of BPTA in April 2009, implementation of above transmission system was taken up by POWERGRID on priority and was expected to be commissioned by June 2011.
  
- (e) In December 2010, NTPC informed that MOP has allocated power from Korba – III to the existing beneficiaries of Western Region. Subsequently, NTPC informed that commissioning schedule of Korba-III as March 2011 and requested to schedule power from the generating station on long-term basis even without availability of identified system strengthening scheme i.e. Korba –Raipur line.
  
- (f) In order to deliberate upon above aspect, a meeting of WR constituents, CEA, WRPC, WRLDC, NTPC was held on 10.03.2011. it was emphasized that as per Electricity Act, 2003, LTOA is being granted on non-discriminatory basis i.e., where transmission augmentation has been identified, LTOA shall be effected with the commissioning of the augmentation scheme so that redundancy criteria as stipulated in the IEGC is fulfilled to facilitate power transfer on long-term basis. In view of the above, it emerged that preponement of date of commencement of LTOA without availability of identified strengthening did not fulfill the conditions stipulated in the LTOA. It also emerged that till

availability of above line, power transfer would be effected through STOA/ MTOA basis.

- (g) CTU has sought directions from the Commission whether LTOA can be made effective without commissioning of identified system strengthening to cater the redundancy criteria stipulated in the IEGC.

### **SUBMISSIONS OF WESTERN REGIONAL POWER COMMITTEE**

9. Member-Secretary, Western Regional Power Committee in his reply dated 18.5.2011 has submitted that the issue of scheduling of generation from Korba-III was discussed in the 57<sup>th</sup> Commercial Committee meeting of WRPC held on 11.1.2011, 16<sup>th</sup> WRPC meeting held on 12.2.2011, meeting convened by CTU on 10.3.2011, 58<sup>th</sup> Commercial Committee meeting of WRPC on 7.4.2011. While the regional beneficiaries of Korba-III were of the view that as per the allocation order of GOI and the definition of long-term customer in Connectivity Regulations, they should be treated as long term customers and scheduling should take place on long-term basis, CTU and WRLDC are of the view that LTA granted to CTU was to become effective after commercial operation of the 400 kV Korba-Raipur D/C line and the margin available are utilisable through STOA on non-discriminatory basis. The position was apprised to the constituents on 15.3.2011 and scheduling of power was agreed upon which commenced with effect from the date of commercial operation of the unit. It has been further submitted that in view of the difference between beneficiaries/NTPC and PGCIL/CTU/WRLDC, Commercial Committee of WRPC requested Member-Secretary to seek advice from the Commission regarding permitting CTU/WRLDC to schedule

power on long term basis prior to commercial operation of ATS for Korba-III. Accordingly, Member Secretary WRPC in its letter dated 11.4.2011 has sought directions from the Commission regarding scheduling of power from the project.

### **SUBMISSIONS OF WESTERN REGION BENEFICIARIES**

10. Gujarat Urja Vikas Nigam Limited (GUVNL) in its reply dated 17.5.2011 has submitted the following:

- (a) Korba-III is a generating station owned or controlled by the Central Government. Power from Korba-III has been allocated to Western Region beneficiaries including GUVNL by Government of India letter dated 9.12.2010, implying thereby that GUVNL is a long term customer under the Connectivity Regulations.
  
- (b) Korba-III was declared under commercial operation with effect from 21.3.2011 and accordingly, Western Regional Power Committee in its letter dated 22.3.2011 implemented the allocated shares of various beneficiaries. Pursuant to the issue of letter dated 22.3.2011, Korba-III attained the status of Inter State Generating Station (ISGS) and scheduling of power from the generating station ought to have been governed as per the provisions of Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 which clearly defines a beneficiary as a 'person who has a share in ISGS'. As per the Connectivity Regulations, long term customer has been defined in

Connectivity Regulations as 'a person who has been granted long term access and includes a person who has been allocated central sector generation that is electricity supply from a generating station owned or controlled by the Central Government'.

- (c) According to WRLDC, there is a margin of 700-800 MW, which can be utilized for granting short term open access. However, the margin is not being considered for allowing long term open access to the WR beneficiaries for availing allocation from central generating station. The WR beneficiaries have been shouldering the entire cost of the transmission system including the redundancy capacity but the same capacity cannot be utilized by them for availing power from Korba-III.
- (d) The stand taken by CTU that long term open access can only be granted pursuant to commissioning of the 400 kV Korba-Raipur D/c line is patently erroneous and is depriving the beneficiaries from their legitimate priority/first right over the transmission capacity apart from operational difficulties regarding scheduling of power to WR beneficiaries.
- (e) Korba-III should be declared as an ISGS and its beneficiaries as long term customers and WRLDC be directed for scheduling and dispatch as per the Grid Code with effect from the date of



commercial operation of the unit.

11. MPPTCL in its reply has submitted that 62.5 MW power has been allocated to Madhya Pradesh by the Central Government from Korba-III and accordingly it is a long term customer of the generating station and cannot be equated as and treated like short term or medium term customers. MPPTCL has supported the position of the petitioner in totality.

12. Maharashtra State Electricity Distribution Company Limited (MSEDCL) in its reply dated 18.5.2011 has submitted that it is a long term beneficiary of Korba-III with an allocation of 108.2 MW power on long term basis. MSEDCL was compelled to avail Korba-III power on short term basis in order to ensure that MSEDCL consumers are not deprived of this cheap power. The resultant practical difficulties and financial implications on long term beneficiaries for scheduling of Korba-III power on short term basis are as under:

- (a) The Western Region REA indicates the cumulative availability of the station but does not indicate the energy scheduled as a long term beneficiary but the same are indicated under short term bilateral transactions.
- (b) While NTPC raises bills as per CERC norms and tariff regulations applicable to long term purchases i.e. capacity charges, variable charges etc. instead of a single flat rate as applicable to power supplied under STOA, the beneficiaries are required to book the

corridor for Korba-III power on short term basis.

- (c) NTPC revises the DC of Korba-III several times due to which application for revision of Short Term Open Access are required to be submitted to WRLDC resulting in unwarranted financial implications on MSEDCL because of payment of following charges additionally:
  - (a) Application fee for STOA application and the revision thereof;
  - (b) Scheduling and operating charges per day for the additional/revised allocation due to frequent revision of declared capacity of Korba-III by NTPC which becomes duplication of these charges which are levied on per day basis on each application.
  - (c) On some occasions, the actual energy scheduled from Korba-III is less than approved STOA quantum i.e. downward revision of schedule.

#### **ADDITIONAL SUBMISSIONS**

13. The Commission in the Record of Proceedings for the hearing on 19.5.2011 directed the petitioner to submit the details regarding date of investment approval of Korba-III project and the scheduled date of commercial operation. PGCIL was also directed to submit the copy of the LTA granted to NTPC, the scheduled date of LTA, the reasons for taking delayed decision for evacuation of power from Korba-III, and the date of

investment approval for the Korba-Raipur 400 KV line, its scheduled DOCO and the expected DOCO.

14. The petitioner in its reply affidavit dated 2.6.2011 has submitted that the investment approval for Korba-III was taken in the meeting of its Board of Directors held on 24.3.2006. The environmental clearance by the Ministry of Environment and Forest was accorded vide letter dated 31.8.2006. The petitioner has further submitted that the decision for the ATS for Korba-III was taken on 30.7.2007 in the 27<sup>th</sup> standing committee on power system planning and the LTA was granted by POWERGRID vide its intimation letter dated 17.2.2009.

15. CTU in its reply dated 8.6.2011 has submitted that the petitioner had applied for long term open access in September 2006. After deliberation in the LTOA meeting of WR constituents and CEA on 22.3.2007, it was agreed to provide LTOA to NTPC for which NTPC had to sign BPTA for sharing of regional transmission charges corresponding to 500 MW. On account of likely mismatch between the commissioning schedule of Korba-III and WR pooling station, the scheme was reviewed and it was agreed to plan Korba-III Raipur 400 kV DC line as ATS for Korba-III. The date of commencement of LTOA is from the date of commissioning of the above transmission system and NTPC also agreed to sign BPTA with Power Grid for sharing of WR transmission charges corresponding to 500 MW capacity. NTPC signed the BPTA with POWERGRID in April 2009 to bear full transmission charges of Korba-III along with other regional transmission charges after which

implementation of the transmission system was taken up. The date of investment approval for Korba-Raipur 400 kV DC line was February 2009 with scheduled date of commercial operation as 28 months from the investment approval. Subsequently, NTPC signed indemnification agreement with Power Grid with zero date of commissioning of the line as 1.7.2011.

## **ANALYSIS OF THE ISSUES**

16. We have considered the submissions of the petitioner and the respondents and perused the material on record. Admittedly, the petitioner has been granted long term open access in accordance with the 2004 Open Access Regulations. It would be apt to recapitulate the provisions pertaining to the long term open access in the 2004 Open Access Regulations which are as under:

- (a) The nodal agency for arranging the long-term transmission access shall be the Central Transmission Utility if its system is used, otherwise the nodal agency shall be transmission licensee in whose system the point of drawl of electricity is situated {Reg.8.(i)}.
- (b) "Open access customer" has been defined as a consumer permitted by the State Commission to receive supply of electricity from a person other than the distribution licensee of his area of supply or a generating company(including a captive generating plant) or a licensee who has availed of intends to avail open access. {(Reg.2(j)}.

- (c) Transmission customer has been defined as “any person, including open access customer using transmission system of a transmission licensee”.{Reg.2(k)}
- (d) Long term customers are those persons who avail or intend to avail access to inter-State transmission system for a period of 25 years or more. The existing beneficiaries of a regional transmission system owned or operated by the Central Transmission Utility are deemed to be the long-term customers of the particular regional system owned or operated by the Central Transmission Utility for the purpose of 2004 Open Access Regulations{Reg.4(2)}.
- (e) The long-term access shall be allowed in accordance with the transmission planning criterion stipulated in the Grid Code {Reg. 5(i)}.
- (f) Applications for long term open access shall be submitted to the nodal agency. Based on the system studies conducted in consultation with other transmission licensees, the nodal agency shall within 30 days of receipt of the application, intimate to the applicant whether or not the long term access can be allowed without further system strengthening. Where long term access can be allowed without further system strengthening, the same shall be allowed immediately without further system strengthening. If further system strengthening is required for providing the long

term access, the applicant may request the nodal agency to carry out system studies and preliminary investigation for the purpose of cost estimates and completion schedule for system strengthening.  
{Reg.9}

- (g) The nodal agency shall carry out the studies immediately on receipt of request from the applicant under clause (v) above and intimate results of the studies within 90 days of receipt of request from the applicant. { Reg.9(vi)}
- (h) A long term customer shall enter into Bulk Power Transmission Agreement with the transmission licensee for use of inter-State transmission system.{Reg.11}
- (i) The annual transmission charges payable by a long term customer for use of the transmission system shall be determined in accordance with the terms and conditions of tariff notified by the Appropriate Commission from time to time and after deducting the adjustable revenue received from the short-term customers, the charges shall be shared by the long term customers.{Reg.16(i)}

17. We have examined the case of the petitioner for long term open access in the light of the above provisions. The Board of Directors of the petitioner's company in its 285<sup>th</sup> meeting dated 24.3.2006 accorded the investment approval of the Korba-III project as per the memorandum submitted before

the Board subject to environmental and forest clearance and signing of Fuel Supply Agreement. The Unit was envisaged to be commissioned within 42 months from the date of Main Plant Order and the zero date was to be reckoned as the date of receipt of environmental clearance from Ministry of Environment and Forests. Since the environmental clearance was received on 31.8.2006, the scheduled date of commissioning of the project was 28.2.2010. The petitioner submitted an application to CTU on 14.7.2006 for Long Term Access (LTA) for Korba-III which was returned by CTU vide its letter dated 21.08.2006 stating that it could not be processed as beneficiaries of the project had not been firmed up. The petitioner made a fresh request on 25.9.2006 to CTU for grant of LTA citing a decision in the meeting taken by Secretary, Ministry of Power on 22.8.2006 regarding finalization of Associated Transmission System for merchant plants as under:

*“For those generation plants, where the State / States in which power is to be transmitted is communicated by the generation plant to PGCIL, but actual beneficiaries or power purchasers are not indicated by the generation company. In these cases if the generation plant is willing to sign the BPTA with PGCIL, there should be no problem in construction of transmission lines.”*

The petitioner also indicated its willingness to sign the BPTA with CTU for paying the applicable transmission charges for the quantum of long-term open access sought. The LTA application indicated the expected date of commencement of long term access as April 2009 with the indicative future sale to such beneficiaries as Maha Discom, Gujarat UVNL, MPSEB and CSEB.

18. In the meeting of the Western Region constituents regarding long term open access applications in the region held on 23.2.2007, the following

decisions were taken:

*“ i) It was agreed that NTPC be provided open access with reference to their long term open access application for 25 years for transfer of 500 MW power from the proposed generation project of Korba-III in Chhatisgarh to targeted beneficiaries in WR.*

*ii) It was also agreed that in addition to above, NTPC shall sign BPTA with POWERGRID for sharing of WR transmission charges corresponding to entire 500 MW generation capacity before commencement of Long Term Open Access. Further, NTPC shall take necessary action to fulfill the terms and conditions of open access application.”*

Further, In the 27<sup>th</sup> Meeting of Standing Committee on Power System Planning in Western Region held on 30.7.2007, PGCIL had suggested revision of the transmission system i.e. a 400 kV D/C line from Korba-III – Bhatapara instead of from Korba-III to Sipat Pooling station. It was decided in the said meeting that ATS for Korba-III would be Korba-III STPS switchyard – Raipur 400 kV D/C line. It therefore emerges that as on 30.7.2007, the ATS for Korba-III was identified by the CTU and the petitioner had already committed in its application dated 25.9.2006 that it would pay the applicable transmission charges. However, the Long Term Open Access was granted by the CTU to the petitioner on 17.2.2009 subject to availability of Korba-III-Raipur transmission line and signing of BPTA with Power Grid by M/s NTPC Ltd for sharing of Western Region transmission charges corresponding to 500 MW. In the LTOA, it has been clearly indicated that Korba-III-Raipur 400 kV D/C line is a dedicated transmission line and NTPC shall ensure availability of the identified dedicated line at its own cost before commencement of LTOA. Government of India, Ministry of Power vide letter dated 17.2.2009 also conveyed the prior approval under section 68 of the Electricity Act, 2003 for the transmission line. The following paragraph extracted from the said letter is relevant:



*"The following shall be ensured prior to implementation:*

*Korba-III is a merchant power plant of NTPC. As such Korba-III- Raipur 400 kV D/C is a dedicated line and the responsibility of constructing this line lies with the generating company, in this case NTPC. Since PGCIL is constructing this line on behalf of NTPC, it has to be ensured that NTPC agrees to bear full transmission cost/transmission charges for this line alongwith the other regional transmission charges. Therefore prior to implementing the line, PGCIL has to ensure that necessary agreements/BPTA with NTPC are in place so that there is no ambiguity at a later date on this account."*

19. On receipt of the LTOA intimation, the petitioner signed BPTA with PGCIL on 28.4.2009. Perusal of the BPTA reveals that based on the system studies carried out by PGCIL in consultation with CEA, Korba-III- Raipur 400 kV D/C line was required as a dedicated transmission system to facilitate long term open access and accordingly long term open access was granted to the petitioner from the time of availability of the said transmission system and transmission system of various strengthening projects. As per the BPTA, the dedicated transmission line was to be constructed, owned, operated and maintained by PGCIL to be used for open access by the petitioner.

20. It emerges from the foregoing that the Standing Committee on Power System Planning in Western Region in the meeting held on 30.7.2007 decided Korba-III-Raipur 400 kV D/C line as the identified system strengthening for Korba-III. However, LTOA intimation was given by CTU to the petitioner on 17.2.2009, one and half years after the system strengthening was identified. As per the 2004 Open Access Regulations, CTU is required to intimate within one month from the date of receipt of application whether the system strengthening is required and the results of system studies within 90 days from the date of request for such study. CTU in its reply dated 11.5.2011 has explained that since Korba-III was envisaged

as a merchant power plant, the WR constituents did not agree to sign the BPTA for sharing the charges of the ATS for Korba-III. To take up the implementation of the strengthening scheme, CTU in its letter dated 13.8.2008 required a comfort letter from the petitioner that it would bear the transmission charges in case the constituents did not agree to share the charges. However, it was indicated in the intimation of LTOA that ATS of Korba-III would be developed by the petitioner as a dedicated transmission line. We fail to understand as to why the intimation of LTOA was delayed especially when the ATS of Korba-III was to be developed by the petitioner as a dedicated transmission line and the petitioner has already given the commitment to bear the regional and inter-regional charges till the beneficiaries are identified. We also fail to understand as to why the CTU undertook the task of construction of the ATS of Korba-III which was identified as the dedicated transmission system of Korba-III knowing fully well that it was the responsibility of the petitioner to develop the transmission line in accordance with section 10(1) of the Act and the transmission line could not be commissioned matching with the commissioning of Korba-III. We are of the view that CTU did not comply with the timeline specified in the 2004 Open Access Regulations to grant long term open access to the petitioner and decided to undertake the construction of the dedicated transmission line with the standard completion schedule which resulted in the mismatch between the commissioning of Korba-III and its ATS.

21. On perusal of the BPTA, we find that the petitioner had agreed to bear the full transmission charges of the dedicated transmission system of Korba-

III which would be constructed, owned, operated and maintained by the CTU.

Para 1(a) of the BPTA is extracted below:

*“1.(a) (i) Long Term Transmission Customer shall pay the total transmission charges for the dedicated transmission system mentioned above in accordance with the applicable CERC notification issued from time to time. However, subsequently in case the Western Regional constituents agree to include the above system in the regional pool, the transmission charges paid by Long Term Open Access Customer shall be adjusted in line with the CERC regulations.*

*(ii) Long term transmission customer shall share and pay the transmission charges including FERV, incentive, income tax, any other charges and taxes etc. of POWERGRID transmission system of Western Region including inter regional links/ULDC/NLDC charges and any addition thereof”.*

The BPTA did not provide for the timeline for completion of the ATS of Korba-III. As per the investment approval by the Board of PGCIL in its meeting dated 24.2.2009, the completion schedule of the project is 28 months from the date of investment approval. The petitioner has separately signed an Implementation Agreement with CTU with the zero date as 1.7.2011. Therefore, the petitioner in terms of the BPTA and Implementation Agreement has accepted that the LTOA for Korba-III would be operational with effect from 1.7.2011.

22. The petitioner has approached the Commission in this petition alleging violation of Regulation 2(m) of the Connectivity Regulations and other related provisions in the Grid Code and UI regulations pertaining to scheduling of power to the inter-State generating station. It would therefore, be appropriate to examine the provisions of Connectivity Regulations with regard to long term access. Long term access has been defined as “the right to use the inter-State transmission system for a period exceeding 12 years but not exceeding 25 years”. The term “long-term customer” has been defined in Regulation 2(1)(m) of Connectivity Regulations as under:

*“(m) Long-term customer” means a person who has been granted long-term access and includes a person who has been allocated central sector generation that is electricity supply from a generating station owned or controlled by the Central Government;”*

It is pertinent to mention that Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 (hereinafter “Grid Code”) carries the same definition of ‘long term customer’. Thus both for the purpose of the Grid Code and Connectivity Regulations, long term customer means, firstly, a person who has been granted long term access and, secondly, a person who has been allocated supply of electricity from generating station owned or controlled by the Central Government. In the first case, there is a requirement of grant of long term open access in accordance with the extant regulations in order to be a long term customer. In the second case, the persons who have been allocated power supply from the generating stations owned or controlled by the Central Government become the long term customers by virtue of operation of law. In other words, grant of long term access as a precondition for being treated as long term customer has been dispensed with in the case of those who have been allocated power from the generating stations owned or controlled by the Central Government.

23. In this case, the petitioner was granted long term open access under the 2004 Open Access Regulations. Regulation 34(2) of the Connectivity Regulations provide that the long term access granted in accordance with the 2004 Open Access Regulations shall continue to remain valid till the expiry of the long term access. In other words, the validity of the long term access granted under the 2004 Open Access Regulations has been saved

under the Connectivity Regulations. After allocation of power from Korba-III by the Central Government and implementation of such allocation by the Western Regional Power Committee consequent to the commercial operation of the generating station, the beneficiaries of the Western Region having allocations have become long term customers by virtue of the operation of Regulation 2(m) of Connectivity Regulations. Therefore, the limited issue before the Commission is whether the deemed status of the beneficiaries of the Western Region as long term customers makes them entitled for scheduling of power from Korba-III on the existing transmission capacity through long term open access.

24. Regulation 2(1)(m) defines long term customer as the person who has been granted long term open access. Chapter 5 of Connectivity Regulations provides for the process of grant of long term access. Regulation 15 provides that the applicant will be required to sign an agreement for long term access with the Central Transmission Utility in case long term access is granted by the CTU. The long term access agreement shall contain the date of commencement of long term access, point of injection of power into the grid and the details of dedicated transmission lines, if any, required. It therefore follows that after signing the agreement for long term access, a person becomes the long term customer of the transmission system for which long term access has been granted. A long term customer is saddled with the following rights and responsibility under the Connectivity Regulations:

- (a) Regulation 16 provides that immediately after grant of long term access, the nodal agency shall inform the Regional Load Despatch

Centre and State Load Despatch Centres concerned so that they consider the same while processing the request for grant of short term open access.

- (b) Regulation 17 entitles the long term customer to seek extension of long term access on a written request to CTU.
- (c) Regulation 18 provides that a long term customer may relinquish the long term access rights fully or partly before expiry of the full long term access by making payment of compensation of stranded capacity.
- (d) Regulation 25 provides that in case of curtailment of power flow on a transmission corridor for the reasons of transmission constraints or in the interest of grid security, the short term customers shall be curtailed first followed by medium term customers followed by long term customers.
- (e) Regulation 26 provides that transmission charges for use of the inter-State transmission system shall be recovered from the long term customers and medium term customers in accordance with the terms and conditions of tariff specified by the Commission from time to time.
- (f) Regulation 28 provides that the fees and charges for the Regional

Load Despatch Centre including charges for the ULDC scheme shall be payable by the long term customers.

- (g) Regulation 30 provides that scheduling of all transactions pursuant to grant of long term access shall be carried out on day ahead basis in accordance with the Grid Code.

25. Clause 6.4.14 of Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 provides the following on scheduling and despatch of electricity:

*“14. The regional entities shall enter into separate joint/bilateral agreement(s) to identify the beneficiary’s Shares in ISGS (based on the allocations by the Govt. of India, where applicable), scheduled drawal pattern, tariffs, payment terms etc. All such agreements shall be filed with the concerned RLDC(s) and RPC Secretariat, for being considered in scheduling and regional energy accounting. Any bilateral agreements between buyer and seller for scheduled interchanges on long-term, medium-term basis shall also specify the interchange schedule, which shall be duly filed with CTU and CTU shall inform RLDC and SLDC, as the case may be about these agreements in accordance 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.”*

26. Regulation 2(1)(m) also defines long term customer as a person who has been allocated central sector generation i.e. supply of electricity from a generating station owned or controlled by the Central Government. Therefore, those entities which have been allocated power from a generating station owned or controlled by the Central Government are long term customers by operation of law and the provisions of the Connectivity Regulations pertaining to the rights and responsibility of long term customers are equally applicable to them. Therefore after the implementation of allocation by the WRPC, the beneficiaries of the Western Region have

become beneficiaries of the transmission system for evacuation of power from Korba-III. It has been argued by WRLDC and CTU that the ATS of Korba-III was not commissioned on the date of commissioning of Korba-III, and therefore, power cannot be scheduled on long term basis. It has to be borne in mind that the beneficiaries of the Western Region are deemed to be long term customers of the transmission systems in the Western Region whose charges they are sharing in proportion to their allocation in the central generating stations in the region. Therefore, once allocations are made from a central generating station to the beneficiaries in the region, the beneficiaries acquire the rights of long term customers for evacuation of power on the existing transmission system within the region. Both CTU and WRLDC have misread the provisions of the Connectivity Regulations and treated the long term access granted to the petitioner as synonymous with the allocation of power by the Central Government from Korba-III in favour of the western region constituents and have linked the scheduling of power to the commissioning of ATS for Korba-III as per the conditions of the LTA.

27. Both CTU and WRLDC are on record that a margin of 600 to 800 MW is available on the existing line. On the basis of the allocation by the Central Government from Korba-III, some of the western region beneficiaries such as GUVNL, MSEDCL, CSPDCL and MPPTCL in their capacity as long term customers had approached the CTU for scheduling of power from Korba-III on long term access. Once the requirements of long term customers are received, such requirements should have been considered first by WRLDC on the basis of available capacity in the existing transmission system before



processing the applications for short term access as required under Regulation 16 of the Connectivity Regulations. In other words, the requirements of the long term customers should have been given precedence over the short term customers. In case of transmission constraints or in the interest of grid security, the curtailment could have been carried out in accordance with Regulation 25 of the Connectivity Regulations.

28. It is pertinent to mention that under the scheme of the open access provided in various regulations of the Commission, the CTU is the nodal agency for grant of long term access and medium term access and RLDC is responsible for grant of short term open access. Therefore, the extensive arguments of WRLDC opposing the grant of long term access to the long term customers are uncalled for since it is not concerned with grant of long term access. Regulation 3 of 2008 Open Access Regulations provides for eligibility for short term open access as under:

*“3.(1) The long-term-customer and the medium-term customer shall have priority over the short-term customer for use of the inter-State transmission system.*

*(2) The short-term customer shall be eligible for short-term open access over the surplus capacity available on the inter-State transmission system after use by the long-term customer and the medium-term customer, by virtue of-*

*(a) inherent design margins;*

*(b) margins available due to variation in power flows; and*

*(c) Margins available due to in-built spare transmission capacity created to cater to future load growth or generation addition.”*

29. It emerges from the above that long term customers have the priority over the medium term customers and short term customers for use of the inter-State transmission system. A short term customer is eligible for short term open access only on the spare capacity available in the system after

use by the long term customer and medium term customer. Admittedly, spare capacity in the system is available upto 600-800 MW over which the long term customers have the first right to use followed by medium term customer and short term customer. CTU has erred in not considering the requirement of western region beneficiaries for long term access after they acquired the status of long term customers and forcing them to seek short term open access. Moreover, WRLDC was obliged under Regulation 16 of Connectivity Regulations to first consider the requirements of Western Region beneficiaries for long term access from Korba-III before granting short term open access on the spare transmission capacity.

30. WRLDC has submitted that LTA has been granted to several generators in and around Korba complex based on the regulations of the Commission and studies carried out by the CTU. Allowing Korba-III to be scheduled as long term transaction merely on the strength of having an allocation or long term PPA would mean jumping the LTA queue and would be a discriminatory approach. If allowed, it could also lead to similar demand by many other generators, including private generators. The apprehension of WRLDC appears to us as overstated and misplaced. Both Connectivity Regulations and Grid Code provide that long term customers shall include the persons who have been allocated power by the Central Government. This dispensation cannot be extended in case of private generators in whose case allocation of power is not made by the Central Government.

31. It has also been argued by CTU and WRLDC that allowing LTOA to the petitioner would have led to backing down of stations of other long term customers on proportionate basis in case of congestion. Both CTU and

WRLDC are on record that a margin of 600 to 800 MW is available in the existing transmission system which in our view is sufficient for evacuation of power from Korba-III. Moreover, the Grid Code contains provision to deal with congestion as and when it occurs. Therefore, there is absolutely no basis for denying long term access to the long term customers of Korba-III on the existing transmission system.

32. In view of the foregoing discussion, we have come to the conclusion that the petitioner is bound by the terms and conditions of the BPTA and the Implementation Agreement signed by it with the CTU. However, after allocation of power from Korba-III by Government of India, Ministry of Power to the western region beneficiaries and execution of PPAs by the petitioner, the western region beneficiaries have become long term customers by operation of Regulation 2(1)(m) of the Connectivity Regulations. The long term customers have right to schedule power on long term access from Korba-III on the available spare capacity and such scheduling shall have priority over the medium term open access and short term open access. The ATS for Korba-III was declared under commercial operation with effect from 27.6.2011. Consequently, scheduling of power from Korba-III for the period from 21.3.2011 to 26.6.2011 on the existing transmission capacity shall be deemed to have been made on long term access. The energy and UI accounts shall be revised and settled accordingly.

sd/-  
**(M.DEENA DAYALAN)**  
**MEMBER**

sd/-  
**(V.S.VERMA)**  
**MEMBER**

sd/-  
**(S.JAYARAMAN)**  
**MEMBER**

sd/-  
**(Dr. PRAMOD DEO)**  
**CHAIRPERSON**

