

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

**Petition No. 278/2010**

**Coram**

**Dr. Pramod Deo, Chairperson**

**Shri V S Verma, Member**

**Shri M Deena Dayalan, Member**

**Date of Hearing: 23.5.2013**

**Date of Order :08.6.2013**

**In matter of**

Electricity Act, 2003

**And in matter of**

Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009

**And in matter of**

Sharing of transmission charges for the inter - regional links between WR and other Regions on proportionate basis and (d) sharing of wheeling charges for Gujarat and Maharashtra for use of the Gujarat transmission system (GETCO) for conveyance of Central Sector Power to Union Territory of Daman & Diu (DD) & Union Territory of Dadra and Nagar Haveli (DNH) and use of Maharashtra State Electricity Transmission Corporation Limited (MSETCL) transmission system for wheeling of Central Sector Power to the State of Goa.

**And in the Matter of**

Torrent Power Limited

**Petitioner**

Vs

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

**Respondents**

**Present:**

**(on 8.2.2011)**

1. Shri Amit Kapoor Advocate for the petitioner

2. Shri Abhishek Munot Advocate for the petitioner
3. Shri A.K. Ghosh, TPL
4. Shri Vinod Khanna, TPL
5. Shri R.S. Negi, TPL
6. Shri Abhishek Munot, TPL
7. Shri M.G. Ramachandaran, Advocate for GUVNL
8. Ms. Ranjita Ramachandran,, Advocate for GUVNL
9. Shri P.J. Jani, GUVNL
10. Shri Manoj Dubey, M.P. Tradco
11. Shri Sakesh Kumar, Advocate for DD & DNH
12. Shri Rohit Singh, Advocate for DD & D NH
13. Shri Manjit Singh, WRLDC

**(on 23.5.2013)**

1. Shri M.G. Ramachandaran, Advocate, TPL
2. Shri Amit Kapur, Advocate, TPL
3. Shri Apporva Mishra, TPL
4. Shri P.J. Jani, GUVNL
5. Shri D.N. Dalal, TPL

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

**ORDER**

Aggrieved by the decision of Western Regional Power Committee arrived at its 13<sup>th</sup> Meeting held on 9.4.2010, the petitioner, Torrent Power Limited seeks the following directions:

- “(a) Order that the claim of transmission charges for inter-regional links between WR-ER, WR-NR, WR-SR as well as claim of wheeling charges payable to Gujarat and Maharashtra are not payable to the Petitioner for the reasons explained earlier,
- (b) Set aside the decision taken by WRPC (Respondent No. 1) at its 13<sup>th</sup> meeting of the effect that LTOA customers for ISTS of WR also should share (a) the wheeling /transmission charges paid to GETCO for conveyance of Central Sector power to DD and DNH and wheeling and transmission charges paid to MSETCL for wheeling of Central Sector Power to the State of Goa as being shares proportionately by the beneficiaries of the Central Sector Generating Stations of WR, and (b) the transmission charges for inter-regional transmission links,
- (c) Declare the claim of transmission charges for inter-regional links for WR-ER, WR-NR and WR-SR and wheeling charges for Gujarat and Maharashtra by PGCIL / CTU (Respondent No.2) vide its invoices dated 06.05.2010 and 05.06.2010, 06.07.2010 , 05.08.2010, 03.09.2010 & 05.10.2010 as void.
- (d) Restrain the Respondent No. 2 to raise further invoice for (i) transmission charges for inter-regional link and (ii) wheeling charges for Gujarat and Maharashtra.

- (e) Relax, if considered necessary, the provisions of the Regulation 2009 by virtue of power under Regulation 44 of the Regulation 2009 by disallowing the claim of Respondent No. 2
- (f) Direct the PGCIL/CTU (Respondent NO. 2) to refund to the Petitioner the amount recovered by it on account of (i) transmission charges for inter-regional links and (ii) wheeling charges payable to Gujarat and Maharashtra, along with interest,
- (g) Condone any inadvertent omission/errors/shortcomings and permit the Petitioner to add/change/modify/alter this filing and make further submission as august be required at a future time and
- (h) Pass such other order as may be deemed fit in the fact and circumstances of the case.”

2. The petitioner, Torrent Power Limited has the generation facilities with total installed capacity of 1647.5 MW including 1147.5 MW SUGEN Mega Power Project, in the State of Gujarat. As part of the associated transmission system for SUGEN Mega Power Project, Torrent Power Grid Limited (TPGL), a joint venture between Torrent Power Limited and Power Grid Corporation of India Limited after obtaining transmission licence from this Commission has established a 250 km, 400 kV double circuit line from SUGEN to 400 kV Pirana sub-station of TPGL with LILO of Vapi-Jhanor and Jhanor–Dehgam lines of PGCIL for evacuation of power from SUGEN Mega Power Project. The petitioner also holds licenses for distribution of electricity in Ahmedabad/Gandhinagar and Surat areas in the State of Gujarat.

3. The petitioner made an application dated 22.4.2004 to Power Grid Corporation of India Ltd, the Central Transmission Utility (CTU), for grant of long-term open access for use of Western Region Transmission System for evacuation of 500 MW power from SUGEN Mega Power Project to Torrent Power Ahmedabad Electric Company, Torrent Power Surat Electric Company, MP State Electricity Board and Maharashtra State Electricity Distribution Company Ltd. 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 Bulk Power Transmission Agreement (BPTA) was executed between the CTU and the petitioner on 31.1.2008. In accordance with the BPTA, the points of injection and drawal of power were situated within the Western Region.

4. Under the BPTA, the petitioner agreed to share the Western Region transmission charges for 500 MW power (excluding power transmitted to distribution area of TPL) generation as per the extracts of the relevant part of the BPTA placed below:-

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

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

*“TPL shall share and pay the transmission charges for transmission of open access power (excluding power transmitted to distribution area of TPL) of POWERGRID including FERV, incentive, income tax, and any other charges specified by CERC and taxes for the use of its Transmission System of Western Region including charges for inter regional links and any addition thereof.”*

6. The petitioner has submitted that it has been using the Western Region transmission system only for evacuation of electricity generated at Sugan Power Project. Accordingly, based on the Regional Energy Accounting prepared by Western Regional Power Committee the petitioner was billed for the transmission charges for use of Western Region transmission system only which the petitioner had been paying.

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 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. In substance, GUVNL proposed to change the methodology for sharing of transmission charges in Western Region so as to make the long-term open access customers, including the petitioner, liable for sharing of the transmission charges for inter-regional links and the transmission charges payable to GETCO and MSETL for use of their transmission networks for evacuation of Central Sector power outside their respective State. The proposal made by GUVNL was included as an agenda item for 54<sup>th</sup> Meeting of the Commercial Committee of Western Region, scheduled for 10.12.2009

8. The petitioner on becoming aware of agenda for the Commercial Committee meeting, addressed a letter dated 9.12.2009 to Member-Secretary, Western Regional Power Committee, opposed the suggestion for change in methodology for sharing of transmission charges. The substance of the petitioner's opposition was that it was provided the long-term open access for transfer of 500 MW power from its Sugan Power Project to the beneficiaries in Western Region with identified strengthening of transmission system to be built, owned and operated by it and that it was not the long-term open access customer or user of the inter-regional links. The petitioner pointed out that for transfer of 500 MW power within Western Region the question of sharing of the transmission charges of inter-regional links by the petitioner should not arise. At

the meeting it was decided that sharing of transmission charges for use of MSETCL transmission system for conveyance of Central Sector power to the State of Goa and for use of GETCO network to the Union Territories of DD and DNH, was in line with the orders of this Commission dated 3.2.2009 and 31.7.2009 in Petition Nos. 64/2008 and 67/2008. In the meeting it is also concluded that the weighted average method as contained in monthly Regional Energy Accounts being issued by the Western Regional Power Committee Secretariat was in order.

9. Undeterred by the decision, GUVNL vide its letter dated 15.1.2010 requested that the matter be put as agenda item for 13<sup>th</sup> meeting of the Western Regional Power Committee. The proposal made by GUVNL was accordingly included as an agenda item for discussion at 13<sup>th</sup> meeting of the Western Regional Power Committee. The proposal was first discussed at the meeting of the Technical Co-ordination Committee of Western Regional Power Committee on 8.4.2010 whereby it was decided that:

- “(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.”

10. At the meeting of the Western Regional Power Committee held on 9.4.2010, the petitioner expressed its serious concern over the proposals. The petitioner was joined by other long-term open access customers like Jindal Power Ltd to protest the proposal. At the meeting it was reiterated that the long-term open access was granted to the petitioner for use of Western region transmission system only and not for use of

inter-regional links. It was also pointed out that in terms of the CERC (Terms and Conditions of Tariff) Regulations, 2009 (the tariff regulations), the transmission charges for inter-regional links were to be borne by the beneficiaries in Western Region and the petitioner was not the beneficiary and as such, the transmission charges for inter-regional links were not to be borne by the petitioner but were to be shared by the beneficiaries of ISGS of WR.

11. Notwithstanding the protests by the petitioner and other long-term open access customers, the decision of the Technical Co-ordination Committee was endorsed by the Western Regional Power Committee. 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 1.8.2009 and onwards. The petitioner has been making payments on both counts, but under protest.

12. 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. With regard to sharing of the wheeling charges, the petitioner has submitted that this Commission directed that the applicable transmission charges for the identified intervening transmission facilities be shared in the same manner as for inter-regional transmission system based on the terms and conditions for determination of tariff applicable prior to promulgation of the 2009 regulations and the then the existing practice of pooling of transmission charges. According to the petitioner, the directions contained in this Commission's orders in Petition Nos.

64/2008 and 67/2008 regarding sharing of transmission charges for the intervening transmission system exhausted themselves after the tariff regulations came into effect on 1.4.2009. From 1.4.2009 onwards, the transmission charges are to be shared in accordance with the methodology contained in the tariff regulations. The petitioner questioned the validity of the decision on ground of retrospectivity as well.

13. Gujarat Urja Vikas Nigam Ltd, Maharashtra State Electricity Distribution Corporation Ltd and Western Regional Power Committee in their replies have supported the decision in the meeting of 9.4.2010. They have justified sharing of the transmission charges for inter-regional links 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.

14. We heard learned counsel for the petitioner and GUVNL and the representatives of other respondents.

15. 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**

16. 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.

17. The major part of the arguments made by the learned counsel for the petitioner was devoted to interpretation of Regulation 33 of the tariff regulations. It was argued on behalf of the petitioner 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 links were required to bear the transmission charges for such links. 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. Therefore, learned counsel argued, 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 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 only in Western Region. Accordingly, the BPTA envisaged payment of the transmission charges by the petitioner for the Western Region alone. For this reason also, according to the petitioner, the petitioner could not be subjected to levy of proportional inter-regional charges.

18. 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. It was submitted that the term 'beneficiary' occurring in clause (3) of Regulation 33 should be given a contextual interpretation and, therefore the petitioner and users of the inter-State transmission system get covered under the definition. 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 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:

*"TPL shall share and pay the transmission charges for transmission of open access power (excluding power transmitted to distribution area of TPL) of POWERGRID including FERV, incentive, income tax, and any other charges specified by CERC and taxes for the use of its Transmission System of Western Region including charges for inter regional links and any addition thereof."*

19. The Member Secretary has in his written submission on behalf of WRPC has stated vide his letter dated WRPC/MS-COML/2010-11104 dated 21.12.2010 has stated as under:

**“2. a)xxxxxxx**

**b) xxxxxxxx**

**c)xxxxxxxxxxx**

**d)xxxxxxxxxxx**

**e) xxxxxxxxxxx**

**f) Upon CERC tariff regulations, 2009 taking effect from 1.4.2009, the sharing of WR transmission charges as applicable under Clause 33 (1) is payable by the users of the ISTS under 33(2)**

**g) in case any generating station/plant is granted LTOA for which beneficiary has not been identified or contracted, the transmission charges corresponding to the extent of plant capacity for which LTOA is granted or payable under Regulation 33(7).**

**h) 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 generation 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).**

**As beneficiaries such as above 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).***

***(i) The total transmission charges as mentioned in (f) and (h) above, which form the pooled regional assets are payable by the subject LTOA user of WR ISTS corresponding to the LTOA granted”***

20. GUVNL in its reply dated 11<sup>th</sup> January 2011 has submitted as under:

“22. It is stated that prior to deciding on the above issue, the members of the WRPC sought information from Member Secretary-Southern Regional Power Committee, being present in the meeting about the methodology followed in Southern Region. Member Secretary – Southern Regional Power Committee informed that while working out the sharing of Inter-regional links the Long Term Open Access customers are also included. As regards to methodology followed in Northern Region, it was conveyed that, even in Northern region the weighted average percentage ratio for sharing of Inter-regional charges is worked out considering the quantum of open access granted to Long Term Open Access customers. The Executive Director, WRLDC also expressed that the Long Term Open Access customers are included in working out of the sharing ratio in other regions. Even, Central Transmission Utility representative opined that open access quantum of Long Term Open Access customers is taken into consideration in other regions for working out the weighted average percentage ratio for sharing of inter-regional link charges.”

21. While we agree in principle the submissions 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.”

22. 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.

23. 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.

24. 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".

25. 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.

26. 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'.

27. 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 Madhya Pradesh, Maharashtra and to its own consumers in Ahmedabad/Gandhinagar and Surat areas in the State of Gujarat. In case the petitioner is supplying power to the States of Madhya Pradesh and Maharashtra, those States 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. When the petitioner uses a part of its generation for supply of electricity to its own consumers, for



all practical purposes, the position of the petitioner is akin to the beneficiaries in other States as there is no qualitative difference between such beneficiaries in other States and the petitioner. Therefore, the petitioner itself is liable to share the inter-regional transmission charges for the proportion of power supplied to its own consumers against 500 MW capacity for which the long-term open access has been granted.

28. 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.

29. 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.

30. 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."*

31. 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 shares 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.

32. 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**

33. 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.

34. 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.

35. 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.”

36. 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.”

37. 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.

### **Summing Up**

38. 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.

39. With the above, the petition stands dismissed.

Sd/-  
**(M Deena Dayalan)**  
**Member**

sd/-  
**(Dr. Pramod Deo)**  
**Chairperson**

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

**Petition No. 278/2010**

**Shri V S Verma, Member**

**Date of Hearing: 23.5.2013**

**Date of Order :08.6.2013**

**In matter of**

Electricity Act, 2003

**And in matter of**

Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009

**And in matter of**

Sharing of transmission charges for the inter - regional links between WR and other Regions on proportionate basis and (d) sharing of wheeling charges for Gujarat and Maharashtra for use of the Gujarat transmission system (GETCO) for conveyance of Central Sector Power to Union Territory of Daman & Diu (DD) & Union Territory of Dadra and Nagar Haveli (DNH) and use of Maharashtra State Electricity Transmission Corporation Limited (MSETCL) transmission system for wheeling of Central Sector Power to the State of Goa.

**And in the Matter of**

Torrent Power Limited

**Petitioner**

Vs

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

**Respondents**

**Present:**

**(on 8.2.2011)**

1. Shri Amit Kapoor Advocate for the petitioner
2. Shri Abhishek Munot Advocate for the petitioner
3. Shri A.K. Ghosh, TPL
4. Shri Vinod Khanna, TPL
5. Shri R.S. Negi, TPL
6. Shri Abhishek Munot, TPL
7. Shri M.G. Ramachandaran, Advocate for GUVNL
8. Ms. Ranjita Ramachandran,, Advocate for GUVNL
9. Shri P.J. Jani, GUVNL
10. Shri Manoj Dubey, M.P. Tradco
11. Shri Sakesh Kumar, Advocate for DD & DNH
12. Shri Rohit Singh, Advocate for DD & D NH
13. Shri Manjit Singh, WRLDC

**(on 23.5.2013)**

1. Shri M.G. Ramachandaran, Advocate, TPL
2. Shri Amit Kapur, Advocate, TPL
3. Shri Apporva Mishra, TPL
4. Shri P.J. Jani, GUVNL
5. Shri D.N. Dalal, TPL

**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 views in this order.

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

“(a) Order that the claim of transmission charges for inter-regional links between WR-ER, WR-NR, WR-SR as well as claim of wheeling charges payable to Gujarat and Maharashtra are not payable to the Petitioner for the reasons explained earlier,

(b) Set aside the decision taken by WRPC (Respondent No. 1) at its 13<sup>th</sup> meeting of the effect that LTOA customers for ISTS of WR also should share (a) the wheeling



/transmission charges paid to GETCO for conveyance of Central Sector power to DD and DNH and wheeling and transmission charges paid to MSETCL for wheeling of Central Sector Power to the State of Goa as being shares proportionately by the beneficiaries of the Central Sector Generating Stations of WR, and (b) the transmission charges for inter-regional transmission links,

- (c) Declare the claim of transmission charges for inter-regional links for WR-ER, WR-NR and WR-SR and wheeling charges for Gujarat and Maharashtra by PGCIL / CTU (Respondent No.2) vide its invoices dated 06.05.2010 and 05.06.2010, 06.07.2010 , 05.08.2010, 03.09.2010 & 05.10.2010 as void.
- (d) Restrain the Respondent No. 2 to raise further invoice for (i) transmission charges for inter-regional link and (ii) wheeling charges for Gujarat and Maharashtra.
- (e) Relax, if considered necessary, the provisions of the Regulation 2009 by virtue of power under Regulation 44 of the Regulation 2009 by disallowing the claim of Respondent No. 2
- (f) Direct the PGCIL/CTU (Respondent NO. 2) to refund to the Petitioner the amount recovered by it on account of (i) transmission charges for inter-regional links and (ii) wheeling charges payable to Gujarat and Maharashtra, along with interest,
- (g) Condone any inadvertent omission/errors/shortcomings and permit the Petitioner to add/change/modify/alter this filing and make further submission as august be required at a future time and
- (h) Pass such other order as may be deemed fit in the fact and circumstances of the case.”

3. The petitioner, Torrent Power Limited has the generation facilities with total installed capacity of 1647.5 MW including 1147.5 MW SUGEN Mega Power Project, in the State of Gujarat. As part of the associated transmission system for SUGEN Mega Power Project, Torrent Power Grid Limited (TPGL), a joint venture between Torrent Power Limited and Power Grid Corporation of India Limited after obtaining transmission licence from this Commission has established a 250 km, 400 kV double circuit line from SUGEN to 400 kV Pirana sub-station of TPGL with LILO of Vapi-Jhanor and Jhanor–Dehgam lines of PGCIL for evacuation of power from SUGEN Mega Power Project. The petitioner also holds licenses for distribution of electricity in Ahmedabad/Gandhinagar and Surat areas in Gujarat.

4. The petitioner made an application dated 22.4.2004 to Power Grid Corporation of India Ltd, the Central Transmission Utility (CTU), for grant of long-term open access for use of Western Region Transmission System for evacuation of 500 MW power from SUGEN Mega Power Project to Torrent Power Ahmedabad Electric Company, Torrent Power Surat Electric Company, MP State Electricity Board and Maharashtra State Electricity Distribution Company Ltd. 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 Bulk Power Transmission Agreement was executed between the CTU and the petitioner on 31.1.2008. In accordance with the Bulk Power Transmission Agreement, points of injection and drawal of power were situated within the Western Region. Under the Bulk Power Transmission Agreement, the petitioner agreed to share the Western Region transmission charges for 500 MW power (excluding power transmitted to distribution area of TPL) generation. Another clause of relevance in the Bulk Power Transmission Agreement is that:

*“TPL shall share and pay the transmission charges for transmission of open access power (excluding power transmitted to distribution area of TPL) of POWERGRID including FERV, incentive, income tax, and any other charges specified by CERC and taxes for the use of its Transmission System of Western Region including charges for inter regional links and any addition thereof.”*

5. The petitioner has submitted that it has been using the Western Region transmission system only for evacuation of electricity generated at Sugen Power Project. Accordingly, based on the Regional Energy Accounting prepared by Western Regional Power Committee the petitioner was billed for the transmission charges for use of Western Region transmission system only which the petitioner had been paying.

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 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. In substance, GUVNL proposed to change the methodology for sharing of transmission charges in Western Region so as to make the long-term open access customers, including the petitioner, liable for sharing of the transmission charges for inter-regional links and the transmission charges payable to GETCO and MSETL for use of their transmission networks for evacuation of Central Sector power outside their respective State. The proposal made by GUVNL was included as an agenda item for 54<sup>th</sup> Meeting of the Commercial Committee of Western Region, scheduled for 10.12.2009

7. The petitioner on becoming aware of agenda for the Commercial Committee meeting, addressed a letter dated 9.12.2009 to Member-Secretary, Western Regional Power Committee, opposed the suggestion for change in methodology of sharing of transmission charges. The substance of the petitioner's opposition was that it was provided the long-term open access for transfer of 500 MW power from its Sugan Power Project to the beneficiaries in Western Region with identified strengthening of transmission system to be built, owned and operated by it and that it was not the long-

term open access customer or user of the inter-regional links. The petitioner pointed out that for transfer of 500 MW power within Western Region the question of sharing of the transmission charges of inter-regional links by the petitioner should not arise. At the meeting it was decided that sharing of transmission charges for use of MSETCL transmission system for conveyance of Central Sector power to the State of Goa and for use of GETCO network to the Union Territories of DD and DNH, was in line with the orders of this Commission dated 3.2.2009 and 31.7.2009 in Petition Nos. 64/2008 and 67/2008. In the meeting it is also concluded that the weighted average method as contained in monthly Regional Energy Accounts being issued by the Western Regional Power Committee Secretariat was in order.

8. GUVNL vide its letter dated 15.1.2010 requested that the matter be put as agenda item for 13<sup>th</sup> meeting of the Western Regional Power Committee. The proposal made by GUVNL was accordingly included as an agenda item for discussion at 13<sup>th</sup> meeting of the Western Regional Power Committee. The proposal was first discussed at the meeting of the Technical Co-ordination Committee of Western Regional Power Committee on 8.4.2010 whereby it was decided that:

- “(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. At the meeting of the Western Regional Power Committee held on 9.4.2010, the petitioner expressed its serious concern over the proposals. The petitioner was joined by other long-term open access customers like Jindal Power Ltd to protest the proposal. At the meeting it was reiterated that the long-term open access was granted to the petitioner for use of Western region transmission system only and not for use of inter-regional links. It was also pointed out that in terms of the CERC (Terms and Conditions of Tariff) Regulations, 2009 (the tariff regulations), the transmission charges for inter-regional links were to be borne by the beneficiaries in Western Region and the petitioner was not the beneficiary and as such, the transmission charges for inter-regional links were not to be borne by the petitioner but were to be shared by the beneficiaries of ISGS of WR.

10. Notwithstanding the protests by the petitioner and other long-term open access customers, the decision of the Technical Co-ordination Committee was endorsed by the Western Regional Power Committee. 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 1.8.2009 and onwards. The petitioner has been making payments on both counts, but under protest.

11. 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. With regard to sharing of the wheeling charges, the

petitioner has submitted that this Commission directed that the applicable transmission charges for the identified intervening transmission facilities be shared in the same manner as for inter-regional transmission system based on the terms and conditions for determination of tariff applicable prior to promulgation of the 2009 regulations and the then the existing practice of pooling of transmission charges. According to the petitioner, the directions contained in this Commission's orders in Petition Nos. 64/2008 and 67/2008 regarding sharing of transmission charges for the intervening transmission system exhausted themselves after the tariff regulations came into effect on 1.4.2009. From 1.4.2009 onwards, the transmission charges are to be shared in accordance with the methodology contained in the tariff regulations. The petitioner questioned the validity of the decision on ground of retrospectively as well.

12. Gujarat Urja Vikas Nigam Ltd, Maharashtra State Electricity Distribution Corporation Ltd and Western Regional Power Committee in their replies have supported the decision in the meeting of 9.4.2010. They have justified sharing of the transmission charges for inter-regional links 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.

13. Heard learned counsel for the petitioner and GUVNL and the representatives of other respondents.

14. 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. On the second issue I agree with the decision

of the other Members of the Commission. On the first issue, I have recorded my views and decision in the succeeding paragraphs.

15. Learned counsel for the petitioner contended 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. 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. No fresh decision regarding levy or sharing of the transmission or wheeling charges was taken by the Western Regional Power Committee. I am of the view that the Western Regional Power Committee has committed any procedural irregularity.

16. The bulk of the arguments made by the learned counsel for the petitioner was devoted to interpretation of Regulation 33 of the tariff regulations. It was argued that clause (3) of Regulation 33 imposed liability of sharing of inter-regional transmission

charges on the beneficiaries. It was argued that only the beneficiaries of inter-regional links were required to bear the transmission charges for such links. However, as the petitioner was not a beneficiary as defined in clause (6) of Regulation 3, it could be fastened with liability to share the transmission charges. Therefore, learned counsel argued, 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 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 only in Western Region. Accordingly, the Bulk Power Transmission Agreement envisaged payment of the transmission charges by the petitioner for the Western Region alone. For this reason also, according to the petitioner, 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 the term 'beneficiary' occurring in clause (3) of Regulation 33 should be given a contextual interpretation and, therefore the users of the inter-State transmission system which include the petitioner get covered under the definition. 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 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:



“TPL shall share and pay the transmission charges for transmission of open access power (excluding power transmitted to distribution area of TPL) of POWERGRID including FERV, incentive, income tax, and any other charges specified by CERC and taxes for the use of its Transmission System of Western Region including charges for inter regional links and any addition thereof.”

17. First, I deem it necessary to analyse 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.”

18. 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.

19. 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 generating company 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 the context of 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.

20. 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. I am of the view that the objective of this clause is to facilitate conveyance of electricity from the generating station to the target region, allowed as per the practice by the Central Transmission Utility, in order to build the transmission system to the concerned region's periphery. The generating station that has sought

and has been granted long-term access to the target region is obliged to pay the transmission charges for its own region, the inter-regional links of the target region and the transmission charges of the target region, when there are no long-term beneficiaries who should bear such transmission charges. Clause (7) 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 in such a case is already covered in this 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, they could be brought 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. This is so because the beneficiaries are continuously importing/exporting power from/to other regions. Accordingly, the provisions relating to sharing of the transmission charges for inter-regional links under clause (3) have been made applicable to the beneficiaries and not to the generating companies. In light of these facts, by reading down clause (7) of Regulation 33 we hold that a generating company whose beneficiaries have not been identified for any part of the plant capacity, shall pay for the transmission charges only while using the inter-regional links when the beneficiaries have not been identified. From this it further follows that where the beneficiaries of a generating station have been identified and

they are being supplied power from the generating station by using the inter-regional links, such beneficiaries shall share the transmission charges for the capacity contracted. On the question raised by the respondents regarding utilizing the transmission system for injection of power through unscheduled inter-change, clauses (2) and (3) of Regulation 33 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. 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.

21. In the light of above analysis, I hold that the petitioner is not liable to share the inter-regional transmission charges.

22. I sum up my findings as under:

- (a) The petitioner is not liable to share the transmission charges for inter-regional links. These charges shall be shared strictly in accordance with clause (3) of regulation 33. The recoveries on this count already made from the petitioner shall be refunded to it within six months.

(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.

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

Sd/-  
**(V.S. Verma)**  
**Member**