

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Coram:
Shri V.S. Verma, Member
Shri M. Deena Dayalan, Member**

**Date of Hearing: 2.7.2013
Date of Order: 11.10.2013**

Petition No. 93/MP/2013

In the matter of:

Petition under Section 79 (1) (c) and (k) of the Electricity Act, 2003 read with the Central Electricity Regulatory Commission (Grant of Connectivity, Long term and Medium term open access in inter-State transmission and related matters) Regulations, 2009 for direction for implementation of the open access on the inter-State transmission system of Power Grid Corporation of India Limited.

And

In the matter of:

1. Central Power Distribution Company of APL Limited (APCPDCL), Hyderabad
 2. Eastern Power Distribution Company of APL Limited (APEPDCL), Hyderabad
 3. Southern Power Distribution Company of APL Limited (APSPDCL), Hyderabad
 4. Northern Power Distribution Company of APL Limited (APNPDCL), Hyderabad
-Petitioners**

Vs

1. Power Grid Corporation of India Limited, Gurgaon
 2. Corporate Power Limited, Nagpur
 3. KSK Mahanadi Power Company Ltd
- ..Respondents**

Petition No. 96/MP/2013

In the matter of:

Petition under Section 79 (1) (f) and (k) of the Electricity Act, 2003 for directions upon the CTU for permitting flow of power through an alternate source instead of the identified source against the medium term open access already granted

And

In the matter of:

Corporate Power Limited, Nagpur

..Petitioner

Vs

1. Power Grid Corporation of India Limited, Gurgaon
 2. Transmission Corporation of Andhra Pradesh Limited, Hyderabad
 3. Central Power Distribution Company of APL Limited (APCPDCL), Hyderabad
 4. Eastern Power Distribution Company of APL Limited (APEPDCL), Hyderabad
 5. Southern Power Distribution Company of APL Limited (APSPDCL), Hyderabad
 6. Northern Power Distribution Company of APL Limited (APNPDCL), Hyderabad
- .. Respondents**

Following were present:

Shri M.G.Ramachandran, Advocate for AP Discom
Shri Sitesh Mukherjee, Advocate, CPL
Shri Hemant Singh, Advocate, CPL
Shri Dilip Rozerkar, CTU
Shri S.S.Barpanda, POSOCO
Ms Jyoti Prasad, POSOCO
Shri Anand K.Ganesan, Advocate for KSK Mahanadi

ORDER

Background Facts

The petitioners in Petition No.93/MP/2013 are the Distribution Companies of Andhra Pradesh, namely Central Power Distribution Company of APL Ltd., Eastern Power Distribution Company of APL Limited, Southern Power Distribution Company of APL Limited, Northern Power Distribution Company of APL Limited (hereinafter referred to as "AP Discoms"). The petitioner in Petition No.96/MP/2012 is Corporate Power Limited (hereinafter referred to as "CPL") which is a generating company engaged in developing 2x270 MW coal based power plant in the State of Jharkhand. AP Discoms through their lead procurer, Central Power Distribution Company of Andhra Pradesh Limited (APCPDCL) invited bids under Case 1 bidding route for procurement of an aggregate quantum of 2000 MW +/- 20% for a period of three years. CPL participated in

the bidding and was selected as successful bidder for supply of 480 MW power from its under construction power plant and was issued Letter of Intent on 31.7.2012. Subsequently, AP Discoms entered into a PPA dated 31.7.2012 for supply of power for a period of three years starting from 16.6.2013 to 15.6.2016 at a levelized tariff of Rs. 4.3197/kWh. In accordance with Article 3.1.1 of the PPA, CPL has the responsibility to obtain the permission for medium term open access from the transmission system from the injection point upto the delivery point and executed Transmission Service Agreement with the transmission licensee for that purpose. CPL applied for medium term open access (MTOA) to Central Transmission Utility for evacuation of 480 MW for a period of three years under Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Open Access in inter-State Transmission and related matters) Regulations, 2009 (hereinafter "Connectivity Regulations"). CTU in its intimation dated 5.10.2012 granted MTOA for 150 MW from 16.6.2013 till 15.6.2016. CPL entered into a Transmission Service Agreement dated 30.10.2012. Consequently, CPL and the AP Discoms executed an amendment dated 15.2.2013 to the original PPA, where under the quantum of supply of 480 MW was reduced to 150 MW.

2. CPL envisaged a problem with regard to the ability of its power plant to generate and supply power from the date of commencement of supply in terms of the PPA. CPL in its letter dated 13.4.2013 addressed to CMD, AP Transco, intimated that even though the major milestones for commissioning of the power plant has been achieved, the actual commissioning of the plant is getting delayed by 6 to 8 months on account of

the delay in two cross country projects, namely construction of the 112 km, 400 kV transmission line from Namkum-Ranchi to the power plant at Chandwa and 25 km. pipeline from Damodar river to the main reservoir and in-plant reservoir of the power plant, on account of naxal attack and RoW problem. The projects are expected to be completed by October 2013. In the said letter, CPL indicated that in terms of Article 4.8.1 of the PPA, it had arranged to supply 150 MW of power to AP Discoms from alternate sources. CPL had requested AP Transco in their letter for issue of revised No Objection Certificate for supply of power from alternate sources to enable it to make application to PGCIL for grant of corridor.

3. CPL tied up with M/s KSK Mahanadi Power Company Ltd. situated in W3 area in the Western Region for supply of 150 MW to AP DISCOMS from 16.6.2013 to 15.6.2014. AP SLDC and AP Discoms conveyed their acceptance/no objection for the proposed arrangement for supply of power from alternative sources. CPL took up the matter with CTU in its letter dated 27.4.2013 with the request for transfer of MTOA corridor granted to CPL in favour of KSK Mahanadi Limited.

4. CTU in its letter dated 9.5.2013 clarified that the Connectivity Regulations does not permit medium term open access rights and accordingly, the request of CPL for transfer of MTOA from CPL to KSK Mahanadi Power Company Limited from 16.6.2013 to 15.6.2014 cannot be accommodated. CTU further sought a confirmation whether CTU is relinquishing the MTOA right on account of the delay of its generation project for taking action as per Regulation 27 of the Connectivity Regulation as otherwise CPL

would be liable to pay the transmission charges as per the Transmission Service Agreement.

5. CPL approached certain generating stations in the Eastern Region for supply of power to AP Discoms and issued LOI to Sterlite Energy Limited on 14.5.2013 located in the State of Odisha. CPL in its letter dated 14.5.2013 approached the CTU for transfer of MTOA corridor in favour of Sterlite Energy Limited for the period 16.6.2013 to 15.6.2014.

6. Against the above background facts, the cases of the petitioners in Petition No.93/MP/2013 and 96/MP/2013 have been considered hereinafter.

Petition No.93/MP/2013

7. The petitioners in this petition namely AP Discoms have submitted that the PPA signed between the AP Discoms and CPL has been patterned on the basis of the Standard Bidding Documents notified by the Government of India under section 63 of the Electricity Act, 2003 (“the 2003 Act”). AP Discoms have submitted that as per Article 4.8 of the PPA, the seller in the event of its inability to commence supply of power by the delivery date or revised delivery date has the option to arrange for the supply of the contracted quantum from alternative generation sources for a period of 12 months at the same tariff as per the PPA. Under Article 4.6.1 of the PPA, even during the operating

period, the seller is at liberty to supply power upto the aggregate contracted capacity from alternative generation source to meet its obligations under the PPA.

8. AP Discoms have submitted that pursuant to the above provisions in the PPA, CPL has arranged 150 MW power from KSK Mahanadi Limited from its generating station at Nariyara village Alktra Tehsil, Jangir-Champa district in the State of Chhattisgarh. AP Discoms have submitted that the injection point of 150 MW electricity shall be the Nariyara village in the State of Chhattisgarh (ER/WR) and thereupon the said quantum of electricity shall be injected to the transmission system for transfer to the AP Discoms under the MTOA granted to CPL. It has been mentioned that consequent to the formation of NEW grid, CTU while processing the inter-regional MTOA/LTOA applications under the Connectivity Regulations, considers the inter-regional available transmission capacities in an integrated manner from WR/ER to SR. Though AP Discoms approached CTU with the above mentioned arrangement for transfer of power for 150 MW, CTU has conveyed that the existing regulations do not permit such an arrangement and accordingly, AP Discoms have approached the Commission in the present petitions for necessary clarifications by the Commission to enable the petitioner to procure 150 MW of electricity with effect from 16.6.2013.

9. AP Discoms have submitted that the Standard Bidding Documents and the Policies of the Government of India as well as the terms of the PPA clearly envisage an obligation in CPL to arrange power from alternative sources in case there is delay in the commissioning of the power project of CPL for any reason whatsoever. The said

arrangement of power would necessarily involve supply and transfer of power by CPL from another generation source within the same region (E/W Region) to the drawal point to fulfill the obligations under the PPA. AP Dicoms are entitled to get electricity so arranged by CPL without there being any change in the terms and conditions of the PPA, namely, in regard to the tariff or in regard to the delivery point. Accordingly, it is necessary for CPL to arrange for the Open Access from the substituted place of generation to fulfill the obligations contained in Article 4.8.1 of the PPA.

10. AP Dicoms have submitted that there is no prohibition in the 2003 Act or in the Connectivity Regulations to the above arrangement. It has been argued that the provisions of the Standard Bidding Documents specifying the Project Developer to arrange for the supply of power from alternative sources both on account of the delay in the commercial operation or during the Operating Period need to be harmoniously construed with the provisions of the Connectivity Regulations and detailed procedures laid down for grant of Medium Term and Short Term Open Access. It has been submitted that the provisions of the Connectivity Regulations and the detailed procedures cannot be read in a manner that it renders the provision of Articles 4.6 and 4.8 of the Standard Bidding Documents a nullity i.e. that there cannot be any arrangement whatsoever for arranging an alternative source of power from another generation station. The reading of the detailed procedure approved by this Hon'ble Commission vide Order dated 31.12.2009 itself shows that it is possible for a bulk supplier or a trader to arrange for the power from various sources and aggregate the same for supply to the purchasing entities. AP Discoms have further submitted that the

petitioners require the 150 MW of power on an urgent basis from 16.6.2013 to enable the supply to the consumers in the State of Andhra Pradesh which has been contracted at the rate of Rs 4.32 per KWh for delivery at the Andhra Periphery. Since the price at which the power is now available to AP Discoms to procure is much in excess of Rs 4.32 per Kwh, it has been pleaded that AP Discoms will suffer irreparable loss and prejudice if the 150 MW power arranged by CPL from alternative source is not available to them. AP Discoms have prayed for a clarification that CPL and KSK Mahanadi Power Company Limited can avail open access for transfer of power from the generating station of KSK Mahanadi for injecting such power under MTOA already granted to CPL on 5.10.2012, Bulk Power transmission Agreement dated 5.10.2011 between CTU and CPL, as per Medium Term PPA between AP Discoms and CPL.

Petition No.96/MP/2013

11. CPL, the petitioner in this petition, has submitted that the proviso to Article 4.8.1 of the PPA between CPL and AP Discoms which has been patterned on the Standard Bidding Documents issued by Ministry of Power, Government of India under section 63 of the 2003 Act mandates CPL to supply power from alternative sources in order to fulfill its obligations under the PPA. CPL initially approached M/s KSK Mahanadi Power Company Limited (KMPCL) for supply of 150 MW power to AP Discoms from 16.6.2013 to 15.6.2014 and thereafter approached CTU for supply of power from KMPCL to AP Discoms under the already granted MTOA. According to CPL, CTU during the discussion indicated that there was congestion in W3 area and the applicable

regulations did not permit the said arrangement and by its letter dated 9.5.2013, CTU declined to accept the proposed arrangement. Thereafter, CPL issued LOI to M/s Sterlite Energy Limited which is located in the State of Odisha in the Eastern Region to supply power under Article 4.8.1 of the PPA as alternate source of supply.

12. CPL has submitted that denial of permission by CTU for scheduling of power from an alternative sources against the already granted MTOA is not tenable for the following reasons:

(a) CTU has granted MTOA of 150 MW from Eastern Region to the Southern Region based upon a study of NEW region (North, Eastern and Western) combined as well as individual and there is no separate access which needs to be granted for the alternate source of power and same can be scheduled under the already existing MTOA. The clause in the Standard Bidding Documents which permits the developer to supply power from an alternate source would be rendered a nullity in the event the MTOA is not transferred/aligned to allow such supply from alternate source.

(b) This Commission has the power under section 79(1)(c), (f) and (k) of the 2003 Act read with the Connectivity Regulations and the procedure made thereunder to direct CTU to allow transfer/modify MTOA as per the request of CPL in order to enable it to fulfill its obligations under the PPA. On account of the transmission constraint, the capacity in the PPA was reduced from 480 MW to 150 MW and non-grant of permission

to wheel power from an alternate source would cause severe prejudice to CPL as the same would lead to penalties and other consequences in terms of the PPA.

(c) Clause 7 of Billing, Collection and Disbursement Procedure (BCD Procedure) provides that scheduling of power, which has only target regions, can be undertaken in the event a customer has either an MTOA or STOA. Applying the same principle, power from an alternate source can flow to the periphery of AP Transco. CPL has argued that when LTA power under MTOA can flow with only target region i.e. when the drawal and injection points keep on changing, then the power of CPL can flow against already existing MTOA from alternate source instead of identified source, from the same Eastern Region.

(d) Under Section 38(2)(d) of the 2003 Act, CTU is required to provide non-discriminatory open access. CTU cannot discriminate between the petitioner and any other DIC or LTA customer in the matter of open access.

(e) As on 30.11.2012, the total all India capacity of CSGS was 47,856 MW. Out of this, only 40,819 MW power is allocated on firm basis to the various State beneficiaries which have 'specified' points of drawal and the balance 7037 MW is unallocated power which is allotted to States as per the discretion of the Central Government. Therefore, the drawl point (s) of this unallocated power (infirm power) keeps on changing i.e. same has no fixed drawl point, and the same is treated as 'long term' transaction for all purposes including scheduling. When RLDC can schedule such 7037 MW power as

long term transaction, which has no fixed drawl point and the same keeps on changing, there can be absolutely no legal impediment in allowing CPL to schedule power from an alternate source within the same MTOA region.

(f) This Commission needs to exercise its powers so as to streamline the open access regulations with the Standard Bidding Documents issued by the ministry of Power which have been adopted by the various State Commissions. In the present case, the existing Medium Term Power Purchase Agreement has been approved by the State Commission. Moreover, the tariff of ₹ 4.32/kWh quoted by the petitioner is the lowest that the AP Discoms could get under medium term under present scenario. Since the PPA includes a provision to enable arrangement of power from alternate sources, with the sole intention of guaranteeing the discoms and general public of continuity in the supply of power at the same tariff, this Commission should find a solution which would uphold the intention of the parties and the bidding documents issued by Ministry of Power.

14. In view of the above submissions, CPL has prayed for the following:

“(a) direct the CTU that pending commissioning of the power project, allow scheduling of power from an alternate source in the ER, in terms of Article 4.8.1 of the PPA dated 31.07.2012 read with LOI dated 14.05.2013;

b) Direct the CTU to amend/modify the existing TSA to enable:

(i) Flow of power from an alternate source located in the ER; and

(ii) Reverting to the original provision for supply of power from the power plant as per the PPA.”

Reply of CTU

15. CTU in its reply dated 6.6.2013 to Petition No.96/MP/2013 has submitted as under:

(a) CPL was granted MTOA for transfer of 150 MW from its proposed generating project in Jharkhand to AP Discoms vide intimation dated 5.10.2012. The grant of MOTA was on the basis of the balance available transfer capacity for MTOA between SR and ER/WR. With the grant of 150 MW to CPL, the entire available transfer capacity was exhausted. Accordingly six applications for transfer of power from ER/WR to SR for quantum varying from 100-250 MW were denied MTOA. Accordingly six applications for transfer of power from ER/WR to SR for quantum varying from 100-250 MW were denied MTOA as per the details given below:

Ser No.	Applicant	Injection Point	Drawal Point	Quant um	Application/Du e month	Period of MTOA	
1	Sree Cement Ltd	IPP of Sree Cement Limited, Rajasthan	Kerala State Electricity Board, Kerala	100	September/ November 2012	1.6.2013	31.5.2014
2	Sterlite Energy Limited	Sterlite Energy Limited, Odisha	Kerala State Electricity Board, Kerala	250	November 2012/January 2013	1.11.2013	31.10.2014
3	Jindal Power Limited	Jindal Power Limited Chhattisgarh	Kerala State Electricity Board, Kerala	150	November 2012/January 2013	1.11.2013	31.10.2014
4	Chhattisgarh State Distribution Company Limited	KSK Mahanadi Power Company Limited., Chhattisgarh	Kerala State Electricity Board, Kerala	250	November 2012/January 2013	1.11.2013	31.10.2014
5	Sree Cement Limited	IPP of Sree Cement Limited, Rajasthan	Kerala State Electricity Board, Kerala	100	December 2012/February 2013	1.6.2013	31.5.2014
6	Essar Power MP Ltd	Madhya Pradesh	Karnataka	210	March/May 2013	1.9.2013	30.6.2015

(b) In terms of Connectivity Regulations, CPL is a MTOA customer having been granted MTOA for transfer of power from its generation project in Jharkhand to AP Discoms for a period starting from 16.6.2013 to 15.6.2016. There is no provision in the Connectivity Regulations for transfer of access rights from one generator to another. Para 94 of the Statement of Reasons dated 30.11.2011 to Connectivity Regulations notified by this Commission clarifies that where the access rights cannot be utilized, it would be surrendered to the nodal agency for reallocations among the pending applications.

(c) For the current cycle, four applications are being processed as per the details given below:

Sl. No.	Applicant	Injection Point	Drawl Point	Quantum (MW)	Application / Due Month	Period of MTOA	
1	Sterlite Energy Limited	Sterlite Energy Ltd., Odisha	APCPDCL, Andhra Pradesh	200	April/June, 2013	1.10.2013	29.5.2014
2	Knowledge infrastructure Systems Pvt. Ltd.	Salasar Steel and Power Ltd., Chhattisgarh	APCPDCL, Andhra Pradesh	53	April/June, 2013	1.10.2013	29.5.2014
3	Jindal Power Limited	Jindal Power Ltd, Raigarh	APCPDCL, Andhra Pradesh	250	April/June, 2013	1.10.2013	29.5.2014
4	Jindal Power Limited	Jindal Power Ltd, Raigarh	Kerala State Electricity Board, Kerala	150	April/June, 2013	1.11.2013	31.10.2014

(d) CPL was requested by CTU vide letter dated 9.5.2013 to confirm whether it was relinquishing its MTOA rights so that necessary action may be taken by CTU as per Regulation 24 of connectivity Regulations. Otherwise, CPL would be liable to pay transmission charges as per the signed agreement for 150 MW MTOA transfer. However, no reply was received from CPL.

(e) In the event, CPL surrenders the granted MTOA, then the vacated capacity would be offered to the above applicants. By allowing the transfer of access rights for transfer of power from one applicant's project to another applicant's project would tantamount to grant of MTOA even without applying for the same. This assumes significance since a number of MTOA requests for similar transfer have been denied on account of lack of transfer capacity and this may be misused for blocking of access rights which can be transferred or traded to other players.

(f) CTU has thus concluded that as per the prevailing regulations of this Commission, transfer of MTOA from CPL to any other generation project is not envisaged.

16. In response, CPL in its rejoinder dated 7.6.2013 has submitted that the stand of CTU is non-cooperative in so far as sourcing of power from alternative source is concerned under the existing MTOA. The petitioner has submitted that apart from the relief prayed in the petition, a mechanism can be devised wherein power from alternate source can be first scheduled to the injection point in the Eastern region and from the

said injection point the power can be scheduled to the Southern Region against the already granted MTOA. It has been submitted that similar contention has been made by the AP Discoms in their petition except that the alternate source was KSK Mahanadi which has been changed to Sterlite Energy Limited.

17. The petitions were heard on 11.6.2013. The Commission had directed the CTU, POSOCO to clarify the following queries on affidavit:

“7. After hearing the learned counsel for the parties, the commission directed CTU and POSOCO to file the following information on affidavit:

(i) As per the MTOA of 150 MW granted by CTU to CPL which is effective from 16.06.2013, the connectivity with the Grid is mentioned as 'Nankum 400/220 kV sub-station of Power Grid Corporation of India Ltd.' as the injection point. The drawal point for APCPDCL is mentioned as interconnection of APTRANSCO and APCPDCL. In the event of alternate power to be arranged by CPL from alternative source, namely Sterlite generating station at Rourkela, the following issues need to be addressed:

(a) Whether 150 MW power can be scheduled from Rourkela to Ranchi under short term open access to CPL which can be further taken to be injected at Ranchi by using the already approved medium term open access to be transferred to AP DISCOMS in Southern Region?

(b) If the injection point and the drawal point are changed, what will be the consequence of validity of MTOA?

(c) Against the MTOA granted to CPL, can power arranged by CPL from some other generator be injected at any other point in the Eastern Region against the MTOA already granted to it?

(ii) In the normal course, when the MTOA holder is unable to inject power, he can either relinquish or give intimation to the RLDC for not injecting power. The available corridor should normally be granted to the other MTOA customers waiting in the queue or it should be allotted to Short Term Open Access customers as per requirement and availability. In this context, is it possible for substituting the MTOA holder by some other generator at some other point of injection? Will this amount to transfer of MTOA rights and what would be consequence of allowing such a transfer? Whether this is allowed as per the present regulations?

(iii) Things required to be done by each entity including the petitioner, CTU, RLDC to facilitate the transfer of alternative power to AP DISCOMS.”

8. CEA and CTU may examine the issue and submit their considered opinion on the ramification in other cases if the relief as prayed for is granted.

9. The Commission further directed CPL to submit the expected duration of supply of power from the alternate source and the expected date of commissioning of its unit/plant on or before 20.6.2013.”

18. CTU in its replies dated 12.6.2013 and 26.6.2013 has submitted as under:

(a) The power flow in real time scenario takes place as per the laws of physics and not as per the contract signed. The combination of Short term open access from Sterlite to Ranchi and medium term open access from Ranchi to Andhra Pradesh shall not cause power flow in the same manner but shall call for evacuation of additional 150 MW power ex-Sterlite bus. A separate bid area W_3 comprising of Chhatisgarh and Sterlite energy has been operationalised with effect from 18.9.2012. For the months of June and July, 2013, no margins are available during off-peak hours (00-17 hrs and 23-24 hrs) after discounting LTA, MTOA and approved STOA. Further, MTOA being round the clock arrangement, the said scheduling of 150 MW is not feasible under the present regulations.

(b) The transfer of power from any location other than CPL shall mean change of point of injection. The Connectivity Regulations does not make any provisions for change of injection point for access to ISTS under Medium Term Open Access. The issue of change of injection point or transfer of access rights,

has been dealt with by the Commission in the Statement of Reasons of Connectivity Regulations and in para 94, it has been clarified that “access rights shall have to be surrendered to the nodal agency who shall then reallocate to the pending applications as per provision enshrined in the regulations”.

(c) A similar issue of change of point of injection/drawl has been dealt by the Hon'ble Appellate Tribunal for Electricity in the judgment dated 31.3.2010 in Appeal No. 104/2009 in which it has been held that change of drawl/injection point shall call for surrender of access and the applicant needs to apply afresh for point to point transmission power.

(d) As regard the feasibility of transfer of power, if change in injection point is permitted by the Commission from M/s Corporate Power Ltd. to M/s Sterlite Energy Ltd., the transfer of 150 MW power from M/s. Sterlite Energy Ltd. to AP Discoms under MTOA may lead to curtailment of already approved STOA transactions as MTOA has higher priority. In order to ensure that there is no clash between timeline of STOA and MTOA, the Connectivity Regulations provides that “the start date of the medium-term open access shall not be earlier than 5 months and not later than 1 year from the last day of the month in which application has been made.” The purpose of this provision would get defeated if new MTOA transaction is allowed without following the timeline.

(e) A separate bid area W3 comprising of Chhattisgarh and Sterlite Energy has been operationalised with effect from 18.9.2012. Total Transfer Capability from W3 area is declared in advance and after accounting for LTA and MTOA transactions, STOA transactions are allowed. Margins allowed in the months of June and July 2013 after accounting for approved transactions is 'NIL' during off-peak hours (00-17 hrs to 23-24 hrs) and ranges from 0 MW to 256 MW during evening peak. In case of increase in generation at Sterlite Energy, it will have an impact on power flow in all directions from the station irrespective of contracted power flow and hence transaction to Southern Region cannot be seen in isolation.

(f) The issue is of generic nature and any decision of CERC will set a precedent and other implications like hoarding of capacity on congested corridors have to be kept in view.

19. POSOCO in its affidavit dated 26.6.2013 has submitted as under:

(a) Under normal circumstances, power transaction can be scheduled from one grid connected entity to another under LTA, MTOA or STOA. However, one transaction cannot be linked to the other and the two transactions have to be separately identifiable.

(b) The provisions of the Regulations 19 and 21 of the Connectivity Regulations unambiguously provide that MTOA is from a point of injection to a point of drawl. Change of point of injection in case of MTOA tantamounts to transferrable transmission right. Allowing change in injection point may lead to a situation where entities would avail MTOA on a congested corridor and then transfer the right to another entity. Once change of injection point is allowed, there may be demand for change in drawal points also. If injection at any other point is allowed in lieu of CPL, it amounts to transfer of MTOA right from one entity to another entity.

(c) Timelines for MTOA and STOA are different and they do not clash with each other. While STOA can be applied three months in advance and RLDCs are nodal agency for the same, MTOA can be granted effective after 4 months as clearly provided in Regulation 19(2) of the Connectivity regulations. In case of relinquishment of MTOA, the available margin can be utilized for allowing STOA for subsequent 3 months and MTOA thereafter. If transfer of MTOA right from one entity to another entity is allowed, it may lead to a situation where many of the entities would book corridor in advance to block it knowing that they may not be able to transact in the required timeframe. Subsequently, these entities may try to trade the corridor right. Transfer of MTOA is not allowed as per the present regulations.

(d) The Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 provides for non-discriminatory open access. Thus, margin vacated by one of the MTOA holder would be available for STOA transactions for all. AP DISCOMS cannot have any over-riding priority. However, no transmission constraint is envisaged for drawl of power by AP DISCOMS from entities in Southern Region.

(e) Issue is of generic nature and any decision of CERC will set precedence.

(f) While there is provision of e-bidding in case of STOA advance reservation, MTOA is on pro-rata basis. In the past, transmission charge for corridor towards Southern Region under STOA has been of the order of ₹ 3-6/kWh. Thus, different entities may apply for much higher quantum than required, and after obtaining approval on pro-rata basis sell the surplus capacity. Transmission corridor towards SR is scarce and if transmission rights are transferrable, there would be hoarding as would happen in case of any other scarce transferrable commodity.

20. CPL in its affidavit dated 1.7.2013 has submitted that the Commission after hearing the parties on 11.6.2013 had directed CPL to submit transmission charges from injection point of Serlite Energy Limited (Rourkela in Odisha) to the injection point of the CPL (Namkum, Ranchi in Jharkhand) for the month of June 2013 and directed CTU to submit the technical feasibility report in this regard. CPL has further submitted that POSOCO during the hearing had conceded that technically the power of the petitioner

can flow from the alternate source of SEL (Rourkela) to the AP Discoms. CPL has submitted that these observations have not been recorded in the Record of proceedings and has requested the Commission to take appropriate measures in this regard. However, in response to the query in the Record of Proceedings for the said hearing on 11.6.2013 regarding the expected date of commissioning of its unit, CPL has clarified that the unit was expected to be commissioned by June 2014 and the expected duration of supply of 150 MW of power to AP Discoms from an alternate source would be from 16.6.2013 to 15.6.2014.

IA No.21/2013

21. After the hearing of the case on 2.7.2013, CPL has filed the IA on 12.8.2013 stating that without prejudice to the outcome of the main petition, it is seeking permission/clarification from the Commission for arranging any generator which is located in the ER grid so that CPL can route the power from the said new alternative source to the injection point of CPL under short term open access and thereafter the power would flow from the injection point under the already granted STOA. CPL has requested the Commission to clarify:

“(a) that the petitioner is free to approach any generator which is situated within the Eastern Region, for re-routing the power from such generator to Namkum Ranchi and to thereafter supply the same to the AP Discoms under the already granted MTOA, in order to enable supply of power through an alternate source, as contemplated in the PPA dated 31.7.2012;

(b) that apart from the reason of a transmission constraint/existing queue for grant of STOA, the application of the petitioner for grant of STOA by the ERLDC will not be rejected/curtailed, provided further that the petitioner pays the requisite transmission charges.”

IA No. 18/2013

22. KSK Mahanadi Power Limited (KSKMPL) has filed this IA for impleadment as a respondent in Petition No. 96/MP/2013. KSKMPL has submitted that it was selected as alternative source of power by CPL in terms of Article 4.8.1 of the PPA for which the AP Discoms have also given their consents. It has been submitted that AP Discoms in Petition No.93/MP/2013 have impleaded KSKMPL as a respondent. However, CPL has filed the Petition No.96/MP/2012 by changing the alternative source of supply from KSKMPL to Sterlite energy Limited. KSKMPL has submitted that the above action of CPL is breach of the obligations and it is not open to CPL to unilaterally breach the agreement with KSKMPL. The relief sought by CPL if granted would prejudicially affect the rights of KSKMPL as it has right to supply electricity to AP Discoms by virtue of the options already exercised by it under Article 4.8.1 of the PPA. KSKMPL has filed the IA for impleadment as a party respondent in the Petition No. 96/MP/2013 and to be given an opportunity to file its pleadings and participate in the hearing before the Commission.

Analysis and Decision

23. We have considered the submissions of the parties and perused the documents on record. Before we proceed to deal with the matter on merit, certain preliminary issues need to be clarified. With regard to the contention of CPL in its affidavit dated 2.7.2013 which has been mentioned in para 20 of the order, it is clarified that both CTU and POSOCO were directed to establish by study whether the power could flow physically and technically from SEL(Rourkela) to AP Discoms by utilizing the MTOA granted to CPL with injection point as Namkum at Ranchi. As regards the contention of CPL that the Commission had directed CPL to submit transmission charges from SEL's injection point to the injection point of the CPL situated in Jharkhand for June 2013, the contention is not correct as no such directions could have been issued without having the report from CTU and POSOCO regarding feasibility of such transfer. However, learned counsel for CPL volunteered to deposit the short term charges with CTU, pending the submission of feasibility report for transfer through STOA. This submission of the learned counsel for CPL has not been inadvertently recorded in the Record of Proceedings.

24. CPL has filed IA No. 21/2013 seeking clarifications, pending the decision in the main petition. The prayers in the IA cannot be granted before first deciding the prayers in the main petition which pertain to utilization of existing MTOA for sourcing of power from an alternative source. Since we have finally heard the matter and have decided to dispose of the petition on merit in the present order, no direction is required to be passed in the IA.

25. IA No.18/2013 has been filed by KSKMPL for impleadment in Petition No.96/MP/2013 on 1.7.2013. Prior to filing of the IA, learned Senior Counsel on behalf of KSKMPL had submitted before us on 11.6.2013 that it is an affected party as it was decided by CPL as the alternative source of power but subsequently has been abandoned CPL in favour of Sterlite Energy Limited. Learned counsel for LSKMPL also mentioned about the filing of the IA during the hearing on 2.7.2013 and argued the matter. The issue involved in the petition is whether the granted MTOA could be utilized by CPL for scheduling of power from an alternative source. The Commission is not looking into the dispute between CPL and the other generator which is an alternative source of supply. In our view, KSKMPL is not a necessary party to the dispute between CPL and the CTU which is the subject matter in Petition No.96/MP/2013. If the relief is granted to CPL, KSKMPL is at liberty to approach the appropriate forum in accordance with law to protect its right as an alternative generator for supply of power to CPL. Therefore, the IA is not maintainable and is accordingly disposed of.

26. Coming to the merit of the issues involved in both petitions, it is observed that both CPL and AP Discoms have argued that in order to give effect to the provisions in the PPA regarding the freedom of the seller to arrange alternative source of supply for a period of one year to meet the contractual obligations under the PPA would be a nullity if the access granted to the seller is not allowed to be utilized for wheeling of power from the alternative source. AP Discoms have sought a clarification that CPL and the alternative generator can supply power to AP Discoms using the granted MTOA. CPL

has prayed the Commission to devise a mechanism wherein power from alternate source can be first scheduled to the injection point in the Eastern region and from the said injection point, the power can be scheduled to the Southern Region against the already granted MTOA. In the light of the rival contentions as discussed, the following issues emerge for our consideration:

- (a) Whether the proposed arrangement made by CPL resulting in change in injection points amounts to transfer of open access rights?
- (b) Whether such an arrangement is permissible under Connectivity Regulations?
- (c) Whether it is permissible under the Connectivity Regulations to combine an access from Point A to point B with another access from point B to point C in order to ensure supply of power from point A to point C?
- (d) Whether the provisions of the PPA stated to be made in conformity with the Standard Bidding Documents issued by Central Government under section 63 of the 2003 Act would necessarily have to be given effect overriding the statutory provisions in the Connectivity Regulations?
- (e) Reliefs, if any, to be granted to the petitioners?

These issues have been discussed in the succeeding paragraphs.

Issue No. 1: Whether the proposed arrangement amounts to transfer of access rights?

27. In the present case, CPL has been selected as the successful bidder to supply 480 MW of power by AP Discoms based on the Case 1 competitive bidding carried out in accordance with the guidelines issued by Government of India under section 63 of the 2003 Act. CPL entered into a Medium term PPA dated 31.7.2012 with AP Discoms for supply of power for a period of three years starting from 16.6.2013 to 15.6.2016 at a levelized tariff of ₹4.3197/kWh. Article 3.1.1(c) of the PPA provides that arrangement of MTOA is one of the conditions subsequent to be fulfilled by the seller (CPL). The said provision reads as under:

“(c) The seller shall have obtained the necessary permission for medium term open access for the transmission system from the Injection Point up to the Delivery point and shall have executed the transmission Service Agreement with the transmission licensee for the transmission of power from the Injection Point upto the Delivery Point and provided a copy of the same to the Procurer(s);”

In accordance with this provision, CPL made an application on 8.1.2012 to CTU for grant of open access for 480 MW. CTU in its letter dated 5.10.2012 gave intimation about the grant of Medium term open access for 150 MW. In the said intimation, connectivity with grid for injection of power has been shown as “Namkum 400/220 kV sub-station of PGCIL” and for drawal of power, connectivity has been shown as “inter-connection of AP TRANSCO and APCDCL”. Subsequently, CTU and CPL have entered into a Transmission Service Agreement on 30.10.2012. On account of the delay in commissioning of the generating station of CPL for various reasons, CPL was unable to supply power with effect from 16.6.2013. Accordingly, CPL became liable to pay the

liquidated damages in terms of Article 4.8.1 of the PPA. The proviso to Article 4.8.1 of the PPA enables the seller to arrange for power from alternative sources for a period of 12 months. CPL invoked the provision of Article 4.8.1 of the PPA to initially tie up with KSK Mahanadi Power Company Ltd and subsequently, with Sterlite Energy Limited as the alternative source of power to supply to AP Discoms under the PPA. The said Article is extracted as under:

"4.8.1. If the seller is unable to commence supply of power to the Procurer(s) by the scheduled Delivery Date or the Revised Scheduled Delivery date as the case may be, other than for the reasons specified in Article 4.7.1 , the Seller shall pay to each procurer, liquidated damages as per this Article 4.8.1, for the delay in such commencement of supply of power and making the Contracted Capacity available for dispatch by the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be:

Provided that the Seller shall have the option to supply power from any alternative generation source from the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may, for a continuous period not exceeding twelve (12) months at the same Tariff as per the terms of this Agreement. Provided further that the cumulative Availability from such alternative generation source in the twelve (12) months period shall not be less than the Normative Availability. If the seller fails to commence such supply of power to fails to achieve the required Availability as mentioned above in this para, it shall pay to the Procurers(s) liquidated damages as per this Article 4.8.1.

In case the transmission and other incidental charges including but not limited to application fees for open access, RLDC/SLDC charges etc., applicable from the alternative source of power supply are higher than the applicable Transmission charges from the Injection Point to the delivery Point, the seller would be liable to bear such additional charges."

28. It has been argued by both AP Discoms and CPL that the proviso to Article 4.8.1 of the PPA would become a nullity if the MTOA already granted is not utilized for transfer of power from the alternative generation source to the Delivery Point. Accordingly, they have requested for the change of injection point from Namkum

220/400 kV sub-station of PGCIL in Ranchi to the bus bar of Sterlite Energy Limited at Rourkela in Odisha. The question is whether the request of CPL amounts transfer of access rights. After tying up with KSK Mahanadi as alternative source of power, CPL made an application dated 27.4.2013 with the following request:

"However, looking into the corridor constraint, issue for supply of power from NEW grid to SR Grid and power crunch situation of APDISCOM, following are requested:

- Transfer of the 150 MW (RTC) corridor granted to CPL from the 16th June 2013 to 15th June 2014 only to KMPCL/power generation sourced from other region (alternate source for supply for CPL to APDISCOMs) in public interest, as AP is facing severe power crunch.
- Signing of MTOA for 150 MW (RTC) between PGCIL and KMPCL/power sourced from other region for the period between 16th June 2013 to 15th June 2014.
- Signing of amended MTOA for 150 MW (RTC) between PGCIL and CPL for the supply period from 16th June, 2013 to 15th June 2016.
- MTOA application along with letter from APSDLDC and APCPDCL is attached as annexure."

After CTU rejected the request of CPL on the ground the Connectivity Regulations do not permit the same, CPL approached other generators in the Eastern Region and decided on Sterlite Energy Limited as the alternative source of power for supply to AP Discoms. CPL approached CTU vide its letter dated 14.5.2013 which is extracted as under:

"However via your letter dated 9th May 2013 (mentioned above in reference no.2), it has been indicated that transfer of corridor from CPL to KMPCL is not possible. We understand that since CPL is located in ER Grid (E- region) and KMPCL is located in Western Region (W-3), therefore there might be technical issues in transferring corridor from ER grid to WR grid (that too in W-3 wherein there is congestion in the network). Looking into above constraints, CPL has now tied up with Sterlite Energy Limited(SEL) generator which is located in Eastern Region connected to 400 kV Rourkela-Raigarh double circuit lines.

Hence it is requested that:

- Transfer of the 150 MW (RTC) corridor granted to CPL from the 16th June 2013 to 15th June 2014 only to SEL (alternate source for CPL) in public interest, as AP is facing severe power crunch.

- Signing of MTOA for 150 MW (RTC) between PGCIL and SEL (alternate source for CPL) located in Eastern Grid for the period between 16th June 2013 to 15th June 2014.
- Signing of amended MTOA for 150 MW (RTC) between PGCIL and CPL for the supply period from 16th June, 2013 to 15th June 2016.

It is therefore requested that aforesaid alternate source in ER grid may please be considered for transfer/modification of corridor already granted. Further document/papers required in above may kindly be intimated.”

29. It is clearly evident from both the letters of CPL to CTU that it had sought to transfer the 150 MW (RTC) corridor granted to it first to KSKMPL and subsequently to SEL, signing of MTOA agreement between KSKMPL/SEL for 150 MW for the period from 16.6.2013 to 15.6.2014, and finally signing of amended MTOA between CPL and CTU for the period from 16.6.2014 to 15.6.2016. Both the letters of CPL clearly establishes that CPL wanted to transfer the MTOA rights granted to it for one year in favour of an alternative generator.

30. CPL in its subsequent submission and during the hearing of the petition has submitted that its intention is not to transfer the MTOA rights to the other generator but permission to source power from an alternative generator by availing Short Term Open Access from the generation bus bar/inter-connection point of the said generator till Namkum substation of PGCIL (which is the inter-connection point for its generating station) and from Namkum to the delivery point by utilizing the existing MTOA. CTU in its reply dated 12.6.2013 has submitted that the power flow in real time scenario does not take place as per the contract signed but takes place as per the laws of physics. In other words, the power flow will take place from the new injection point at Rourkela in

Odisha (ex-Sterlite bus) to the drawal point (inter-connection point of AP Transco), and not from Sterlite-bus to Namkum at Ranchi and from Namkum till the interconnection points with AP Transco. In our view, the proposal of CPL amounts to transfer of MTOA to the alternative generator which is not permissible.

Issue No.2: Whether the arrangement by CPL is permissible under the Connectivity Regulations?

31. Section 2(47) of the 2003 Act defines 'open access' as "the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission." Further, section 38(2)(d) of the 2003 act provides that the functions of the Central Transmission Utility shall be to provide non-discriminatory open access to its transmission system for use by any licensee or generating company on payment of transmission charges. Similar provision has been made in section 40(c)(i) of the 2003 Act in respect of the transmission licensee. This commission which has been vested with the function to regulate inter-State transmission of electricity has specified the Connectivity Regulations for facilitating long term access and medium term open access and Open Access Regulations of 2008 to facilitate short term open access inter-State transmission.

32. Connectivity Regulations defines "medium-term open access" as the right to use the inter-State transmission system for a period exceeding 3 months but not exceeding 3 years. Central Transmission Utility has been designated as the nodal agency for grant

of medium term open access to inter-State transmission system. Regulations 9 and 10 of Connectivity Regulation provides for the criteria for granting long term access and medium term open access as under:

“9. Criteria for granting Long Term access or medium term open access

(1) Before awarding long-term access, the Central Transmission Utility shall have due regard to the augmentation of inter-State transmission system proposed under the plans made by the Central Electricity Authority.

(2) Medium-term open access shall be granted if the resultant power flow can be accommodated in the existing transmission system or the transmission system under execution.

Provided that no augmentation shall be carried out to the transmission system for the sole purpose of granting medium-term access:

Provided further that construction of a dedicated transmission line shall not be construed as augmentation of the transmission system for the purpose of this regulation.

10. Relative priority

Application for long-term access or medium-term open access shall be processed on first-come-first-served basis separately for each of the aforesaid types of access:

Provided that applications received during a month shall be construed to have arrived concurrently;

Provided further that while processing applications for medium-term open access received during a month, the application seeking access for a longer term shall have higher priority;

Provided also that in the case of applications for long-term access requiring planning or augmentation of transmission system, such planning or augmentation, as the case may be, shall be considered on 30th of June and 31st of December in each year in order to develop a coordinated transmission plan, in accordance with the perspective transmission plans developed by the Central Electricity Authority under section 73 of the Act;

Provided also that if an intra-State entity is applying for long-term access or medium-term open access, concurrence of the State Load Despatch Center shall be obtained in advance and submitted along with the application to the nodal agency. The concurrence of the State Load Despatch Centre shall be in such form as may be provided in the detailed procedure.

(2) Where necessary infrastructure required for energy metering and time-block-wise accounting already exists and required transmission capacity in the State network is available, the State Load Despatch Center shall convey its concurrence to the applicant within ten working days of receipt of the application.

(3) In case SLDC decides not to give concurrence, the same shall be communicated to the applicant in writing, giving the reason for refusal within the above stipulated period."

33. It is evident from the provisions quoted above that the transmission system augmentation is done based on Long Term Access (LTA) whereas MTOA is granted when the resultant power flows can be accommodated in the margin available in the transmission system after LTA. Similar is the case with the Short Term Open Access (STOA) which is also provided on the margin of the existing transmission system. In this connection, Regulation 3 of the Open Access Regulations of 2008 is extracted as under:

"3. Subject to any other regulations specified by the Commission, the long-term customer shall have first priority for using the inter-State transmission system for the designated use. These regulations shall apply for utilization of surplus capacity available thereafter on the inter-State transmission system by virtue of-

(a) inherent design margins;

(b) margins available due to variation in power flows; and

(c) margins available due to in-built spare transmission capacity created to cater to future load growth or generation addition"

Thus, Long Term Access (LTA) is provided higher priority over the Medium Term Open Access (MTOA) and the Short Term Open Access (STOA).

34. Regulation 19 of the Connectivity Regulations provides for the application for grant of medium term open access as under:

"19. Application for Medium Term Open Access

1. The application for grant of medium-term open access shall contain such details as may be laid down under the detailed procedure and shall, in particular, include the point

of injection into the grid, point of drawal from the grid and the quantum of power for which medium-term open access has been applied for.

2. The start date of the medium-term open access shall not be earlier than 5 months and not later than 1 year from the last date of the month in which application has been made."

Further, proviso of Regulation 21(1) of the Connectivity Regulations provides as under:

"...The medium-term open access agreement shall contain the date of commencement and end of medium-term open access, the point of injection of power into the grid and point of drawal from the grid, the details of dedicated transmission lines required, if any, the bank guarantee required to be given by the applicant and other details in accordance with the detailed procedure."

Regulation 6(2) of Open Access Regulations 2008 provides as follows:

"The application for a bilateral transaction shall contain the details, such as names and location of supplier and buyer, contracted power (MW) to be scheduled and interface at which it is referred to, point of injection, point of drawal, starting time block and date, ending time block and date, and such other information that may be required in the detailed procedure."

It may be noticed that both STOA as well as MTOA require firm points of injection and firm points of drawal to be specified at the time of making the application. Change of injection point and drawal point has not been provided for in these regulations. The reason being that allowing the change of injection and drawal point in a specific medium term open access or short term open access would affect the corridor availability to other medium term open access customers or short term open access customer or would result in overriding priority over the other applicants for medium term open access or short term open access as the case may be. This arrangement would not be non-discriminatory since a MTOA or STOA customer by changing the injection or drawal points can claim priority over the waitlisted applicants in the respective category.

35. In the present case, CPL has sought change in the injection point for the MTOA granted to it. Earlier, the injection point was Namkum 200/400 kV PGCIL sub-station in Ranchi in the State of Jharkhand and now the proposed injection point is in the State of Odisha at Rourkela which falls within the W3 zone. It has already been indicated by the CTU in its reply dated 6.6.2013 that applications of four applicants are pending for MTOA for the same corridor. Change of injection point of CPL by overlooking the claims of other MTOA applicants will be discriminatory. Under the circumstances, CPL is required to surrender the MTOA already granted to it with consequential liabilities and apply for Medium Term Open Access afresh from the new injection point provided it has got the generation facility at that point which will be considered by CTU after taking into account the other pending applications for Medium Term Open Access. Moreover, in accordance with Regulation 19(2) of Connectivity Regulations, MTOA if granted can be operationalised not before 5 months and not later than 1 year of making the applications. There are good reasons for this provision in the Connectivity Regulations. Under Regulation 9 of the Open Access Regulations 2008, the application for advance scheduling of bilateral transaction can be given within four months in advance, the month of application being the first month. Short term open access is granted on the basis of the margin available after granting the medium term open access. Since advance scheduling under short term open access is allowed upto 4 months, the medium term open access if granted can be operationalised after 5 months in order to obviate the requirements to cancel the short term open access already granted. Therefore, allowing change of injection point to CPL will also result in cancellation of the

short term open access in violation of the provisions of Regulation 19(2) of the Connectivity Regulations.

36. Hon'ble Appellate Tribunal for Electricity in its judgment dated 31.3.2010 in Appeal No. 104/2009 (Gujarat Energy Transmission Company Ltd Vs. Gujarat Electricity Regulatory Commission and others) had held that change of drawl point shall call for surrender of existing open access and the applicant needs to apply afresh for change of drawl points. Relevant portion of the judgment is extracted as under:

"32. There has to be a purpose as to why Regulation 9 contemplates that the applicant in the application shall specify the point of injection and point of drawl. This is not an empty formality. The entire process deciding to grant open access is based on the point of injection and point of drawl. Even before the Electricity Act 2003, the open access to the transmission lines and distribution lines were provided in the point of injection and point of drawl. This would be clear from the approval letter dated 27.11.2000 which was granted by the Board only in respect of 6 transmission lines on which wheeling was allowed. This approval granted to ONGC(R-2) was on 6 specific lines with the point of injection, points of drawl and the capacity for which open access is sought.

33. As pointed out by the Learned Counsel for the Appellant it is a well accepted practice in the electricity industry that open access is restricted to specified transmission lines with specific injection and drawl points. Thus, there is no vested right to open access over the entire transmission system of the licensee.

34. Since the open access customer has no right whatsoever to shift point of drawl under the Regulations, the request for substitution of the new points of drawl would amount to surrendering capacity of the open access between the two specified points and seeking open access for the different point to point transmission. In view of the above, in the present case, change of injection point shall also call for a fresh application."

37. It is thus clear from the above judgment that open access is restricted to specific transmission lines with specific injection and drawal points. Since the open access customer has no right under the regulations to shift the point of drawal, the request for substitution of new points of drawal would amount to surrendering capacity of open

access between the two specified points and seeking open access for the different point to point transmission. In the present case, under Regulation 19(1) of Connectivity Regulation, the application for medium term open access shall include the point of injection into the grid, point of drawal from the grid and the quantum of power for which medium-term open access has been applied for. There is no provision under the Connectivity Regulations to shift the point of injection or point of drawal. Therefore, the request of CPL to allow change of injection point from Namkum sub-station of PGCIL at Ranchi to the bus bar of the Sterlite Energy Limited at Rourkela in Odhisha would amount to surrendering capacity of MTOA between Namkum sub-station to the periphery of AP Transco and seeking open access to different point to point transmission line i.e. from Sterlite Energy Limited to periphery of AP Transco. This can only be done by making fresh application for MTOA or STOA from Sterlite Energy Limited to the periphery of AP Discom till CPL starts generating from its generating station and injecting power at Namkum sub-station as per the provisions of the MTOA granted to it. Similar is the procedure for seeking open access from any other injection point.

38. In the Statement of Reasons to the Connectivity Regulations, the issue of transfer of access rights to a third party has been dealt with as under:

"92. It has been suggested by PGCIL, ED (SO) that the word 'rights' may be replaced by 'long term access rights'. It has been also suggested that the original Regulation 18 (ii) may be reviewed so as to restrict transfer of the rights to another company in the same location and to the extent of the MW allocation of long-term access granted. This clause shall tantamount to transfer/trading of Financial Transmission Rights (FTRS). It is therefore proposed that the clause may be revised.

93. It has been suggested by WBSETCL that the existing customer should surrender rights to nodal agency which should distribute the same on first come first serve basis.

94. The term 'rights and obligations' have been replaced by 'access rights taking the above suggestions into account,'. The provision regarding transfer of access rights by LT customer to another person has also been omitted. It goes without saying that the access rights would be surrendered to the nodal agency which shall deal with the re-allocation as per the pending applications as per the mechanism enshrined in these regulations."

Though the above observations have been made in the context of long term access, it is equally applicable in case of medium term and short term open access.

39. It has been argued by CPL that its requirement should be treated at par with the un-requisitioned surplus power allocated by the Government of India which is given priority over other accesses. CPL has submitted that the total all India capacity of Central Sector Generating Stations, as on 30.11.2012 was 47,856 MW out of which, only 40,819 MW power is allocated on firm basis to the various States beneficiaries which have 'specified' points of drawal and the balance 7037 MW is unallocated power which is allotted to States as per the discretion of the Central Government. Therefore, the drawl point (s) of this unallocated power (infirm power) keeps on changing i.e. same has no fixed drawl point, and the same is treated as 'long term' transaction for all purposes including scheduling. It has been argued that when RLDC can schedule such 7037 MW power as long term transactions, which has no fixed drawl point and the same keeps on changing, there can be absolutely no legal impediment in denying CPL the right to schedule power from an alternate source within the same MTOA region. It has been pleaded that the statute expressly provides that open access has to be non-discriminatory, meaning thereby that the principles of grant of open access cannot at all

be subjective, exclusive to one party/category and/ or arbitrary. CPL has submitted that CTU cannot discriminate between the Petitioner and any other DIC/customer (viz. LTA customer) and on this ground, CPL is entitled to schedule power under the already granted MTOA.

40. We have considered the submission of CPL. 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. The present case is different from the case of allocation from the unallocated capacity by the Central Government from the generating stations owned or controlled by Central Government. In the present case, CPL has been granted MTOA for the period 16.6.2013 to 15.6.2016 against the margin available in the corridor (after utilization by long term customers) and based on its position among the applicants for MTOA at that point of time. When the change of point of injection takes place, it becomes a fresh access for which CPL, if it has generation facility at the new injection point, has to come in its turn after consideration of the other pending applications for MTOA. The case of CPL cannot be compared with the allocation from unallocated capacity by the Central Government as the States which have been allocated from such unallocated capacity are deemed to be long term customers by virtue of Regulation 2(1)(m) of the Connectivity Regulations. No such dispensation is available to the Medium Term Customers as the transmission lines are not built for them but they are allotted the access subject to the availability of margin. Therefore, reliance on the case of allocation from unallocated capacity at the disposal of the Central Government does not advance the case of CPL.

Issue No.3 Whether it is permissible under the Connectivity Regulations to combine an access from Point A to point B with another access from point B to point C in order to ensure supply of power from point A to point C?

41. CPL during the course of the hearing argued that it should be permitted to make arrangement for short term open access from Sterlite Energy Ltd injection point (Rourkela) to CPL injection point (Namkum at Ranchi) which can be combined with the already granted MTOA from CPL to AP Discoms. In other words, the issue is whether the access from Sterlite Energy Ltd.(Point A) to CPL (Point B) can be combined with an access from CPL (Point B) to AP Discoms (Point C) in order to ensure supply from Point A to Point C. The Commission during the hearing on 11.6.2013 had raised the following query:

“Whether 150 MW power can be scheduled from Rourkela to Ranchi under Short Term Open Access to CPL which can be further taken to be injected at Ranchi by using the already approved Medium Term Open access to be transferred to AP Discoms in Southern Region?”

POSOCO (NLDC) in its reply filed vide affidavit dated 26.6.2013 has submitted as under:

“From the above query, it appears that since Corporate Power Ltd. (CPL) is yet to commence generation, two inter-linked transactions are proposed to be scheduled, first from Sterlite to CPL under STOA and second from CPL to APDISCOMs as per the already approved MTOA.

Under the normal circumstances, power transaction can be scheduled from one grid connected entity to another under LTA, MTOA or STOA. However, one transaction cannot be linked to the other and the two transactions have to be separately identifiable. Metering and scheduling facility is a pre-requisite for scheduling of power as deviations are also to be accounted for.

XX

It is understood that the power plant of Corporate Power Ltd. is yet to be connected to the grid and meters have not been installed and it is not a regional entity now. Thus power from/to Corporate Power Limited cannot be scheduled under LTA/MTOA/STOA.”

42. POSOCO (NLDC) has opined that power transaction can be scheduled from one grid connected entity to another grid connected entity and two transactions cannot be linked to each other and have to be separately identifiable. It has been submitted that CPL has not been connected to the grid as the necessary energy meters have not been installed. Therefore, power from and to CPL cannot be scheduled under any form of access. We find merit in the submission of NLDC. As already discussed, Regulation 19(1) and proviso 21(1) of Connectivity Regulations specifically provide for firm point of injection and firm point of drawal in case of MTOA. Similarly, Regulation 6(2) of the Open Access Regulations specifically provide for firm point of injection and firm point of drawal. Therefore, MTOA/STOA are based on the firm points of injection and firm points of drawal. Point of injection is the interface point between the generating station and the ISTS and point of drawal is the interface point between ISTS and the load. When the power is scheduled from Point A to Point B, it is consumed at Point B. If the power is consumed at Point B, the same power cannot be further scheduled to Point C. Therefore, scheduling of power from Point A to Point B and from Point B to Point C are two different transactions and if both transactions are combined in order to schedule power from A to C, in that event, the point of drawal shifts from Point B to Point C and It becomes a single transaction for which access is required from Point A to Point C. Under the provisions of the Connectivity Regulations and Open Access Regulations, such combination of different types of access to execute a single transaction is not permissible. Moreover, such a dispensation has the portent for misuse as it will result in advance booking of corridor and sale of transmission access rights.

Issue No.4: Whether the provisions of the PPA could be given effect to even though there is no provision in the regulations?

43. Both CPL and AP Discoms have argued that the PPA has been made in the light of the Standard Bidding Document under section 63 of the 2003 Act and since the PPA provides for arrangement for alternative sources of power in the event of failure of the seller to generate power due to any reason beyond its control, it should be given effect to by evolving a mechanism. Otherwise the purpose of having the said provision would be rendered a nullity. We have considered the submission. The provision in the PPA binds the parties to the PPA and cannot bind a third party. Moreover, the relationship between AP Discoms and CPL is a contractual relationship for supply of power under the PPA even though it is issued in accordance with the Standard Bidding Documents issued under section 63 of the 2003 Act. It has been settled in the judgement of the Hon'ble Supreme Court in the matter of PTC India Limited Vs CERC that all contracts have to conform to the statutory regulations issued under the 2003 Act. Therefore, the access to the transmission system for supply of power between the parties to the PPA will have to conform to the statutory regulations, in this case Connectivity Regulations.

Para 4.8.1 of the PPA between CPL and AP Discoms reads as under:

"4.8.1. If the seller is unable to commence supply of power to the Procurer(s) by the scheduled Delivery Date or the Revised Scheduled Delivery date as the case may be, other than for the reasons specified in Article 4.7.1 , the Seller shall pay to each procurer, liquidated damages as per this Article 4.8.1, for the delay in such commencement of supply of power and making the Contracted Capacity available for dispatch by the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be:

Provided that the Seller shall have the option to supply power from any alternative generation source form the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may, for a continuous period not exceeding twelve (12) months at the same Tariff as per the terms of this Agreement. Provided further that the cumulative Availability from such alternative generation source in the twelve (12) months period

shall not be less than the Normative Availability. If the seller fails to commence such supply of power or fails to achieve the required Availability as mentioned above in this para, it shall pay to the Procurers(s) liquidated damages as per this Article 4.8.1.

In case the transmission and other incidental charges including but not limited to application fees for open access, RLDC/SLDC charges etc., applicable from the alternative source of power supply are higher than the applicable Transmission charges from the Injection Point to the delivery Point, the seller would be liable to bear such additional charges."

It is apparent from the above that in case of failure of the seller to supply power by the Scheduled Delivery Date or Revised Scheduled Delivery date, the seller is required to pay the liquidated damages. As an alternative, the seller has been given the option to arrange power from an alternative generation source for a period of 12 months. Therefore, the provision for alternative generation source for supply of power has been made to enable the generator to meet its contractual obligations. Moreover, it has been provided that if the transmission charges applicable from the alternative source of power supply are higher than the applicable transmission charges from the injection point to the delivery point, the additional charges shall be borne by the seller. Thus the provisions of Article 4.8.1 do not bind the seller to utilize the already granted MTOA to schedule the power under the PPA. It only grants flexibility to the seller to supply power from alternative source of generation anywhere in the country but the liability of the AP Discoms to pay the transmission charges is limited to the transmission charges from the point of injection to the point of drawal agreed in the PPA. As the Connectivity Regulations do not allow operationalisation of the existing MTOA after the injection or drawal points are changed, CPL will be required to seek a fresh access to supply power from the alternative source of generation. We are of the view that Para 4.8.1 of the PPA

does not give any liberty to CPL to schedule power from alternative source by utilizing the already granted MTOA which is not permissible under the Connectivity Regulations. The provision in the PPA allowing the generator to supply from alternative sources is meant to protect the interest of both seller and buyer and enable the seller to arrange power from alternative sources to meet its contractual obligations. This provision in the PPA cannot supersede or modify the provisions of statutory regulations governing grant of access.

Issue No.4: Relief, if any.

44. In view of our discussion as above, the petitioners cannot be granted any relief prayed for.

45. The petitions are accordingly disposed of.

sd/-
(M. Deena Dayalan)
Member

sd/-
(V.S. Verma)
Member