

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 240/MP/2012**

Subject : Petition under section 79 (1) (c) 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June 2011 vide provisional bill dated 24.8.2012 raised by the PGCIL is invalid in nature and accordingly, the same be withdrawn with immediate effect.

Date of Hearing : 23.4.2013

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

Petitioner : Lanco Kondapalli Power Ltd., Hyderabad

Respondents : Power Grid Corporation of India and others

Parties present : Shri Amit Kapoor, Advocate for the petitioner  
Shri Vishal Gupta, Advocate for the petitioner  
Ms. Sadapurna, Advocate for the petitioner  
Shri Rakesh Gupta, LANCO  
Shri M.G. Ramachandran, Advocate for GUVNL and PGCIL  
Shri P.J.Jani, GUVNL  
Shri Jasbir Singh, PGCIL  
Shri R.P. Padhi, PGCIL

**Record of Proceedings**

Learned counsel for the petitioner submitted as under:

(a) The petitioner vide its application dated 25.2.2008 applied for grant of long-term open access to the Power Grid in accordance with CERC Open Access Regulations, 2004;

(b) During the pendency of application dated 25.2.2008, the Commission notified the CERC (Terms and Conditions of Tariff) Regulations, 2009 (Tariff Regulations, 2009) on 19.1.2009 which was applicable from 1.4.2009. Regulation 33 (7) of the Tariff Regulations, 2009 provides that transmission charges

corresponding to any plant capacity for which a beneficiary has not been identified, shall be paid by the concerned generating company;

(c) 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 the petitioner's proposal permitting it LTOA for proposed target beneficiaries in NR and WR, with the permission to sell power by STOA to any constituents in SR, WR and NR in the absence of identified long-term beneficiaries was agreed;

(d) The BPTA was signed between the parties on 2.9.2009 and the COD in open cycle was achieved by the petitioner on December 2009 and in combined cycle on July, 2010;

(e) 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. Repealing the Open Access Regulations of 2004, Regulation 26 of the Connectivity Regulations provides that the transmission charges for use of inter-State transmission system shall be recovered from the Long-term customers and the Medium term customers in accordance with the terms and conditions of tariff specified by the Commission;

(f) The Commission notified the Central Electricity Regulatory Commission(Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 (Sharing Regulations) on 15.6.2011, which came into force from 1.7.2011 and respondents have sought to apply the provisions of Sharing Regulations retrospectively, especially when a bare perusal of the Sharing Regulations shows that it is prospective in nature and it cannot be applied in a retrospective manner. Regulation 19 of the Sharing Regulations repealed the Regulation 33 of the Tariff Regulations, 2009 which dealt with the sharing of transmission charge. Till the date of commencement of operation of Sharing Regulations, Regulation 33 of the Tariff Regulations 2009 was operative;

(g) The Sharing Regulations were amended on 24.11.2011 which define 'Target Region'. Second proviso to Regulation 11(4) of the Sharing Regulations which now requires that "the charges for the quantum of long term access to a target region without identified beneficiaries shall comprise the Injection POC Charges and lowest of the Demand POC Charges among all the DICs in the target region." The amendment was specifically stated to come into force from the date of publication in the official gazette and not retrospectively;

(h) The petitioner is aggrieved by the decision of WRPC dated 23.12.2011

directing for inclusion of petitioner in the Regional Energy Accounts (REA) for the period prior to implementation of Transmission Sharing Regulations;

(i) 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, consequential bill raised by the PGCIL on the basis of CERC Sharing Regulations is not valid;

(j) GUVNL vide its letter dated 2.8.2011 requested WRPC to include the petitioner in the RTA of western region i.e. the letter was written after the sharing Regulations were notified by CERC. The said letter was never marked to the petitioner nor any representation was sought from the petitioner in this regard; and

(k) From the perusal of the BPTA it is evident that the petitioner is liable to pay transmission charges for the use of transmission system and not for obtaining LTOA. The terms used in the BPTA are "use" and "quantum of power to be transmitted" clarifies the intention of the parties at the time of execution of the BPTA, i.e., Transmission charges is payable only once the petitioner uses the transmission system and not otherwise.

2. Learned counsel for the GUVNL who also appeared for PGCIL submitted as under:

(a) The impugned bill was not raised by retrospectively applying the amendment to Sharing Regulations dated 24.11.2011 and was raised in accordance with Regulation 33(7) of the Tariff Regulations, 2009;

(b) The BPTA does not suggest that the payment of transmission charges are to be made for use only. The BPTA has to be read in context to (i) the definition of "long term open access customer", "beneficiary" read with (ii) Regulation 33 (2), (3) and (7), which clarifies that the transmission charges are payable for grant of LTOA and not for the actual use;

(c) The transmission charges were wrongly not made applicable to the petitioner. Having realized the said mistake, GUVNL represented before WRPC to include the petitioner also in the RTA. The other constituents had been paying the transmission charges, which was also to be paid by the petitioner; and

(d) As regards the decision taken on 23.12.2011, it was pointed out that there were several decisions taken in the said meeting and the decision taken by

WRPC to include the petitioner in the RTA for the period prior to 1.7.2011 was not taken by retrospectively applying the amendment to Sharing Regulations.

3. In response, the learned counsel for the petitioner submitted as under:

(a) As per the definition of 'long term open access customer', the petitioner is only liable to transmission charges for the use of the transmission system. The above submission is further strengthened by Regulation 33 of the Tariff Regulations, 2009 and the terms of the BPTA which uses the word "User" and "Use"; and

(b) Regulation 33 of the Tariff Regulations has to be read as a whole, and a holistic reading of the same establishes the fact that transmission charges are applicable only on the user of the transmission system;

4. After hearing the learned counsels for the petitioner and respondents, the Commission reserved order in the petition.

**By order of the Commission**

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