

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

Petition No. 29/2011

Coram

Dr. Pramod Deo, Chairperson

Shri V S Verma, Member

Shri M Deena Dayalan, Member

Date of Hearing: 23.05.2013

Date of Order : 08.06.2013

In the matter of

Irrational and unlawful decision of the Western Region Power Committee, the Respondent No. 11 herein to saddle the Petitioner with the burden of sharing of transmission charges for the inter-regional links between Western Region and other Regions on proportionate basis when the Petitioner has been granted Long Term Open Access only for the Western Region

And in the Matter of

Jindal Power Ltd

Petitioner

Vs

1. Gujarat Urja Vikas Nigam Ltd, Vadodra
2. Madhya Pradesh Power Trading Company Ltd, Jabalpur
3. Chhattisgarh State Power Distribution Co. Ltd. Raipur
4. Maharashtra State Electricity Distribution Co.Ltd, Mumbai
5. Maharashtra State Electricity Transmission Company, Mumbai
6. Gujarat Electricity Transmission Company Limited, Vadodara
7. Electricity Department, Govt. of Goa, Panaji
8. Electricity Department, Union Territory of Daman and Diu, Daman
8. Electricity Department, Union Territory of Dadra and Nagar Haveli
10. Power Grid Corporation of India Ltd., Gurgaon
11. Western Regional Power Committee, Mumbai

Respondents

Present:

(on 13.9.2011)

1. Shri Jayant Bhushan, Senior Advocate for JPL
2. Shri Abhishek Mitra, Advocate, MSETCL
3. Shri Shashank Kumar, JPL
4. Shri P.J. Jani, GUVNL
5. Shri Pramod Chaudhary, MPPTCL
6. Shri A.V. Deo, MSETCL
7. Shri Rajat Janioal, JPL8.Shri Snehal Kakrania, JPL

(on 23.5.2013)

1. Shri P.J. Jani, GUVNL

Per: Dr Pramod Deo, Chairperson & Shri M Deena Dayalan, Member

ORDER

Being aggrieved by the decision of Western Regional Power Committee arrived at its 13th Meeting held on 9.4.2010, the petitioner Jindal Power Limited seeks the following directions:

- “(a) Grant an ad interim ex parte stay from recovery of any amount from the petitioner in pursuance to the impugned decision of the western region power committee dated 09.04.2010
- (b) Order that the claim of transmission charges for inter-regional links between western region-eastern region, western region-northern region and western region-southern region as well as claim of wheeling charges payable to Gujrat and Maharashtra are not payable by the petitioner for the reasons explained above
- (c) Set aside the decision taken by western region power committee at its 13th meeting to the effect that long term open access customers for Inter State Transmission system of Western region also should share (a) the wheeling transmission charges/ transmission charges paid to GETCO for conveyance of central sector power to DD and DNH and wheeling/transmission charges paid to MSETCL for wheeling of Central Sector Generating Station of WR, and (b) the transmission charges for inter-regional transmission links
- (d) Direct to refund of the amount of Rs. 14,54,07,162 and Rs. 72,46,893 paid towards the interest and which has already been paid by the petitioner under protest towards the inter-regional link charges with interest.
- (e) Condone any inadvertent omission / errors / shortcomings and permit the petitioner to add / change / modify /alter the present pleading / petition and may also grant leave to the petitioner to make appropriate submissions at any future date in regard to the present proceeding
- (f) Pass such further or other orders as this Hon’ble Commission may deem fit and proper in the fact and circumstances of the case.”

2. The petitioner, a public limited company incorporated under the Companies Act, 1956 has set up its generating station near Raigarh in the State of Chhattisgarh and is engaged in the business of generation of electricity. The petitioner made an application to Power Grid Corporation of India Ltd, the Central Transmission Utility (CTU), for grant of long-term open access for evacuation of 500 MW of power for supply from its generating station to the States of Chhattisgarh and Gujarat in the

Western Region. In the meeting held on 30.9.2006 in the office of CEA it was agreed to grant the long-term open access to the petitioner on availability of the identified system strengthening scheme. The CTU by its letter dated 8.11.2006 conveyed to the petitioner the decision arrived at, subject to the petitioner executing a Bulk Power Transmission Agreement (BPTA) for sharing of Western Region transmission charges corresponding to 500 MW generation capacity. The condition conveyed to the petitioner in the said letter dated 8.11.2006 was that -

“(e) Date of commencement of open access shall be from the date of availability of above identified transmission strengthening scheme as well as transmission system of Vindhayachal-III, Sipat-I & II including signing of BPTA with POWERGRID by M/s JPL for sharing of WR transmission charges corresponding to 500 MW generation capacity.”

3. The BPTA was executed between the CTU and the petitioner on 19.3.2008. In accordance with the BPTA, points of injection and drawal of power were situated within the Western Region. The petitioner agreed to share the Western Region transmission charges for 500 MW power as per the extracts of the relevant part of the BPTA placed below:-

“M/s Jindal Power Ltd shall share the WR transmission charges corresponding to 500 MW power immediately on connectivity at Raipur and shall have Long term open access to the tune of 500 MW....”

4. Another clause of relevance in the recitals of the BPTA is that:-

“And Whereas long term transmission customer has agreed to share and pay all the transmission charges of POWERGRID including FERV, incentive, income tax, and pay other charges and taxes etc of western region including charges for inter regional links/ULDC/NLDC corresponding to 500 MW for the use of its transmission system of Western Region and any addition thereof.”

5. The petitioner used to be billed for the Western Regional Transmission System for which the petitioner made payments.

6. Gujarat Urja Vikas Nigam Ltd (GUVNL) addressed a letter dated 24.11.2009 to the Member-Secretary, Western Regional Power Committee requesting for

revision of the weighted average share of the transmission charges for inter-regional links by factoring the quantum of long-term open access granted to the inter-State generating stations on the Western Region transmission system. GUVNL further requested for revision of the monthly wheeling charges payable to Gujarat Electricity Transmission Corporation Ltd (GETCO) for wheeling of Central Sector power to the Union Territories of Dadar & Nagar Haveli and Daman & Diu and Maharashtra State Electricity Transmission Corporation Ltd (MSETL) for wheeling of Central Sector power to the State of Goa based on this Commission's orders dated 3.2.2009 and 31.7.2009 passed in the Petition Nos. 64/2008 and 67/2008.

7. The proposal made by GUVNL was included as an agenda item for discussion at 13th meeting of the Western Regional Power Committee. The proposal was discussed at the meeting of the Technical Co-ordination Committee of Western Regional Power Committee on 8.4.2010 whereby it was decided as under:

- “(i) Long term open access customers cannot be treated differently; therefore, all long term open access customers of western region transmission system should also share the inter-regional links transmission charges.
- (ii) Long term open access customers of inter-state transmission system of western region also should share the wheeling/transmission charges paid to Gujarat transmission system (GETCO) for wheeling of Central Sector power to Daman and Diu and Dadra & Nagar Haveli and wheeling/transmission charges paid to Maharashtra State Electricity Transmission Corporation Limited (MSETCL) for wheeling of Central Sector power to the State of Goa, as being shared proportionately by the beneficiaries of Central Sector generating stations of western region with effect from August 2009.”

8. The above decision of the Technical Co-ordination Committee was endorsed at the meeting of the Western Regional Power Committee held on 9.4.2010 despite objections from the petitioner. Pursuant to the above decision, the Western Regional Power Committee worked out weighted average share for transmission charges for inter-regional links with effect from 1.4.2009 and raised the invoices levying

additional charges on the petitioner. The petitioner has also been billed for wheeling charges for GETCO and MSETCL systems from August 2009 onwards. The petitioner has been making payments on both counts.

9. The petitioner in the present petition has submitted that the decision of the Western Regional Power Committee cannot be said to be by consensus as required under Government of India's Resolution dated 25.5.2005 under which the Regional Power Committees were established, since it opposed the proposal of GUVNL at the meeting. The petitioner has alleged that it has been fastened with liability to share the transmission charges for inter-regional links unilaterally even though it is not using those links in any manner. The petitioner has relied upon the clause of the BPTA reproduced under para 3 hereinabove which restricts its liability to share the transmission charges only for the Western Region transmission system. The petitioner has further alleged that the decision of the Western Regional Power Committee is contrary to the provisions of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (the tariff regulations) as under the tariff regulations only the beneficiary is required to share the charges for inter-regional links and the petitioner is not the beneficiary as defined under the tariff regulations. With regard to sharing of the wheeling charges, the petitioner has submitted that since the order of this Commission in Petition Nos. 64/2008 and 67/2008 was a consent order and it was not party to the proceedings, the petitioner cannot be made to share the wheeling charges. The petitioner also questioned the validity of the decision on ground of retrospectively as well.

10. Gujarat Urja Vikas Nigam Ltd, Madhya Pradesh Power Trading Corporation Ltd, Maharashtra State Electricity Distribution Corporation Ltd and the Western

Regional Power Committee in their replies have supported the decision arrived at the meeting held on 9.4.2010. They have justified sharing of the transmission and wheeling charges by the petitioner based on the clauses of the BPTA, the tariff regulations and the orders of this Commission in Petition Nos. 64/2008 and 67/2008.

11. We heard learned counsel for the petitioner and learned counsel/representatives of the respondents.

12. The questions raised by the petitioner are two-fold; sharing of the transmission charges for the inter-regional links and sharing of the wheeling charges for the transmission lines owned by GETCO and MSETCL being used for conveyance of Central Sector power.

Sharing of Transmission Charges for Inter-regional Links

13. It was contended by learned counsel for the petitioner that the decision of the Western Regional Power Committee at the meeting held on 9.4.2010 was invalid for more than one reason as narrated below:

- (a) There was no consensus on sharing of inter-regional transmission charges and the wheeling charges,
- (b) Western Regional Power Committee had no authority under the law to decide on the question of sharing since its function as laid down under sub-section (55) of Section 2 of the Electricity Act is to facilitate integrated operation of the power system in the region,

(c) Sharing was ordered with retrospective effect from 1.4.2009 in case of inter-regional transmission charges and with effect from 1.8.2009 in case of wheeling charges.

14. We have considered the submissions of learned counsel. . It was contended by learned counsel for the petitioner that the decision of the Western Regional Power Committee at the meeting held on 9.4.2010 was invalid. It was argued that Western Regional Power Committee had no authority under the law to decide on the question of sharing since its function as laid down under sub-section (55) of Section 2 of the Electricity Act is to facilitate integrated operation of the power system in the region, sharing was ordered with retrospective effect from 1.4.2009 in case of inter-regional transmission charges and with effect from 1.8.2009 in case of wheeling charges. We have considered the submissions of learned counsel. .The principles for sharing of the transmission charges have been laid down in the tariff regulations, applicable from 1.4.2009 and for sharing of wheeling charges in this Commission's orders in Petition Nos. 64/2008 and 67/2008, effective from 1.8.2009. In view of these facts, it is not worthwhile to contend that the Western Regional Power Committee decided to levy either the inter-regional transmission charges or the wheeling charges for GETCO and MSETCL. When the issue of sharing of charges came before the Western Regional Power Committee, the tariff regulations which contain the methodology for sharing of inter-regional links were already in force. Similarly, the issue of sharing of wheeling charges was decided by this Commission in its orders in Petition Nos. 64/2008 and 67/2008. The Western Regional Power Committee reiterated the decisions of this Commission. No fresh decision regarding levy or sharing of the transmission charges for inter-regional links or wheeling charges was taken by the Western Regional Power Committee. We do not find that the Western

Regional Power Committee committed any procedural irregularity, though the decisions are subject to scrutiny on merits.

15. The major part of the arguments made by the learned counsel for the petitioner was devoted to interpretation of clauses (3) and (7) of Regulation 33 of the tariff regulations. Learned counsel argued that clause (3) of Regulation 33 imposed liability of sharing of inter-regional transmission charges on the beneficiaries and therefore, only the beneficiaries of inter-regional transfers were required to bear the transmission charges for such transfers. However, as the petitioner was not a beneficiary as defined in clause (6) of Regulation 3, it could not be fastened with liability to share the transmission charges. Learned counsel argued that by reading together the clauses (3) and (7) of Regulation 33, the intention gathered was that only when there was no identified beneficiary of inter-regional transfers, the transmission charges were to be borne by the generating station. Therefore, according to learned counsel, the decision of the Western Regional Power Committee was contrary to the provisions of Regulation 33 of the tariff regulations and hence illegal. Learned counsel further submitted that while making the application for long-term open access, the petitioner had indicated that the supply of power from the petitioner's generating station was to the constituents of the Western Region (States of Chhattisgarh and Gujarat). Accordingly the BPTA envisaged payment of the transmission charges by the petitioner for the Western Region alone, that is, the region of operation of the petitioner. For this reason also, according to the learned counsel, the petitioner could not be subjected to levy of proportional inter-regional charges.

16. According to the respondents, the petitioner as the generating company was a beneficiary of the transmission network as it sought its use on long-term basis and was having a long-term contractual right under the BPTA to use inter-State transmission system under the BPTA. It was submitted that Regulation 3 of the tariff regulations, which contained the definitions, began with words “unless the context otherwise requires” and therefore, the term ‘beneficiary’ occurring in clause (3) of Regulation 33 should be given a contextual interpretation and, therefore also include the persons like the petitioner and users of the inter-State transmission system. Accordingly, the petitioner was liable to share the inter-regional transmission charges, it was urged, by virtue of clause (3) as well as clause (7) of Regulation 33. It was further submitted that the long-term transmission charges of Western Region include intra-regional charges as well as inter-regional charges which are collectively known as Western Region transmission charges and the two could not be differentiated. The respondents argued that the petitioner in the past received Unscheduled Interchange charges on account of over-injection into the grid. The quantum of power injected by the petitioner over and above the schedule did not have any restrictions of flow and could flow outside the Western Region. Therefore, it can be construed that depending on the system conditions the power was supplied to the neighboring regions also and became entitled to the Unscheduled Interchange charges. The petitioner, therefore, directly or indirectly, utilized the inter-regional links also although it has been granted open access within the Western Region only. It was submitted that the petitioner as a long-term open access customer of the CTU agreed to share the inter-regional transmission charges in the BPTA as per the following clause:

“And Whereas Long Term Transmission customer has agreed to share and pay all the transmission charges of POWERGRID including FERV, incentive,

income tax, and pay other charges and taxes etc of Western Region including charges for Inter Regional Links/ULDC/ NLDC corresponding to 500 MW for the use of its transmission system of Western Region and any addition thereof.”

17. Member Secretary-WRPC in his letter No. WRPC/MS-COML/2010-508 dated

18.4.2011 has submitted as under:

“2. a)xxxxxx

b) xxxxxxx

c) Upon CERC tariff regulations, 2009 taking effect from 1.4.2009, the sharing of WR transmission charges is as applicable under Clause 33 of the regulation. The transmission charges in respect of common regional transmission system under 33 (1) is payable by the users of the ISTS under 33(2) and the transmission charges for inter-regional links are payable under 33(3) by the beneficiaries of ISGS of the region except where specifically agreed otherwise.

d) Under regulation 33(3), the transmission charges of inter-regional links are payable by the beneficiary of ISGS (ISGS by definition under 2(1)(pp) of IEGC, 2010 is a Central generating station or other generating station in which two or more states have share/entitlement) in proportion to some of its entitlement in ISGS in own region and its entitlement in the ISGS of interconnected region if any, under Regulation 33 (3). The transmission charges shall however become payable by the generator in case beneficiary with exact quantum of power is not identified or contracted, the transmission charges corresponding to the extent of plant capacity for which LTOA is granted or payable under Regulation 33(7).

As beneficiaries with exact quantum of power are not identified for the subject LTOA user of WR ISTS (which is a generating station), the extent of charges for inter regional links connected with the regional transmission system which form the pooled regional assets of WR ISTS are payable by it as applicable under Regulation 33(3)(i) and 33(3)(ii)."

18. MSETCL vide affidavit dated 16.5.2011 has submitted as under:

Para 6 - "It is further most respectfully submitted that the petitioner has by raising this issue sought to deny the responsibility of sharing of legitimate transmission charges payable in accordance with the CERC Tariff Regulations, 2009. The CERC Tariff Regulation, 2009, are very clear on the fact that in case the beneficiary for the sale of power, as defined in the CERC Tariff Regulations, 2009, is not identified then in that case the generating company shall pay the charges entirely. In case the beneficiary is identified then in accordance with the CERC Tariff Regulations, 2009, the charges are payable by the beneficiary

Para 7 - It is an admitted fact that in the instant case the Petitioner has not yet identified the beneficiary and hence the transmission charges are payable by the Petitioner and the Petitioner cannot raise frivolous issues to seek and wriggle out of the same at the cost and expense of the answering Respondent.

Para 8 - Further, it is submitted that the petitioner is a LTOA user of Central Transmission Utility (CTU) and has executed Bulk Power Transmission Agreement (BPTA) with PGCIL. The relevant clause of BPTA are excerpted as follows:

"And whereas Long Term Transmission customer has agreed to share and pay all the transmission charges of POWERGRID including FERV, incentive, income tax, and pay other charges and taxes etc. of Western Region including charges for Inter Regional Links/ULDC/NLDC corresponding to 500 MW for the use of its transmission system of Western Region and any addition thereof".

Hence, it is apparent that the petitioner has agreed in BPTA for payment of Inter-Regional links and any addition thereof for use of transmission system of Western Region. It is also submitted that if other LTOA users of CTU in the Western Region are proportionately sharing the transmission charges for Inter Regional links and for wheeling Central Sector power to Goa, DD & DNH, the petitioner also being LTOA user of CTU in Western Region should not be treated

differently. Further, as per the CERC (Terms and Conditions of Tariff) Regulation, 2009 the petitioner will be required to bear the requisite transmission charges till the user is identified by him.”

“11.GUVNL in its letter dated 30th June 2010 forwarded its comments on the minutes of the meeting to the 13th WRPC meeting with a request to record it. The view expressed by GUVNL are reproduced as under:

“As regards to sharing of inter-regional link charges, the executive director – Finance, GUVNL pointed out that as per Regulation 33 (7) of the Central Electricity Regulatory Commission (Terms and conditions of tariff) Regulations, 2009, “Transmission charges corresponding to any of the plant capacity for which a beneficiary has not been identified and contracted shall be paid by the concerned generating company”. It was further stated that as per Regulation 33(2)(iv) when the regional transmission charges have to be shared by medium term users of the regional transmission system, in proportion to the MW for which medium term usage has been approved by the Central Transmission Utility for that month, on the same analogy that the Long Term users are also required to share the link charges. It was accordingly conveyed that the inter-state generating stations which are granted Long Term Open Access by the CTU but not have identified the actual beneficiary are required to share both the intra-Regional transmission charges to the extent of long term open access granted until the actual beneficiary is identified by the generator.”

“Views of Executive Director, WRLDC and position in SR and NR were also inquired from NR representative. NR representative informed that in NR, only one transmission charges sharing percentage is worked out which includes inter regional system charges also and this percentage sharing is paid by all long term beneficiaries. ED, WRLDC informed that the same procedure is followed in SR also.”

19. While agreeing with the views submitted above, we deem it necessary to extract in Regulation 33 of the tariff regulations. Regulation 33 provides as hereunder:

“33. Sharing of transmission charges. (1) The following shall be added up to arrive at the regional transmission charges payable for a month by the users of the concerned regional (common) transmission system:

(a) Amounts payable for the month for all components of inter-State transmission system (ISTS) in the region, charges for which have been agreed to be pooled

and shared by all regional beneficiaries. These shall necessarily include all components of ISTS in commercial operation on 1.4.2008, as also components of transmission system associated with a generating station at least one generating unit of which was declared under commercial operation upto 31.3.2008.

(b) Amounts payable for the month for those parts or the whole of all new transmission systems for which regional beneficiaries have agreed to pay the charges on pooled basis, or it has been so decided by the Commission. These may include an appropriate share of the total charges of a new associated transmission system commensurate with extra capacity built therein to cater to future generation addition and/or for system strengthening not directly attributable to the concerned power plant.

(2) The above regional transmission charges (grossed up) shall be shared by the following:

(i) All regional beneficiaries, in proportion to the sum of their respective entitlements (in MW) during the month in the inter-State generating stations in that region and in other regions, but excluding any generating capacity for which charges of associated transmission system are not being fully pooled.

(ii) Beneficiaries in other regions having entitlements in any generating station in the concerned region, in proportion to such entitlement (in MW) during the month, but excluding any generating capacity for which charges of associated transmission system are not being fully pooled.

(iii) Generating companies owning generating stations connected to inter-state transmission system in the region, but for which the associated transmission system has not been fully commissioned for any reason, in proportion to the gap (in MW) between the generating capacity commissioned up to the end of the month and the capacity for which the designated associated transmission system has been commissioned up to the beginning of the month.

(iv) Medium-term users of the regional transmission system, in proportion to the MW for which medium-term usage has been approved by the Central Transmission Utility for that month.

(3) The transmission charges for inter-regional links shall be shared in the following manner, except where specifically agreed otherwise:

(i) The amount payable for the month for inter-regional links between Eastern and Northern/ Western / Southern regions shall be borne by the beneficiaries in the latter region (Northern / Western / Southern), in proportion to the sum of their respective entitlements (in MW) in the inter-State generating stations in their own region and in Eastern region, but excluding any generating capacity for which charges of associated transmission system are not being fully pooled.

(ii) The amounts payable for the month for inter-regional links between Northern and Western regions, between Western and Southern regions, and between Eastern and North-eastern regions shall be borne by the linked regions in 50 : 50 ratio, and shared by the beneficiaries in the concerned region in proportion to the sum of their respective entitlements (in MW) in the inter – State generating stations in their own region, but excluding any generating capacity for which charges of associated transmission system are not being fully pooled.

Provided that 220 kV Birpara – Salakati transmission line shall be treated as a part of the Eastern Region transmission system and its charges shall be borne by the beneficiaries in Eastern Region only.

(4) For those associated transmission systems or part thereof which are not agreed to be commercially pooled with the Regional transmission system, the applicable transmission charges shall be borne by the beneficiaries of the concerned generating station(s) or the generating company as the case may be and shared between them as mutually agreed or as decided by the Commission.

(5) Transmission charges for 400 / 220 kV step down transformers (ICTS) and downstream systems, under inter-state transmission schemes brought under commercial operation after 28.03.2008 shall be determined separately (i.e. segregated from the rest of the scheme) and shall be payable only by the beneficiary directly served.

(6) Entitlements of Eastern Region beneficiaries in Chukha, Tala and Kurichchu hydroelectric generating stations in Bhutan shall be considered as their entitlements in ISGS in their own region, for the purpose of clauses (2)(i) and (3)(ii) above.

(7) Transmission charges corresponding to any plant capacity for which a beneficiary has not been identified and contracted shall be paid by the concerned generating company.”

20. It is seen that clause (1) of Regulation 33 defines the elements of the regional transmission charges. According to this clause, the amounts payable for all components of the inter-State transmission system in the region in commercial operation on 1.4.2008, as also components associated with a generating station whose one or more generating units were commissioned up to 31.3.2008 is one element of the regional transmission charges. The other element of the regional transmission charges is the amounts payable for the new inter-State transmission system, including an appropriate share of the total charges of the new associated transmission system commensurate with extra capacity built therein to cater to future generation addition and/or for system strengthening not directly attributable to the concerned power plant.

21. In terms of clause (2), the regional transmission charges computed under clause (1) are shared by (i) all regional beneficiaries, (ii) beneficiaries outside the

concerned region having entitlement in the generating station located in such region, (iii) generating companies owning generating stations for which associated transmission system has not been commissioned and such generating stations are connected to the inter-State transmission system in the region, and (iv) medium-term users of the regional transmission system. It is evident from clause (2) of Regulation 33 that the entities mentioned therein, including a generating company, in the circumstances mentioned therein, are made liable to share the regional transmission charges.

22. Next comes clause (3) which contains the principles for sharing of the transmission charges for inter-regional links. Under clause (3), the transmission charges for the inter-regional links are shared by the 'beneficiaries of the inter-State generating stations'. One of the most contentious issues raised before us is the interpretation of the term 'beneficiaries' used in clauses (2) and (3) of Regulation 33. The term is defined under clause (6) of Regulation 3 in relation to a generating station as "the person purchasing electricity generated at such a generating station whose tariff is determined under these regulations".

23. Clauses (4), (5) and (6) of Regulation 33 are not relevant for the purpose of present analysis. The last relevant provision is clause (7) which provides that the transmission charges corresponding to any plant capacity of a generating station for which a beneficiary has not been identified and contracted shall be paid by the concerned generating company. This clause is a residuary clause regarding payment of the transmission charges by the generating companies. This clause does not make any distinction between the transmission charges for the regional and inter-regional assets.

24. The petitioner has contended that while availing long-term open access on the inter-State transmission system, it is not the beneficiary and is not liable for sharing of the transmission charges for inter-regional assets under clause (3) of Regulation 33. The generating station itself cannot be its own beneficiary because it cannot purchase power from itself. The generating company as a user of the inter-State transmission system is not included within the scope of 'beneficiary' or 'beneficiaries'. Per contra, the respondents have argued that the petitioner is covered by the term 'beneficiaries'.

25. The petitioner had sought long-term open access for supply of total of 500 MW of power within Western Region. The supply was to be affected in the States of Chhattisgarh and Gujarat. In case the petitioner supplies power to these States they fall within the definition of beneficiaries and they have to share the transmission charges for inter-regional links in accordance with clause (3) of Regulation 33 of the tariff regulations in proportion of 500 MW capacity for which the long-term open access has been granted.

26. Even if it is accepted that the beneficiaries of the generating station are not identified there is no escape from the conclusion that the petitioner owes liability to share the transmission charges for the inter-regional links based on clause (7) of Regulation 33. Clause (7) provides that the transmission charges corresponding to any plant capacity for which a beneficiary has not been identified and contracted shall be paid by the concerned generating company. Regulation provides for sharing of the transmission charges, regional as well inter-regional. Clause (7) does not make any distinction between regional transmission charges and the transmission charges for inter-regional links. Therefore, the transmission charges for both types of

assets are within the scope of clause (7). In case the beneficiary has been identified corresponding to whole or a part of the plant capacity, the transmission charges corresponding to such plant capacity are payable by the beneficiary under clause (3) of Regulation 33. However, for the balance unallocated capacity, if any, that is, the capacity for which the beneficiary has not been identified, the transmission charges are payable by the generating company granted the inter-State long-term access. The petitioner has not identified the beneficiary for supply of 500 MW of capacity for which it has been granted long-term access on the inter-State transmission system. Therefore, the petitioner cannot escape its liability to share the transmission of regional and inter-regional transmission assets.

27. It is also important to note that the petitioner, as a commercial entity, under the BPTA has already agreed to share the transmission charges for regional assets as also for inter-regional links. The petitioner cannot be allowed to retract from the commitment made under the BPTA. After all the issue is of the sanctity of the contract entered into by the parties with free will and for commercial gains.

28. The Commission's order dated 28.3.2008 in Petition No, 85/2007 in para 28 clearly states that the transmission charges for inter-regional links are to be merged with the transmission charges of intra-regional system in order to arrive at the total transmission charges. The total transmission charges so arrived at are shared by the long-term access customers. The relevant portion of the said order is extracted hereunder:

"it is therefore specified that in respect of all inter-regional links between ER and NR, between ER and WR and between ER and SR, their ,transmission charges shall be merged with the transmission charges of intra-regional systems of NR, WR and SR respectively, and shared in the same manner as the later with effect from 1.4.2008."

29. The above observations of the Commission also make it explicit that the transmission charges for regional assets and the inter-regional form one package and are to be shared by the beneficiaries, the generating companies etc. There was no possibility of differentiating between the intra-regional and inter-regional transmission charges as both together are the transmission charges to be shared under clause (7) of Regulation 33. As such the generating companies are liable to share the regional transmission charges as single charge.

30. For the foregoing reasons, we uphold the petitioner's liability of the petitioner to share the transmission charges for the inter-regional links.

Sharing of Wheeling Charges

31. On the second question regarding sharing of wheeling charges for intra-State transmission system lines of GETCO and MSETCL used for conveyance of Central Sector power outside the respective State, learned counsel for the petitioners submitted that in the absence of any rule or regulation, it was inequitable to saddle the petitioner with the liability for usage of the transmission lines by other States/Union Territories. According to learned counsel, the Western Regional Power Committee relied on the orders of this Commission dated 3.2.2009 and 31.7.2009 in Petition Nos. 64/2008 and 67/2008 to levy the wheeling charges on the petitioner. Learned counsel pointed out that the petitioner was not bound since it was not party to the proceedings before this Commission. Learned counsel suggested that it would be more appropriate if only the beneficiaries of those transmission lines were made to share the transmission charges for these transmission lines.

32. The respondents submitted that this Commission decided that the lines in question were identical to the lines of the CTU and accordingly the charges were to be shared by the regional entities. The respondents pointed out that the Western Regional Power Committee had already implemented this Commission's order dated 31.7.2009 and that the said order had attained finality since the order had not been challenged by any party. Therefore, according to the respondents, the transmission charges determined by this Commission for the transmission lines belonging to GETCO and MSETCL and used for conveyance of Central Sector power outside the respective State were to be shared by all long-term open access customers, including the petitioner in accordance with the tariff regulations without exceptions.

33. We first take note of the background against which these two petitions were filed. Electricity Department, State of Goa filed Appeal No. 150 of 2007 before the Appellate Tribunal challenging the order dated 28.6.2006 of the Maharashtra State Electricity Regulatory Commission wherein, *inter alia* the intervening transmission system of MSETCL used for wheeling of power from the Central Generating Stations and/or WREB pool of power to the State of Goa was treated as part of the intra-State transmission system. The Appellate Tribunal in its judgment dated 17.12.2007 held as under:

“Accordingly, the transmission of power from Central Generating units to Goa is an inter-State transmission in terms of Section 2(36) of the Act. The use of transmission lines of MSETCL is incidental to the transmission of power from Central Generating Station to Goa. The determination of tariff for inter-State transmission as per the provisions of Section 79 of the Act is vested with CERC and is beyond the jurisdiction of MERC.”

34. In view of the above judgment of the Appellate Tribunal, GETCO filed Petition Nos. 64/2008 and 67/2008 under Section 62 read with Section 79 of the Electricity Act for fixation of the transmission charges for use of the Gujarat transmission system for conveyance of Central Sector power to the Union Territories of Dadra &

Nagar Haveli and Daman & Diu. This Commission by its order dated 3.2.2009 passed after hearing the parties, laid down the detailed guidelines for determination of transmission charges and directed Member-Secretary, Western Regional Power Committee to submit detailed calculations. On the question of pooling of the transmission charges, this Commission held:

“21. On the issue of pooling of applicable transmission charges for sharing by all the beneficiaries of the region, MPPTCL in its affidavit submitted on 22.12.2008 has stated that DD has been connected to CTU network since April 2008 after commissioning of 220 kV Vapi-Magarwada D/C transmission line and has contended that question of pooling of transmission charges payable by DD should not arise. We presume that MPPTCL is aware that some power is still flowing through the petitioner’s network who is contending that DD should pay charges for such use directly to it. Similar argument has been made in respect of conveyance of power to DNH after commissioning of 220 kV Vapi-Kharadpada D/C transmission line. To a pointed question during the hearing on 7.8.2008, as to whether these charges be pooled and shared by all the beneficiaries as had been done in the past, the counsel for the petitioner, DD, DNH and Goa, GUVNL and representative of MPPTCL agreed that the existing practice of pooling of transmission charges should be continued.”

35. On receipt of the computations from the Member-Secretary under his letter dated 3.3.2009, this Commission by order dated 31.7.2009 determined the transmission charges. This Commission directed that the charges shall be shared in the manner decided in the order dated 3.2.2009, which provided that the applicable transmission charges for conveyance of power to DD and DNH shall be shared by all long-term customers of WR in the same manner as regional assets of the CTU. As noticed above, the Appellate Tribunal in its judgment in Appeal No 150/2007 held that the transmission of power from Central Generating Stations across the territory of one State through the intra-State transmission lines amounted to inter-State transmission since the use of intra-State transmission lines was incidental to the inter-State transmission. Therefore, the tariff fixed by this Commission for such intra-State transmission lines is akin to the tariff for the inter-State transmission system owned by the CTU. It therefore necessarily follows that the transmission charges for

these intra-State transmission lines are also to be treated in the same manner as the transmission charges for the inter-State transmission lines of the CTU. The transmission charges for inter-State transmission system are pooled in the regional transmission charges and shared by long-term customers. This Commission's decision for pooling of the transmission charges for the transmission lines of GETCO used for conveyance of Central Sector power to the Union Territories is to be viewed in this context. The transmission charges determined for the transmission lines of MSETCL used for conveyance of Central Sector power to the State of Goa deserves similar treatment. We, therefore, hold that the petitioner as long-term open access customer of the Western Region Transmission System is liable to share the wheeling charges for the transmission lines of GETCO and MSETCL used for conveyance of power outside the respective State.

36. We sum up our findings as under:

- (a) The petitioner is liable to share the transmission charges for inter-regional links in accordance with clause (7) of regulation 33.
- (b) The petitioner as a long-term open access customer of the Western Region Transmission System is liable to bear the wheeling charges for the transmission lines of GETCO and MSETCL used for conveyance of Central Sector power outside the concerned States.

37. With the above, the petition stands dismissed.

Sd/-
(M Deena Dayalan)
Member

sd/-
(Dr. Pramod Deo)
Chairperson

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 29/2011

Shri V S Verma, Member

Date of Hearing: 23.5.2013

Date of Order : 08.6.2013

In the matter of

Irrational and unlawful decision of the Western Region Power Committee, the Respondent No. 11 herein to saddle the Petitioner with the burden of sharing of transmission charges for the inter-regional links between Western Region and other Regions on proportionate basis when the Petitioner has been granted Long Term Open Access only for the Western Region

And in the Matter of

Jindal Power Ltd

Petitioner

Vs

1. Gujarat Urja Vikas Nigam Ltd, Vadodra
2. Madhya Pradesh Power Trading Company Ltd, Jabalpur
3. Chhattisgarh State Power Distribution Co. Ltd. Raipur
4. Maharashtra State Electricity Distribution Co.Ltd, Mumbai
5. Maharashtra State Electricity Transmission Company, Mumbai
6. Gujarat Electricity Transmission Company Limited, Vadodara
7. Electricity Department, Govt. of Goa, Panaji
8. Electricity Department, Union Territory of Daman and Diu, Daman
8. Electricity Department, Union Territory of Dadra and Nagar Haveli
10. Power Grid Corporation of India Ltd., Gurgaon
11. Western Regional Power Committee, Mumbai

Respondents

Present:

(on 13.9.2011)

1. Shri Jayant Bhushan, Senior Advocate for JPL
2. Shri Abhishek Mitra, Advocate, MSETCL
3. Shri Shashank Kumar, JPL
4. Shri P.J. Jani, GUVNL
5. Shri Pramod Chaudhary, MPPTCL
6. Shri A.V. Deo, MSETCL
7. Shri Rajat Janioal, JPL8.Shri Snehal Kakrania, JPL

(on 23.5.2013)

1. Shri P.J. Jani, GUVNL

ORDER

I have gone through the order of learned Members of the Commission, namely, Dr Pramod Deo, Chairperson and Shri M Deena Dayalan, Member. I respectfully disagree with the views of the Hon'ble Members with regard to the liability of the petitioner to bear the inter-regional charges. I am recording my views in this order.

2. Brief facts of the case are that feeling aggrieved by the decision of Western Regional Power Committee at its 13th Meeting held on 9.4.2010, the petitioner Jindal Power Limited seeks the following directions:

- “(a) Grant an ad interim ex parte stay from recovery of any amount from the petitioner in pursuance to the impugned decision of the western region power committee dated 09.04.2010*
- (b) Order that the claim of transmission charges for inter-regional links between western region-eastern region, western region-northern region and western region-southern region as well as claim of wheeling charges payable to Gujrat and Maharashtra are not payable by the petitioner for the reasons explained above*
- (c) Set aside the decision taken by western region power committee at its 13th meeting to the effect that long term open access customers for Inter State Transmission system of Western region also should share (a) the wheeling transmission charges/ transmission charges paid to GETCO for conveyance of central sector power to DD and DNH and wheeling/transmission charges paid to MSETCL for wheeling of Central Sector Generating Station of WR, and (b) the transmission charges for inter-regional transmission links*
- (d) Direct to refund of the amount of 14,54,07,162 and 72,46,893 paid towards the interest and which has already been paid by the petitioner under protest towards the inter-regional link charges with interest.*
- (e) Condone any inadvertent omission / errors / shortcomings and permit the petitioner to add / change / modify /alter the present pleading / petition and may also grant leave to the petitioner to make*

appropriate submissions at any future date in regard to the present proceeding

(f) Pass such further or other orders as this Hon'ble Commission may deem fit and proper in the fact and circumstances of the case."

3. The petitioner, a public limited company incorporated under the Companies Act, 1956 has set up its generating station near Raigarh in the State of Chhattisgarhi and is engaged in the business of generation of electricity. The petitioner made an application to Power Grid Corporation of India Ltd, the Central Transmission Utility (CTU), for grant of long-term open access for evacuation of 500 MW of power for supply from its generating station to the States of Chhattisgarh and Gujarat in the Western Region. In the meeting held on 30.9.2006 in the office of CEA it was agreed to grant the long-term open access to the petitioner on availability of the identified system strengthening scheme. The CTU by its letter dated 8.11.2006 conveyed to the petitioner the decision arrived at, subject to the petitioner executing a Bulk Power Transmission Agreement for sharing of Western Region transmission charges corresponding to 500 MW generation capacity. The condition conveyed to the petitioner in the said letter dated 8.11.2006 was that -

"(e) Date of commencement of open access shall be from the date of availability of above identified transmission strengthening scheme as well as transmission system of Vindhayachal-III, Sipat-I & II including signing of BPTA with POWERGRID by M/s JPL for sharing of WR transmission charges corresponding to 500 MW generation capacity."

4. The Bulk Power Transmission Agreement was executed between the CTU and the petitioner on 19.3.2008. In accordance with the Bulk Power Transmission Agreement, points of injection and drawal of power were situated within the Western Region. The petitioner agreed to share the Western Region transmission charges for 500 MW power as per the extracts of the relevant part of the Bulk Power

Transmission Agreement placed below:-

“M/s Jindal Power Ltd shall share the WR transmission charges corresponding to 500 MW power immediately on connectivity at Raipur and shall have Long term open access to the tune of 500 MW....”

5. Another clause of relevance in the recitals of the Bulk Power Transmission Agreement is that:-

“And Whereas long term transmission customer has agreed to share and pay all the transmission charges of POWERGRID including FERV, incentive, income tax, and pay other charges and taxes etc of western region including charges for inter regional links/ULDC/NLDC corresponding to 500 MW for the use of its transmission system of Western Region and any addition thereof.”

6. The petitioner used to be billed for the Western Regional Transmission System for which the petitioner made payments.

7. Gujarat Urja Vikas Nigam Ltd (GUVNL) addressed a letter dated 24.11.2009 to the Member-Secretary, Western Regional Power Committee requesting for revision of the weighted average for sharing of the transmission charges for inter-regional links by factoring the quantum of long-term open access granted to the inter-State generating stations on the Western Region transmission system. GUVNL further requested for revision of the monthly wheeling charges payable to Gujarat Electricity Transmission Corporation Ltd (GETCO) for wheeling of Central Sector power to the Union Territories of Dadar & Nagar Haveli and Daman & Diu and Maharashtra State Electricity Transmission Corporation Ltd (MSETL) for wheeling of Central Sector power to the State of Goa based on this Commission's orders dated 3.2.2009 and 31.7.2009 passed in the Petition Nos. 64/2008 and 67/2008.

8. The proposal made by GUVNL was included as an agenda item for discussion at 13th meeting of the Western Regional Power Committee. The

proposal was discussed at the meeting of the Technical Co-ordination Committee of Western Regional Power Committee on 8.4.2010 whereby it was decided as under:

- “(i) Long term open access customers cannot be treated differently; therefore, all long term open access customers of western region transmission system should also share the inter-regional links transmission charges.
- (ii) Long term open access customers of inter-state transmission system of western region also should share the wheeling/transmission charges paid to Gujarat transmission system (GETCO) for wheeling of Central Sector power to Daman and Diu and Dadra & Nagar Haveli and wheeling/transmission charges paid to Maharashtra State Electricity Transmission Corporation Limited (MSETCL) for wheeling of Central Sector power to the State of Goa, as being shared proportionately by the beneficiaries of Central Sector generating stations of western region with effect from August 2009.”

9. The above decision of the Technical Co-ordination Committee was endorsed at the meeting of the Western Regional Power Committee held on 9.4.2010 despite objections from the petitioner. Pursuant to the above decision, the Western Regional Power Committee worked out weighted average share for transmission charges for inter-regional links with effect from 1.4.2009 and raised the invoices levying additional charges on the petitioner. The petitioner has also been billed for wheeling charges for GETCO and MSETCL systems from August 2009 onwards. The petitioner has been making payments on both counts.

10. The petitioner in the present petition has submitted that the decision of the Western Regional Power Committee cannot be said to be by consensus as required under Government of India's Resolution dated 25.5.2005 under which the Regional Power Committees were established, since it opposed the proposal of GUVNL at the meeting. The petitioner has alleged that it has been fastened with liability to share the transmission charges for inter-regional links unilaterally even though it is

not using those links in any manner. The petitioner has relied upon the clause of the Bulk Power Transmission Agreement which restricts its liability to share the transmission charges only for the Western Region transmission system.. The petitioner has further alleged that the decision of the Western Regional Power Committee is contrary to the provisions of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (the tariff regulations). With regard to sharing of the wheeling charges, the petitioner has submitted that since the order of this Commission in Petition Nos. 64/2008 and 67/2008 was a consent order and it was not party to the proceedings, the petitioner cannot be made to share the wheeling charges. The petitioner also questioned the validity of the decision on ground of retrospectivity as well.

11. Gujarat Urja Vikas Nigam Ltd, Madhya Pradesh Power Trading Corporation Ltd, Maharashtra State Electricity Distribution Corporation Ltd and the Western Regional Power Committee in their replies have supported the decision arrived at the meeting held on 9.4.2010. They have justified sharing of the transmission and wheeling charges by the petitioner based on certain clauses of the Bulk Power Transmission Agreement, the tariff regulations and the orders of this Commission in Petition Nos. 64/2008 and 67/2008.

12. Heard learned senior counsel for the petitioner and learned counsel/ representatives of the respondents.

13. The questions raised by the petitioner are two-fold viz. sharing of the transmission charges for the inter-regional links and sharing of the wheeling charges

for the transmission lines owned by GETCO and MSETCL being used for conveyance of Central Sector power. I agree with the decision of other Members of the Commission on the second issue. I have dealt with the first issue in the succeeding paragraphs.

14. It was contended by learned senior counsel for the petitioner that the decision of the Western Regional Power Committee at the meeting held on 9.4.2010 was invalid for more than one reason. Learned senior counsel brought out that there was no consensus on sharing of inter-regional transmission charges and the wheeling charges, Western Regional Power Committee had no authority under the law to decide on the question of sharing since its function as laid down under sub-section (55) of Section 2 of the Electricity Act is to facilitate integrated operation of the power system in the region, sharing was ordered with retrospective effect from 1.4.2009 in case of inter-regional transmission charges and with effect from 1.8.2009 in case of wheeling charges. In my view, the principles for sharing of the transmission charges have been laid down in the tariff regulations, applicable from 1.4.2009 and for sharing of wheeling charges in this Commission's orders in Petition Nos. 64/2008 and 67/2008, effective from 1.8.2009. In view of these facts, it is not worthwhile to contend that the Western Regional Power Committee decided to levy either the inter-regional transmission charges or the wheeling charges for GETCO and MSETCL. When these issues came before the Western Regional Power Committee, they had already been deliberated upon and decided by this Commission. The Western Regional Power Committee sought to act in furtherance of the decisions of this Commission. The Western Regional Power Committee did not act as a delegatee of this Commission either. No fresh decision regarding levy or sharing of the

transmission or wheeling charges was taken by the Western Regional Power Committee. In my view, Western Regional Power Committee has not committed any procedural irregularity.

15. The major part of the arguments made by the learned senior counsel appearing for the petitioner was devoted to interpretation of clauses (3) and (7) of Regulation 33 of the tariff regulations. Learned senior counsel argued that clause (3) of Regulation 33 imposed liability of sharing of inter-regional transmission charges on the beneficiaries. Only the beneficiaries of inter-regional transfers were required to bear the transmission charges for such transfers. However, the petitioner was not a beneficiary as defined in clause (6) of Regulation 3. Learned senior counsel argued that by reading together the clauses (3) and (7) of Regulation 33, the intention gathered was that only when there was no identified beneficiary of inter-regional transfers, the transmission charges were to be borne by the generating station. Therefore, according to learned senior counsel, the decision of the Western Regional Power Committee regarding the liability of the petitioner to pay the inter-regional charges was contrary to the provisions of Regulation 33 of the tariff regulations and hence illegal. Learned senior counsel further submitted that while making the application for long-term open access the petitioner had indicated that the supply of power from the petitioner's generating station would be to the constituents of the Western Region namely, States of Chhattisgarh and Gujarat. Accordingly the Bulk Power Transmission Agreement envisaged payment of the transmission charges by the petitioner for the Western Region alone, that is, the region of operation of the petitioner. For this reason also, according to the learned senior counsel, the petitioner could not be subjected to levy of proportional inter-regional charges.

16. According to the respondents, the petitioner as the generating company was a beneficiary of the transmission network as it sought its use on long-term basis and was having a long-term contractual right to use inter-State transmission system. It was submitted that Regulation 3 of the tariff regulations, which contained the definitions, began with words “unless the context otherwise requires” and therefore, the term ‘beneficiary’ occurring in clause (3) of Regulation 33 should be given a contextual interpretation and, therefore also include the persons like the petitioner, users of the inter-State transmission system. Accordingly, the petitioner was liable to share the inter-regional transmission charges, it was urged, by virtue of clause (3) as well as clause (7) of Regulation 33. It was further submitted by the respondent, MPPTCL that the long-term transmission charges of Western Region include intra-regional charges as well as inter-regional charges which are collectively known as Western Region transmission charges and the two can not be differentiated. The respondents argued that the petitioner in the past received Unscheduled Interchange charges on account of over-injection into the grid. The quantum of power injected by the petitioner over and above the schedule did not have any restrictions of flow and could flow outside the Western Region. Therefore, it can be construed that depending on the system conditions, the power was supplied to the neighboring regions also and became entitled to the Unscheduled Interchange charges. The petitioner, therefore, directly or indirectly, utilized the inter-regional links also although it has been granted open access within the Western Region only. It was submitted that the petitioner as a long-term open access customer of the CTU agreed to share the inter-regional transmission charges in the Bulk Power Transmission Agreement as per the following clause:

“And Whereas Long Term Transmission customer has agreed to share and pay all the transmission charges of POWERGRID including FERV, incentive, income tax, and pay other charges and taxes etc of Western Region including charges for Inter Regional Links/ULDC/ NLDC corresponding to 500 MW for the use of its transmission system of Western Region and any addition thereof.”

17. I consider it appropriate to examine the provisions relating to sharing of transmission charges, contained in Regulation 33 of the tariff regulations. Regulation 33 provides as hereunder:

“33. **Sharing of transmission charges.** (1) The following shall be added up to arrive at the regional transmission charges payable for a month by the users of the concerned regional (common) transmission system:

(a) Amounts payable for the month for all components of inter-State transmission system (ISTS) in the region, charges for which have been agreed to be pooled and shared by all regional beneficiaries. These shall necessarily include all components of ISTS in commercial operation on 1.4.2008, as also components of transmission system associated with a generating station at least one generating unit of which was declared under commercial operation upto 31.3.2008.

(b) Amounts payable for the month for those parts or the whole of all new transmission systems for which regional beneficiaries have agreed to pay the charges on pooled basis, or it has been so decided by the Commission. These may include an appropriate share of the total charges of a new associated transmission system commensurate with extra capacity built therein to cater to future generation addition and/or for system strengthening not directly attributable to the concerned power plant.

(2) The above regional transmission charges (grossed up) shall be shared by the following:

(i) All regional beneficiaries, in proportion to the sum of their respective entitlements (in MW) during the month in the inter-State generating stations in that region and in other regions, but excluding any generating capacity for which charges of associated transmission system are not being fully pooled.

(ii) Beneficiaries in other regions having entitlements in any generating station in the concerned region, in proportion to such entitlement (in MW) during the month, but excluding any generating capacity for which charges of associated transmission system are not being fully pooled.

(iii) Generating companies owning generating stations connected to inter-state transmission system in the region, but for which the associated transmission system has not been fully commissioned for any reason, in proportion to the gap (in MW) between the generating capacity commissioned up to the end of the month and the capacity for which the designated associated transmission system has been commissioned up to the beginning of the month.

(iv) Medium-term users of the regional transmission system, in proportion to the MW for which medium-term usage has been approved by the Central Transmission Utility for that month.

(3) The transmission charges for inter-regional links shall be shared in the following manner, except where specifically agreed otherwise:

(i) The amount payable for the month for inter-regional links between Eastern and Northern/ Western / Southern regions shall be borne by the beneficiaries in the latter region (Northern / Western / Southern), in proportion to the sum of their respective entitlements (in MW) in the inter-State generating stations in their own region and in Eastern region, but excluding any generating capacity for which charges of associated transmission system are not being fully pooled.

(ii) The amounts payable for the month for inter-regional links between Northern and Western regions, between Western and Southern regions, and between Eastern and North-eastern regions shall be borne by the linked regions in 50 : 50 ratio, and shared by the beneficiaries in the concerned region in proportion to the sum of their respective entitlements (in MW) in the inter – State generating stations in their own region, but excluding any generating capacity for which charges of associated transmission system are not being fully pooled.

Provided that 220 kV Birpara – Salakati transmission line shall be treated as a part of the Eastern Region transmission system and its charges shall be borne by the beneficiaries in Eastern Region only.

(4) For those associated transmission systems or part thereof which are not agreed to be commercially pooled with the Regional transmission system, the applicable transmission charges shall be borne by the beneficiaries of the concerned generating station(s) or the generating company as the case may be and shared between them as mutually agreed or as decided by the Commission.

(5) Transmission charges for 400 / 220 kV step down transformers (ICTS) and downstream systems, under inter-state transmission schemes brought under commercial operation after 28.03.2008 shall be determined separately (i.e. segregated from the rest of the scheme) and shall be payable only by the beneficiary directly served.

(6) Entitlements of Eastern Region beneficiaries in Chukha, Tala and Kurichchu hydroelectric generating stations in Bhutan shall be considered as their entitlements in ISGS in their own region, for the purpose of clauses (2)(i) and (3)(ii) above.

(7) Transmission charges corresponding to any plant capacity for which a beneficiary has not been identified and contracted shall be paid by the concerned generating company.”

17. It is seen that clause (1) of Regulation 33 defines the elements of the regional transmission charges. According to this clause, the amounts payable for all components of the inter-State transmission system in the region in commercial

operation on 1.4.2008, as also components associated with a generating station whose one or more generating units were commissioned up to 31.3.2008 is one element of the regional transmission charges. The other element of the regional transmission charges is the amounts payable for the new inter-State transmission system, including an appropriate share of the total charges of the new associated transmission system commensurate with extra capacity built therein to cater to future generation addition and/or for system strengthening not directly attributable to the concerned power plant. It is thus crystal clear that under clause (1) the inter-regional transmission charges are not included in the regional transmission charges. In terms of clause (2), the regional transmission charges computed under clause (1) are shared by (i) all regional beneficiaries, (ii) beneficiaries outside the concerned region having entitlement in the generating station located in such region, (iii) generating companies owning generating stations for which associated transmission system has not been commissioned and such generating stations are connected to the inter-State transmission system in the region, and (iv) medium-term users of the regional transmission system. It is evident from clause (2) of Regulation 33 that a generating company, in the circumstances mentioned therein, is also made liable to share the regional transmission charges.

18. Next comes clause (3) which contains the principles for sharing of the transmission charges for inter-regional links. It bears notice that separate provision has been made for sharing of the transmission charges for inter-regional links as they are not included in the regional transmission charges. Under clause (3), the transmission charges for the inter-regional links are shared only by the 'beneficiaries of the inter-State generating stations'. One of the most contentious issues raised is the interpretation of the term 'beneficiaries' extensively used in clauses (2) and (3) of

Regulation 33. The petitioner has contended that while availing long-term open access on the inter-State transmission system, it is not the beneficiary. Per contra, the respondents have argued that the petitioner is covered by the term. The term is defined under clause (6) of Regulation 3 in relation to a generating station as “the person purchasing electricity generated at such a generating station whose tariff is determined under these regulations”. Even a cursory glance at the definition shows that the generator as a user of the inter-State transmission system is not included within the scope of ‘beneficiary’ or ‘beneficiaries’. Even otherwise, from the language of clauses (2) and (3) of Regulation 33 it is evident that the term ‘beneficiaries’ is used in conjunction with generating station only as it provides that the transmission charges for the inter-regional links are shared only by the ‘beneficiaries of the inter-State generating stations’ It, therefore, follows that under clause (3) the generating company is exempt from sharing of the transmission charges for inter-regional links as it does not qualify as the beneficiary.

19. Another major issue on which the parties hold diametrically opposite view involves interpretation of clause (7) of Regulation 33. The controversy is whether clause (7) takes within its ambit sharing of inter-regional charges by a generating company. Clause (7) provides that the transmission charges corresponding to any plant capacity of a generating station for which a beneficiary has not been identified and contracted shall be paid by the concerned generating company. This clause is a residuary clause regarding payment of the transmission charges by the generating companies. In my opinion, this clause has been used to facilitate long term access to a target region, which is allowed as per the practice by CTU, in order to build the transmission system to the concerned region's periphery. The generating station who has sought and has been grant long term access to a target region is obliged to

pay the transmission charges of its own region, the inter-Regional links of the target region and the transmission charges of the target region, since there are no long-term beneficiaries who are existing at that time to bear such transmission charges. This clause cannot imply to mean that the transmission charges of the target region and of inter-regional links are to be paid, in the case of short term contracts for sale to another region, since the payment of transmission charges are already covered in the Commission's Regulations on short-term open access. The clause cannot be interpreted to impose an obligation on the generating companies to share the transmission charges for the inter-regional links in all situations as in the case of beneficiaries provided in clause (3). The generating companies have not been expressly included in clause (3). In case the intention was to saddle the generating companies with the inter-regional transmission charges, nothing could prevent to expressly bring them within the purview of clause (3). In fact, the generating companies are made liable for sharing of regional transmission charges explicitly under clause (2). Under clause (3) only the beneficiaries are mandated to share the transmission charges for the inter-regional links. On the question raised by the respondents regarding utilizing the transmission system for injection of power through unscheduled inter-change, both Regulation 33 (2) and 33 (3) provide that Regional Transmission Charges and transmission charges of inter-Regional links shall be shared by the beneficiaries in proportion to their share in the inter-State generating stations and not on the difference between the actual power flows and those based on entitlements, i.e. on unscheduled interchange. Therefore, the contention of the respondents is not in order on this issue. In light of these facts, I hold that the petitioner is liable to pay only the regional transmission charges since its beneficiaries are located in its own region, i.e. the Western Region.

20. The respondents argued that there was no possibility of differentiating between the intra-regional and inter-regional transmission charges as both together are known as the Western Region transmission charges and as such the generating companies are liable to share the regional transmission charges as single charge. I find the submission to be without merit. Clause (1) of Regulation 33 defines the elements that embrace regional transmission charges. There is no provision in clause (1) to include the inter-regional transmission charges in the regional transmission charges. The inter-regional and intra-regional charges have been further segregated while laying down the principles for sharing of the two categories of charges under clauses (2) and (3) of Regulation 33. Therefore, the inter-regional and intra-regional transmission charges are distinct and the two do not overlap. Therefore, there is no support for the view that the two types of transmission charges be clubbed together.

21. The petitioner has submitted that its generating station is not the inter-State generating station since it is neither a central generating station nor a generating station in which two or more States have shares. This contention of the petitioner has no force. The petitioner was allowed long-term open access based on its representation that the States of Chhattisgarh and Gujarat would be supplied power from its generating station. Therefore, I hold that the generating station developed by the petitioner is an inter-State generating station with attendant rights and obligations.

22. In the light of above analysis, I hold that the petitioner is not liable to share the inter-regional transmission charges. Similar interpretation shall apply to the clause of the Bulk Power Transmission Agreement under which the petitioner has agreed for

payment of inter-regional transmission charges. No part of the Bulk Power Transmission Agreement can override the statutory regulations interpreted above.

23. The petitioner has argued that it has not scheduled any power for long-term transactions and is selling entire power on short-term basis. From this it appears that the PPAs to Chhattisgarh and Gujarat have not materialized. Notwithstanding the same, since the petitioner has sought Long Term Access to the Western Region, it is bound to share the regional transmission charges of the Western Region. Western Regional Power Committee is directed to revise the Regional transmission account accordingly and refund the inter-regional transmission charges recovered from the petitioner during the subject period to the petitioner. The first question of sharing of inter-regional transmission charges by the petitioner is decided accordingly.

24. I sum up my findings as under:

- (a) The petitioner shall not be liable to share the inter-regional transmission charges.
- (b) The petitioner as a long-term open access customer of the Western Region Transmission System is liable to bear the wheeling charges for the transmission lines of GETCO and MSETCL used for conveyance of Central Sector power outside the States.

25. With the above directions, the petition stands disposed of.

Sd/-
(V.S. Verma)
Member