

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No 244/MP/2012

Coram:

Shri V.S. Verma, Member

Shri M. Deena Dayalan, Member

Date of Hearing: 16.05.2013

Date of Order: 02.12.2013

In the matter of

Petition under Sections 79 (1) (c) and 79 (1) (k) of the Electricity Act, 2003 for directions to, inter alia, accept schedules for supply of power against long-term access.

And in the matter of

Jindal Power Ltd., Chhattisgarh

.....Petitioner

Vs

1. National Load Despatch Centre, New Delhi
2. Western Region Load Despatch Centre
3. Power Grid Corporation of India Ltd, Gurgaon

....Respondents

Parties Present

1. Ms. S. Usha, WRLDC
2. Shri Sanjay Sen, Sr. Advocate, JPL
3. Shri S. S. Barpanda
4. Shri Sanjay Kaul, JPL
5. Ms. Jyoti Prasad, POSOCO
6. Shri P. Pentayya, WRLDC
7. Shri S.R. Narasimhan, NLDC
8. Shri Y.U. Sehgal, CTU
9. Ms. Manju Gupta, CTU
10. Shri Vikas Saksena, JPL

ORDER

The present petition has been filed seeking following directions, namely -

- a. issue appropriate directions to the CTU / Respondent No. 2 to allow open access in terms of the applications / schedules submitted by the Petitioner being Annexure A - 5 hereto, to the extent of allotted transmission capacity under LTA /BPTA dated 19.03.2008.
- b. clarify that the Petitioner is at all time entitled to schedule power to the extent of allotted transmission capacity under the LTA, so as to ensure efficient utilization of long term transmission capacity allotted to the Petitioner; and
- c. pass such other order and further order or orders as this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case and in the interest of justice."

Regulatory Framework

2. On 30.1.2004 this Commission notified the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2004 (the 2004 OA Regulations) which regulated grant of long-term open access, short-term open access and other matters connected therewith.

3. The provisions relating to short-term open access in the 2004 Regulations were repealed with effect from 1.4.2008 with the enactment of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 (the 2008 OA Regulations). Subsequently, the provisions in the 2004 OA Regulations in relation to long-term access were repealed with effect from 1.1.2010 with the enforcement of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 (Connectivity Regulations) by virtue of clause (1) of Regulation 34 thereof. Clause (2) of the Connectivity Regulations saved the long-term access granted under the 2004 OA Regulations.

4. The Commission has specified the Central Electricity Regulatory Commission (Sharing of Inter-state transmission charges and losses) Regulations, 2010 (the Sharing Regulations). In accordance with the provision of Regulation 4 of the Sharing Regulations, the Central Transmission Utility prepared the detailed procedure for Billing, Collection and Disbursement (hereinafter referred to as "BCD Procedure") which was approved by the Commission. Para 7.1 of the BCD Procedure as approved by the Commission provides as under:

"7.1 The long term access (LTA) is granted to DICs with and/ or without firm beneficiaries but with target region. The scheduling for the power injection/ drawal on priority shall be only for the portion of the quantum for which there are firm long term PPAs. For the balance untied LTA quantum for which DIC has only target region, the scheduling shall be done only when DIC is granted either medium-term open access (MTOA) or short-term open access for entire or part of the balance untied LTA quantum from the nodal agency."

Basic Facts of the Case

5. The petitioner, a generating company, has established a 1000 MW generating station in the State of Chhattisgarh. It made an application dated 23.8.2004 to the Central Transmission Utility (CTU), the nodal agency under the 2004 OA Regulations, for grant of long-term open access (long-term access) for conveyance of 500 MW of electricity to the State of Gujarat and the Union Territory of Dadra and Nagar Haveli. At the meeting held on 30.9.2006 with the constituents of Western Region, the petitioner stated that the utilities in the States of Gujarat and Chhattisgarh would draw power from its generating station for which long-term access was sought. At the meeting the CTU informed that based on the systems studies, long-term access could be granted to the petitioner. Accordingly, it was decided to grant long-term access for 500 MW capacity. The petitioner by its letter dated 26.2.2008 informed the CTU that it might transfer power to any other Western Region constituents. The petitioner signed the Bulk Power

Transmission Agreement dated 19.3.2008 (BPTA) for long-term access for 500 MW.

The BPTA further provided as under:

“Therefore, the following is agreed between the parties:

- 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 for power transfer to Gujarat and Chhattisgarh.
- However, power transfer to other than Gujarat and Chhattisgarh may be affected through short-term open access which M/s Jindal Power Ltd shall approach WRLDC separately.”

Petitioner’s Grievances

6. The petitioner was being allowed short-term open access by the second respondent, WRLDC for transfer of electricity to the entities in Western Region from time to time. The trigger for the present petition is the petitioner’s letter dated 21.9.2012 to WRLDC whereby the petitioner is said to have submitted its schedule for short-term supply of 400 MW of power to Maharashtra State Electricity Distribution Company Ltd (MSEDCL) during October and November 2012 and 195 MW during December 2012. Similarly, the petitioner had proposed to schedule 150 MW and 100 MW to Essar Steel in the State of Gujarat during October 2012 and November 2012 respectively. WRLDC, vide its letter dated 27.9.2012, however, gave consent for open access for 100 MW for the period 1.10.2012 to 20.10.2012 to schedule power to Essar Steel. The petitioner under its letter dated 28.9.2012, claimed that it had right to avail short-term open access since it was already granted long-term access for 500 MW capacity under the 2004 Regulations. However, WRLDC treated the petitioner at par with other applicants for short-term open access and declined to treat it long-term customer for transfer of power to MSEDCL and Essar Steel as the petitioner had not produced the long-term PPA for

sale of power to these utilities. WRLDC accordingly under its letter dated 23.10.2012 rejected the request of the petitioner for scheduling of power during October, November and December 2012 on the basis of long-term access already granted. WRLDC informed the petitioner that all short-term open access applicants “have the equal right on the available transmission capacity and no preference can be given to LTA/MTOA customers without PPA as per various regulations.”

7. Feeling aggrieved by the decision of WRLDC, the petitioner has approached the Commission by filing the present petition. The petitioner has submitted that by virtue of clause (2) of Regulation 34 of the Connectivity Regulations, long-term access granted shall continue to be governed under the 2004 OA Regulations, which did not lay down any conditions of long-term PPA for availing long-term access. Accordingly, the petitioner has sought directions for acceptance of schedules for supply of power on the basis long-term access granted under the 2004, OA Regulations.

8. The petitioner has submitted that it has been sharing the transmission charges applicable to Western Region like other constituents of the region and has acquired the status of a constituent by meeting all obligations of a regional constituent. The petitioner has submitted that for purposes of scheduling power, it has to be given priority over short-term customers and cannot be subjected to curtailments. The petitioner has argued that the generating companies which have executed BPTAs with the CTU and have been granted long-term access, cannot be treated as short-term users and, consequently, cannot be denied open access to the extent of the transmission capacity allotted to them as a long-term customers. The petitioner has stated that as a result of

refusal by WRLDC to schedule power to MSEDCL and Essar Steel, the petitioner's generation capacity remained, and will continue to remain, stranded, causing huge financial loss to the petitioner and loss of national resources as well. It has been averred that refusal of WRLDC to schedule power has jeopardised the interests of MSEDCL since it was forced to buy costlier power through the power exchange which has adversely affected the electricity consumers in the State of Maharashtra.

9. Relying upon Paragraph 24 & 26 of the Procedure issued under Connectivity Regulation, the petitioner has urged that as a long-term customer, it deserves higher priority in scheduling of power on day-ahead basis.

10. The petitioner has argued that the Commission's regulations do not provide for forfeiture of the capacity allotted to a long-term customer merely for that reason of its failure to execute long-term PPA which itself is beset with legal and financial risks. Therefore, according to the petitioner, long-term access is independent of the existence of long-term PPA. The petitioner has envisaged that the CTU despite being aware that the petitioner did not have a long-term PPA, has granted long-term access to the petitioner and executed the BPTA. The petitioner has submitted that it has not been able to execute long-term PPAs, for whatever reasons, and is therefore selling power on short-term basis to the identified entities which include the distribution companies and has sought scheduling of power. According to the petitioner, an entity granted long-term access owns the transmission capacity allotted to it as long as it meets the financial and other obligations attached to such grant of long-term access and it is irrelevant whether the scheduled supply of power is on short-term or long-term basis. The petitioner has

claimed vested right to the transmission capacity allotted to it. The petitioner has averred that it has been paying transmission charges applicable to a long-term customer in accordance with demands raised by WRLDC from time to time. At one of the hearings, it was stated on behalf of the petitioner that it had paid a sum of more than ₹218 crore towards the transmission charges.

11. The petitioner has alleged that NLDC and WRLDC have unilaterally revised the methodology for computing Total Transfer Capacity (TTC), Available Transfer Capacity (ATC) and Transfer Reliable Margin (TRM) for short-term open access, as a consequence of which TTC and ATC for short-term open access has been reduced. As a result, ATC for its generating station has been reduced from '750 MW to 850 MW' to about '200 to 400 MW', causing bottling of power. The petitioner has submitted that reduction in TTC and ATC is another reason for denial of short-term open access.

Reply by NLDC and WRLDC

12. Power System Operation Corporation Ltd (POSOCO), which exercises control over NLDC and WRLDC, the first and second respondent respectively, in the reply filed on behalf of these respondents has submitted that in accordance with the regulations of the Commission, short-term open access is to be granted in a non-discriminatory manner and subject to availability of surplus capacity. POSOCO has submitted that the petitioner has not brought to the notice of WRLDC any agreements for scheduling on long-term basis as required under the Regulation 6.4.14 of the Grid Code and therefore, the petitioner is not entitled to long-term access. POSOCO has stated that short-term open access is being granted in accordance with the regulations of the Commission and

the procedures approved by it. POSOCO has relied upon para 7.1 of Procedure under Sharing Regulations, to underscore its view point that in case long-term access is granted to any person for the target region only but he does not have PPA, power can be scheduled only when such person is granted medium-term open access or short-term open access. Therefore, according to POSOCO, for the mere fact that the petitioner has been granted long-term access for Western Region, but without any long-term PPA for supply of power to the said region, it does not become entitled to schedule power on short-term basis. POSOCO has stated that the petitioner, as a part of its business strategy and after risk-return analysis, has been applying only for short-term open access to different utilities at different points of time. POSOCO has stated that giving any preference to the petitioner in grant of short-term open access would be contrary to the non-discriminatory open access principle enshrined in clause (d) of sub-section (2) of Section 38 of the Electricity Act, 2003 (the Act).

13. POSOCO has attributed denial of short-term open access for the months of October, November and December 2012 to the unavailability of transmission capacity. POSOCO has submitted that the installed generation capacity in W3 area (the area within which the petitioner's generating station is located) is approximately 12,500 MW (including Chhattisgarh's own generation) and it has a peak load of just 2,500 MW and, therefore, about 10,000 MW needs to be exported out of W3 area. POSOCO has explained that TTC for injection by regional entities in W3 area into the ISTS is of the order of 7000-7500 MW against an ex-bus capability of the order of 9500 MW. According to POSOCO, considering Transmission Reliability Margin (TRM) of 200 MW and effective scheduling under long-term access, medium-term open access of 6100

MW for a typical day, the margin left for short-term open access for injection by W3 area regional entities is of the order of 700 to 1200 MW. It has been further submitted that generation of the order of 5000 MW has been added in the W3 area since March 2011 out of which the Independent Power Producers account for a capacity close to 4000 MW. However, long-term access and medium-term open access is of the order of 900 MW only, with infinitesimally small proportion of long-term PPA. Therefore, almost the entire capacity is exported by availing short-term open access. In substance, POSOCO has explained that presently the total available generation is much more than the transmission evacuation capacity which leads to congestion in the system and accordingly injection limits for W3 area were implemented with effect from 18.9. 2012. As a consequence of implementation of injection limits, short-term open access is not granted for the entire capacity for which the applications are received.

CTU's Reply

14. The CTU vide its reply dated 28.1.2013 submitted that in accordance with clause (ii) of Regulation 9 of the 2004 Regulations, it is necessary to indicate the drawee utility for availing long-term access. It has stated that similar provision has been made in proviso to clause (1) of Regulation 12 of the Connectivity Regulations. Accordingly, it has been stated that it is essential for a long-term customers to indicate the drawee utility for availing long-term access. The CTU has submitted that if the drawee utilities are not indicated, it is not possible to evolve firm up transmission system and the adequacy of the system for the desired power transfer cannot be determined since for granting long-term access, system studies are carried out to determine the transmission system strengthening needs for flawless power transfer.

Petitioner's Rejoinder

15. The petitioner has filed its rejoinder to the reply of POSOCO. The petitioner has submitted that neither the Sharing Regulations nor the Procedure framed there under which were not in existence when the petitioner was granted long-term access, can take away the rights vested under the 2004 OA Regulations which has been saved by virtue of clause (2) of Regulation 34 of the Connectivity Regulations. The petitioner has further submitted that the Sharing Regulations by themselves do not stipulate that scheduling/inter-change of power cannot be done in the absence of firm long-term PPA. On the question of applicability of the Procedure under the Sharing Regulations, the petitioner has submitted that the Procedure does not have any statutory force and cannot be pressed as a ground to decline scheduling of power on short-term basis. The petitioner has stated that it has constructed 258 Km long transmission line at a cost of ₹321.87 crore for obtaining connectivity to the CTU's network for availing long-term access and on this ground also it deserves to be given priority in the matter of short-term open access. In the rejoinder, the petitioner has next contended that denial of short-term open access amounts to indirectly regulating generation which has been de-licensed under the Act. The petitioner has reiterated that non-execution of long-term PPA is of no consequence for availing short-term open access. The petitioner has questioned the correctness of the technical reason of unavailability of transmission capacity given by POSOCO on the ground that the computation of TTC and ATC is based on wrong assumptions and calculations.

Analysis and Decision

16. The petitioner's first contention is that by virtue of saving provisions under clause (2) of Regulation 34 of the Connectivity Regulations, it continues to be governed by the 2004 OA Regulations and since the latter regulations did not specify any condition of execution of long-term PPA for grant of long-term access, the petitioner is not under any obligation to enter into PPA with any entity for availing short-term open access against the long-term transmission capacity allotted to it. Therefore, it is to be seen whether the 2004 OA Regulations continue to apply in the case of the persons granted long-term access under the 2004 OA Regulations in view of clause 34 (2) of the Connectivity Regulations. Regulation 34 provides as under:

“34. Repeal and Savings

(1) On commencement of these regulations, Regulation No.s 4(1)(a), 4(ii), 5(i), 6(i), 7, 8(i), 9, 10, 11, 12, 16(i), 18, as far as it applies to long-term customers, and 31(i) of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2004, shall stand repealed.

(2) Notwithstanding anything contained in clause (1), long-term access granted in accordance with the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2004 shall continue to be valid till the expiry of the term of long-term access.”

17. Regulation 34 of the Connectivity Regulations has two clauses: Clause (1) repeals all the provisions relating to long-term access of the 2004 OA Regulations and clause (2) continues the validity of long-term access granted prior to commencement of the Connectivity Regulations. The petitioner was granted long-term access under the 2004 OA Regulations. By virtue of clause (2) of Regulation 34, long-term access already granted has been saved. The intention expressed in clause (2) is to keep alive the long-term access already granted. In other words, the persons already granted long-term

accesses do not have to seek long-term access afresh under the Connectivity Regulations.

18. The established principle is that when a law is repealed, it is as if it had never existed except in respect of the transactions already firmed up in the past or with reference to some parts as are saved by the repealing law. Clause (1) of Regulation 34 repeals all the provisions relating to long-term access incorporated in the 2004 OA Regulations. Neither clause (1) nor clause (2) reveals any intention that the long-term customers granted open access under the 2004 Regulations shall continue to be governed by the repealed regulations. Those regulations stand completely obliterated. Any attempt to enforce the 2004 OA Regulations would amount to enforcing the dead regulations. As such, we do not find any merit in the petitioner's contention that it is governed by the 2004 OA Regulations despite their repeal.

19. The petitioner has further argued that the Connectivity Regulations and the Sharing Regulations notified by the Commission cannot be enforced *qua* the petitioner as they were notified subsequent to grant of long-term access. It is not a valid proposition. The regulations are framed by the Commission in exercise of its powers delegated under the Act. If Petitioner's plea is accepted, it would mean that a set of regulations governing open access would apply only to the category of persons granted open access after the date of promulgation of the regulations and thereby there will be as many sets of open access customers as the number of amendments of regulations. Such a proposition nullifies the effect of most of the new statutory regulations. It is not

correct to say that new regulations when enacted in accordance with prescribed procedure do not apply to the existing entities.

20. Article 2.0 of the BPTA provides as under:

“2.0 POWERGRID agrees to provide Long Term Open Access required by the Long term transmission customer as per the details mentioned above and in accordance with the Regulations under the Central Electricity Regulatory Commission (Open Access in Interstate Transmission Regulations 2004) and the conditions specified by the CERC from time to time.”

21. In terms of Article 2.0 of the BPTA, the petitioner has covenanted to be governed by the conditions specified by the Commission from time to time since the CTU cannot provide long-term access to the petitioner *de hors* the conditions specified by the Commission, whether these conditions are specified by the Commission through the regulations or otherwise. This is another ground to hold that the petitioner is governed by the regulations specified by the Commission.

22. The petitioner has taken inconsistent pleas as regards applicability of the Connectivity Regulations. In the petition, the petitioner has heavily relied upon the Connectivity Regulations and the procedure formulated by the CTU thereunder and approved by the Commission. However, in its rejoinder and the written submissions, the petitioner has repudiated applicability of the Connectivity Regulations. The petitioner cannot be allowed to take vacillating stand.

23. The petitioner has strongly urged that the BCD Procedure under Sharing Regulations does not have statutory force and as such cannot be applied in the case of the petitioner. The Procedure has been notified under the 2010 Regulations and has been issued by the Commission vide order dated 29.4.2011.

24. The next question is whether it is necessary to enter into long-term PPA to avail long-term access. According to the petitioner, there is no such requirement.

25. It is amply clear that any person granted long-term open access is governed by the conditions specified under Chapter 7 of the "Connectivity Regulations", among other provisions thereof. Clause (1) of Regulation 30 of the Connectivity Regulations lay down that scheduling of all transactions pursuant to grant of long-term access and medium-term open access shall be carried out on day-ahead basis in accordance with the Grid Code. Para 6.4.14 of the Grid Code provides as under:

“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. The Grid Code requires the long-term customers to file with the CTU the bilateral (long-term) agreements for sale of power for availing long-term access. We have already held that the petitioner as a long-term customer is governed by the procedures notified under the regulations specified by the Commission. Paragraph 7.1 of the BCD Procedure under Sharing Regulation provides as under:

“7.1 The long term access (LTA) is granted to DICs with and/ or without firm beneficiaries but with target region. The scheduling for the power injection/ drawal on priority shall be only for their portion of the quantum for which there are firm long term PPAs. For the balance untied LTA quantum for which DIC has only target region, the scheduling shall be done only when DIC is granted either medium- term open access (MTOA) or STOA for entire or part of the balance untied LTA quantum from the nodal agency.”

27. Paragraph 7.1 of the BCD Procedure recognises that long-term access may be allowed for an identified region, called target region but with or without firm or identified beneficiaries. The long-term customer enters into PPA for supply of power when the beneficiaries are identified. Paragraph 7.1 further provides that the scheduling of power on the basis of long-term access can be on priority for the portion of the quantum of power for which firm long-term PPAs have been executed. Therefore, even under Paragraph 7.1, execution of long-term PPA is envisaged for availing long-term access. Therefore, we held that execution of long-term PPA is a necessary condition for availing long-term access.

28. The next question is whether the petitioner is entitled to overriding priority for scheduling its power on short-term basis as claimed by the petitioner.

29. We have held that scheduling of power injection under long-term access can be availed of only on the basis of firm PPA for supply of power. However, there is no such condition for availing short-term open access. The petitioner who has been allowed long-term access can avail it only after filing of long-term PPA(s) and not otherwise. The petitioner has not entered into long-term firm PPA for supply of power. From the facts available on record it is seen that the proposed sale to MSEDCL and Essar Steel for the months of October, November and December 2012 was on short-term basis. Therefore, the petitioner was not entitled to get over-riding priority for scheduling of short-term open access transactions to MSEDCL and Essar Steel. Paragraph 7.1 of the BCD Procedure provides that when the quantum of long-term access exceeds the quantum tied up under the firm PPA, the balance power or part thereof can be scheduled only when medium-

term open access or short-term open access is granted. Therefore, the petitioner cannot claim any preferential treatment and can schedule power to MSEDCL & Essar only after it has been granted short-term open access.

30. The petitioner has urged that since it has been sharing the regional transmission charges, it is to be treated as a constituent of the Western Region and therefore, it can supply power up to 500 MW to any person in the Region. The argument implies that a Regional constituent sharing the transmission charges enjoys the freedom to transfer power anywhere in the Region. There is a fallacy in the argument. The State Utilities in the Region are the Regional constituents and they share the Regional transmission charges too.

These utilities cannot be permitted to transmit power outside the State without obtaining approval for the open access on inter-State transmission system from the nodal agency i.e. CTU for medium-term open access and RLDC for short-term open access. Therefore, the petitioner, even if presumed to be a Regional constituent, cannot schedule power on short-term basis on priority and without permission from RLDC.

31. The petitioner has claimed to have made investment of ₹321.87 crore to develop the dedicated transmission line connecting its generating station with the CTU network. The petitioner has submitted that the investment was made so that it became entitled to evacuate power within Western Region at all times. On this basis, the petitioner has claimed preferential treatment in grant of short-term open access. The argument of the petitioner is completely devoid of merit. The dedicated transmission line was constructed by the petitioner as a condition for grant of long-term access to facilitate

transfer of power from its generating station. At the time of construction of the dedicated transmission line, short-term open access by the petitioner was not thought of. The petitioner at his own request has since been granted transmission licence for the said transmission line and recovers the transmission charges of the said transmission line which are shared by others in accordance with the 2010 Regulations and is being paid the transmission charges and is getting return on the investment.

32. Also the Petitioner's argument that he made an investment to develop a dedicated transmission line does not entitle him any priority primarily in view of the fact that a connectivity line was required to be implemented by him upto the ISTS in case it wanted to supply power under LTA and more so because the dedicated line has since been converted to ISTS.

Further, as per 2004 OA Regulations, the Procedure for Long-term access given under Regulation 9 reads as follows:

"9. (i) An application for long-term access shall be submitted to the nodal agency.

(ii) The application shall contain the details, such as capacity needed, point(s) of injection, point(s) of drawal, duration of availing open access, peak load, average load and such other additional information that may be specified by the nodal agency. The nodal agency shall issue necessary guidelines, procedure and application forms within 30 days."

The petitioner obtained LTA on the basis of above regulation but the point of drawal specified in the application became infructuous due to non finalization of PPA with GUVNL and CSEB decided to put its own transmission lines for evacuation of power from the petitioner's plant. In the absence of long-term PPA, RLDC cannot schedule petitioner's power as per Section 28 (3) of the Act as RLDCs are responsible

for optimum scheduling and dispatch of electricity within the region, in accordance with the contracts entered into with the licensees or the generating companies operating in the region. Since there is no contract under Long-term Access, power cannot be scheduled under LTA.

33. The petitioner has urged that the CTU granted long-term access though it was aware that the petitioner did not have a long-term PPA and executed the BPTA. Therefore, according to the petitioner, execution of the PPA cannot be a condition precedent for grant of short-term open access. We have considered the submission. Under the BPTA, the petitioner was granted long-term access for transfer of power to GUVNL in the State of Gujarat and CSEB in the State of Chhattisgarh as they were identified as the drawee utilities. It was, however, specifically agreed that power transfer to other persons, other than GUVNL in Gujarat and CSEB in Chhattisgarh would be effected through short-term open access for which the petitioner is required to make an application to WRLDC, the nodal agency. The relevant provision of the BPTA has already been extracted above. It is thus seen that the understanding was that the petitioner was granted long-term access for supply of power to GUVNL in Gujarat and CSEB in Chhattisgarh and in case the petitioner intended to supply power to any other person, such supply could be made after obtaining short-term open access. It was argued on behalf of the petitioner that reference to the States of Gujarat and Chhattisgarh in the above extracted clause of the BPTA is only indicative of the fact that drawee-utilities are located in those States. It was urged that the provision relating to power transfer "to other than Gujarat and Chhattisgarh may be affected through short term open access", in effect relates to sale of power outside Western Region. Such an

interpretation is not tenable. The petitioner had sought, and was granted, long-term access for supply of power within Western Region and the BPTA was executed accordingly. The BPTA is to be interpreted in that context only. There is no warrant to uphold the petitioner's argument that the provision governing short-term open access is with reference to sale of power outside Western Region. The contention has no merit.

34. POSOCO, during the course of hearing, submitted that normally the scheduled drawal of State drawee utilities allotted power from Central Sector generating stations is less than the allocated quantum. POSOCO illustrated its submission with the help of the following details of long-term access granted and drawal of power by the States in Northern Region on a number of days. The necessary details shown for 30.1.2013:

(MW)			
State	Long-term Access	Average Drawal Schedule	Difference
Uttar Pradesh	5096	3186	1911
Punjab	2664	1325	1339
Rajasthan	2307	1693	614
Delhi	4195	2089	2107

35. From the above details, it is discernible that substantial quantum of allotted transmission capacity remains unutilized. It was argued on behalf of POSOCO that if the interpretation given by the petitioner is accepted, the State utilities would claim preferential treatment for scheduling of power on short-term basis. We find force in the submission of POSOCO. In case the petitioner's claim for preferential treatment for scheduling of 500 MW through STOA is accepted on the strength of LTA granted already without a long-term PPA, it would not be possible to deny similar treatment to the State utilities when ever demanded by them. In such a situation, the capacity for transmission of power on short-term basis would not be available as short-term open

access is accommodated against unutilized capacity after meeting the LTAs and MTOAs. It will cause a serious blow to the very concept of short-term open access. For this reason also, the petitioner's claim for preferential treatment for scheduling of power on short-term basis cannot be accepted.

36. An application for short-term access is to be considered in accordance with the 2008 OA Regulations which regulate short-term open access and other related matters. Regulation 9 of the 2008 OA Regulations which specifies the procedure for scheduling of short-term open access (Bilateral Transactions) is reproduced below:

“Procedure for Advance Scheduling for bilateral transactions

9. (1) An application for advance scheduling for a bilateral transaction may be submitted to the nodal agency up to the fourth month, the month in which an application is made being the first month:

Provided that separate application shall be made for each month, and for each transaction.

(2) (a) An application for inter-State scheduling during the fourth month shall be made up to the last day of the first month.

(b) All applications received shall be taken up together for consideration.

(c) The nodal agency shall convey its acceptance or otherwise to the applicant latest by the fifth day of the second month.

(3) (a) An application for inter-State scheduling during the third month shall be made up to five (5) days prior to the close of the first month.

(b) All applications received shall be taken up together for consideration.

(c) The nodal agency shall convey its acceptance or otherwise to the applicant latest by the close of the first month:

Provided that while accepting the application, open access granted to any person prior thereto shall not be withdrawn.

(4) (a) An application for inter-State scheduling in the second month shall be made with the nodal agency up to ten (10) days prior to the close of the first month.

(b) All applications shall be taken up together for consideration.

(c) The nodal agency shall convey its acceptance or otherwise to the applicant five days prior to the last day of the first month:

Provided that while accepting the application, open access granted to any person prior thereto shall not be withdrawn.

(5) Wherever the nodal agency rejects an application, it shall convey its reasons to the applicant in writing.”

37. In accordance with the specified procedure, all applications for short-term open access are to be taken up together for consideration. Accordingly, clubbing of the petitioner’s application by WRLDC with other applications for short-term open access in accordance with the 2008 OA Regulations does not involve any irregularity and cannot be faulted. All the applications for short-term open access are to be considered together. Where, in the opinion of RLDC, grant of all applications at a particular stage of scheduling is likely to cause congestion in one or more of the transmission corridors to be used, the provisions relating to congestion management in the 2008 OA Regulations have to be followed. In case of transmission constraints, if it becomes necessary to curtail open access, the short-term customer is to be curtailed first followed by medium-term customer and lastly the long-term customer. The petitioner as a long term customer shall be entitled to priority over other categories of customers only when availing long-term access.

38. The petitioner in its affidavit dated 6.2.2013 has also raised the issue of scheduling of power from the Central Sector Generating Stations to the beneficiaries out of the unallocated quota which does not have scheduled point of injection and schedule point of drawal. The relevant para of the said affidavit is extracted as under:-

"The NLDC, pursuant to a specific clarification sought by the Commission on 13.12.2012 with regard to the issue whether RLDC can schedule the power of a long term customer who does not have identified drawee utility, stated that scheduling cannot be done in such cases. With regard to the same, it is submitted that beneficiaries of Central Sector Generating Stations are deemed long term customers of inter-State transmission system in proportion to their allocation in CGS. It is further submitted that total All India Installed Capacity of CSGS, as on 30.11.2012, was 47,856 MW. Out of this, only 40,819 MW power is allocated on firm basis to the various states beneficiaries which has specified point of drawal and the balance 7037 MW is unallocated power (i.e. floating power) which is allotted to States as per the discretion of the Central Government. Therefore, considering the priority of requirement the drawl point(s) of this unallocated power keeps on changing i.e. the same has no fixed drawl point, and the same is treated as Long Term transaction for all purposes including scheduling. Therefore, when the RLDC can treat such scheduling of 7037 MW power as long term transaction, which has no fixed drawl point and the same keeps on changing, the action of not scheduling the petitioner's power which is only 500 MW and having specified drawl point(s) within a fixed Region i.e. Western Region, is arbitrary, subjective and unreasonable.

Therefore, it is stated that keeping in view the treatment given for scheduling 7037 MW C.S. unallocated power (which has no fixed drawl point), there is not difficulty for scheduling the 500 MW petitioner's power under the LTA rights within the WR."

39. We have considered the submission of the petitioner. With respect to treatment of un-allocated power from CSGS to beneficiaries allotted by the Central Government, it is worth noting that such allocations by the Ministry of Power are deemed to be part of the contracts. In fact, the PPAs between CSGS and the beneficiaries already have such provisions that allocations would be as decided by the Government of India/ Competent Authority. A specimen agreement between NTPC and beneficiaries typically has the provision of following nature:

"Allocation of Capacity

1. Allocation of power from ----- STPS amongst various customers of ----- Region shall be decided by GOI/Competent Authority in accordance with the applicable guidelines of Govt. of India issued from time to time. Such allocation of power along with various terms and conditions mentioned therein shall form an integral part of this Agreement.

2. Fifteen percent capacity of the Station shall be kept unallocated at the disposal of Govt. of India/Competent Authority and shall be subject to allocation from time to time as per the decision of GOI/Competent Authority. Out of unallocated capacity, balance if any, after such allocation by GOI/Competent Authority, shall be deemed to have

been allocated to various Bulk Power Customer(s) in proportion to their allocated shares.

3. The allocation made from the Station by GOI or any other competent authority in favour of the -----(Name of beneficiaries) shall be subject to signing of the PPA, opening of LC and providing appropriate payment security mechanism as provided in this Agreement. The ----- (Name of beneficiaries) shall draw electricity against the above allocated capacity limited to the amount of LC opened and maintained by it. NTPC shall intimate RLDC from time to time regarding the quantum of capacity ----- (Name of beneficiary) is eligible to draw."

40. In case of allocation of power by the Central Government from the unallocated quota in CSGS, it becomes the part of the PPAs already executed between the CSGS and the beneficiaries. Precisely for this reasons, Regulation 2 (m) recognizes the deemed LTA status of the long term customer. The Commission in its order dated 11/10/2013 in Petition no. 93/MP/2013 and 96/MP/2013 as clarified the issue as under:-

"40..... It is clarified that the inter-State transmission system network has been planned traditionally to evacuate the power from the Central Sector Generating Stations owned or controlled by the Central Government. The entire capacities of these generating stations have been taken into account in the planning of the transmission corridors. Therefore, these generating stations have the long term access for their entire capacity, though there is firm allocation for about 85% and remaining 15% has been kept as unallocated capacity which is allotted by the Ministry of Power, Government of India keeping in view the urgency of requirement of any State. Allocation of power from the unallocated capacity may be for a short period, but their evacuation is against the long term access to the inter-State transmission system. Once the power is allocated from unallocated capacity of a particular generating station to a particular State, the bus bar of the generating station becomes the firm point of injection and the inter-connection point between that State and ISTS becomes the drawal point. These allocations get priority as long term access in accordance with the provisions of Connectivity Regulations. In Regulation 2(1)(m) of the Connectivity Regulations, a long term customer has been defined 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."

Thus a person who has been allocated power from the generating stations owned or controlled by the Central Government is recognized as a long term customer and gets priority at the bottom of other long term customers and over the medium term and short term customers who have been allotted access on account of the margin available due to non-utilization of the corridor by such long term customer....."

However the Petitioner's case is not on similar grounds. In this context section 28 (3) of the Act is reproduced hereunder:

"(3) The Regional Load Despatch Centre shall-

(a) be responsible for optimum scheduling and despatch of electricity within the region, in accordance with the contracts entered into with the licensees or the generating companies operating in the region."

Since the petitioner did not have long term PPA, its power cannot be scheduled by RLDC under LTA granted to the petitioner.

41. The petitioner has alleged that the respondents changed the methodology for computation of TTC, ATC and TRM. However, apart from the bald allegation, the petitioner has not brought to our notice any specific instance of wrong computation. It bears notice that the methodology for computation of TTC, ATC and TRM was the subject matter of *Suo Motu* Petition No 188/SM/2012 and the petitioner had been actively participating in those proceedings. Central Electricity Authority (CEA) has clarified that the computation of ATC/TTC by RLDCs is correct. However in case the petitioner is aggrieved on account of methodology used for computation of TTC, ATC and TRM in future, it is at liberty to approach the Commission by filing an appropriate petition.

42. In view of the above discussion, the petition lacks merit and is dismissed.

sd/-
(M Deena Dayalan)
Member

sd/-
(V S Verma)
Member