

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 240/MP/2012 with I.A. No.52/2012**

Subject : Petition under Section 79 (1) (c ) read with Section 79 (1) (f) of the Electricity Act, 2003 seeking direction that the levy of transmission charges of Western Region based on revised regional energy accounts (Revised REA) for the period of March 2011 to June 2011 vide provisional bill dated 24.8.2012 raised by the Power grid Corporation of India Limited is invalid in nature and accordingly, the same be withdrawn with immediate effect.

Date of hearing : 22.11.2012

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

Petitioner : Lanco Kondapalli Power Limited, Hyderabad

Respondents : Power Grid Corporation of India Limited, New Delhi  
Western Regional Power Committee, Mumbai

Parties present : Shri Amit Kapoor, Advocate for the petitioner  
Shri Vishal Gupta, Advocate for the petitioner  
Shri K.V.M.Roa, PGCIL  
Shri M.G.Ramchandran, Advocate for GUVNL

**Record of Proceedings**

The petitioner, Lanco Kondapalli Power Limited, Hyderabad has filed this petition seeking direction to Power Grid Corporation of India Limited to declare invalid the provisional bill dated 24.8.2012.

2. Learned senior counsel for the petitioner submitted that petitioner is a generating company and has a gas based power plant at Kondapalli of a capacity of 1466 MW. The petitioner vide its application dated 25.2.2008 had

applied for grant of long term open access to the Power grid Corporation of India Ltd. (PGCIL) in accordance with Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2004 (Open Access Regulations). During the pendency of said application dated 25.2.2008, Commission notified the CERC (Terms and Conditions of Tariff) Regulations, 2009 (Tariff Regulations) on 19.1.2009 which was applicable from 1.4.2009. Regulation 33 of the Tariff Regulations provides for the mechanism for arriving at the regional transmission charges payable by the users of the regional transmission system. Regulation 33 (7) of the Tariff Regulations provides that transmission charges corresponding to any plant capacity for which a beneficiary has not been indentified shall be paid by the concerned generating company.

3. Learned senior counsel submitted that the issue of grant of Long Term Open Access (LTOA) to the petitioner was discussed in the meeting of Standing Committee for grant of LTOA on 3.3.2009 wherein it was agreed that connectivity to the petitioner should be permitted to harness the additional generation in the prevailing scenarios of power deficit. The PGCIL vide its letter dated 6.7.2009 granted LTOA to the petitioner for a period of 25 years and based on the said permission dated 6.7.2009 BPTA was executed between the petitioner and PGCIL on 2.9.2009 in accordance with the Tariff Regulations. In the meantime, the Commission notified the CERC (Grant of Connectivity, Long Term Access and Medium Term Open Access in Inter-State Transmission and related matters) Regulations, 2009 on 31.10.2009 which was applicable from 1.1.2010. Regulation 34 (1) of the Connectivity Regulations repealed the provisions of the open access regulations and changed the mechanism and procedure for grant of long term open and medium terms connectivity. However, Regulation 34 (2) of the Connectivity Regulations provides that long-term open access granted in accordance with open access regulations shall continue to be valid till the expiry of the term of open access. Despite the Connectivity Regulations coming into force, the petitioner was liable to pay transmission charges as per the Tariff Regulations and there was no change whatsoever in the payment mechanism or sharing of transmission charges.

4. Learned senior counsel for the petitioner submitted that the respondents have sought to apply the provisions of CERC Sharing Regulations, which came into force from 1.7.2011, retrospectively especially when a bare perusal of the CERC Sharing Regulations shows that it is prospective in nature and it cannot be applied in a retrospective manner. Regulation 19 of the CERC Sharing Regulations repealed the Regulation 33 of the Tariff Regulations, 2009 which dealt with the sharing of transmission charge and till the date of commencement of operation of CERC Sharing Regulations, Regulation 33 of the Tariff Regulations, 2009 was operative. The respondents have failed to consider the establish position of law that any statute or regulation is prospective in

nature unless the same is expressly made retrospectively. The provisions of CERC Sharing Regulations are clearly prospective in nature and therefore , the same could not apply before 1.7.2011 for the period of March 2011 till June 2011 and therefore, the bills dated 24.8.2012 raised by the PGCIL on the basis of CERC Sharing Regulations is erroneous and invalid.

5. Learned senior counsel submitted that the petitioner has filed an IA for interim relief seeking direction to the respondents not to take any coercive action in pursuant to the provisional bill dated 24.8.2012 during the pendency of the petition. The Commission decided that no interim direction can be issued without hearing the parties.

6. Learned counsel for the Gujarat Urja Vikas Nigam Limited submitted that the GUVNL is a effected party and any decision in the matter should be taken after hearing the GUVNL. He requested the Commission to issue direction to petitioner to implead the Western Region constituents as parties to the petition.

7. After hearing of the learned counsel, the Commission directed to admit the petition and issue notice on the main petition and the IA. The Commission further directed the petitioner to implead the Western Region and Northern Region constituents as respondents to the petition and file revised memo of parties.

8. Accordingly, the petitioner was directed to serve copy of the petition and IA on the respondents by 30.11.2012 who may file their responses by 20.12.2012 and the petitioner may file its rejoinder, if any, 28.12.2012.

9. The petition along with the IA for interim relief shall be listed for hearing on 15.1.2013.

**By the order of the Commission,**

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