

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 240/MP/2012
With I.A.No.52/2012**

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

**Date of Hearing: 02.07.2013
Date of Order: 21.02.2014**

In the matter of

Petition under Section 79(1) (c) read with section 79(1) (f) of the Electricity Act, 2003 seeking a direction from this Hon'ble Commission that the levy of transmission charges of Western Region based on Revised Regional Energy Accounts (Revised REA) for the period of March 2011 to June 2011 vide provisional bill dated 24.08.2012 raised by the Respondent No.1 M/s Power Grid Corporation of India Limited is invalid in nature and accordingly, the same be withdrawn with immediate effect.

And in the matter of

Lanco Kandapalli Power Ltd., Hyderabad

.....**Petitioner**

Vs

1. Power Grid Corporation of India, Gurgaon
2. Western Regional Power Committee, Mumbai
3. Central Electricity Authority, New Delhi
4. Chhattisgarh State Power Generation Co. Ltd., Raipur
5. SLDC, Chhattisgarh State Power Transmission Co. Ltd., Raipur
6. Gujarat State Electricity Corp. Ltd., Vadodara
7. Gujarat Energy Transmission Corp. Ltd., Vadodara
8. Dakshin Gujarat Vij Co. Ltd., Kapodara
9. Paschim Gujarat Vij Co. Ltd., Rajkot
10. Madhya Gujarat Vij Co. Ltd., Vadodara
11. Uttar Gujarat Vij Co. Ltd., Mehsana
12. SLDC, GETCO, Vadodara
13. Madhya Pradesh Generation Co. Ltd., Jabalpur
14. Madhya Pradesh Power Transmission Co. Ltd., Jabalpur
15. Madhya Pradesh Paschim Kshetra Vidyut Vitran Co. Ltd., Indore
16. Madhya Pradesh Madhya Kshetra Vidyut Vitran Co. Ltd., Bhopal
17. Madhya Pradesh Poorv Kshetra Vidyut Vitran Co. Ltd., Jabalpur
18. SLDC, MPPTCL, Jabalpur
19. Maharashtra State Power Gen, Co. Ltd., Maharashtra
20. Maharashtra State Electricity Transmission Co. Ltd., Mumbai
21. Maharashtra State Electricity Distribution Co. Ltd., Pune
22. SLDC, Maharashtra
23. Electricity Deptt., Government of Goa, Panaji
24. Electricity Deptt., Government of Daman & Diu, Nani Daman
25. Electricity Deptt., UTs of Dadra & Nagar Haveli, Khanvel

26. NTPC, New Delhi
 27. Nuclear Power Corporation of India Ltd., Mumbai
 28. Tata Power Trading Co. Ltd., Mumbai
 29. NHPC Ltd., Faridabad
 30. SJVNL, Shimla
 31. THDC India Ltd., Uttaranchal
 32. Bhakra Beas Management Board, Chandigarh
 33. National Load Dispatch Centre, New Delhi
 34. Delhi Transco Ltd., New Delhi
 35. Indraprastha Power Generation, New Delhi
 36. Haryana Vidyut Prasaran Nigam Ltd., Panchkula
 37. Haryana Power Generation Co. Ltd., Panchkula
 38. SLDC, Haryana Vidyut Prasaran Nigam Ltd., Panipat.
 39. Uttar Haryana Bijli Vitran Nigam Ltd., Haryana
 40. HPSEB Ltd., Shimla
 41. H. P. Power Transmission Corp. Ltd., Shimla
 42. Principal Secretary, PDD, Jammu & Kashmir
 43. Power Development Deptt., Jammu & Kashmir
 44. Punjab State Transmission Corp. Ltd., Patiala
 45. Punjab State Power Corp. Ltd., Patiala
 46. Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jaipur
 47. Rajasthan Rajya Vidyut Utpadan Nigam Ltd., Jaipur
 48. SLDC, Rajasthan, Jaipur
 49. Distribution Co. of Rajasthan by rotation, Jaipur
 50. UP Power Transmission Corp. Ltd., Lucknow
 51. UP Rajya Vidyut Utpadan Nigam, Ltd., Lucknow
 52. SLDC, Lucknow
 53. Distribution company of UP by rotation, Lucknow
 54. Power Transmission Corp.. of Uttarakhand Ltd., Dehradun, Uttarakhand
 55. Uttarakhand Jal Vidyut Nigam Ltd., Dehradun, Uttarakhand
 56. SLDC, Veerbhadra, Rishikesh
 57. Uttarakhand Power Corp. Ltd., Dehradun
 58. Electricity Deptt., UT of Chandigarh
 59. Northern Regional Power Committee, New Delhi.
 60. Gujarat Urja Vikas Nigam Ltd., Vadodara
-**Respondents**

Following were present:

Shri Amit Kapoor, Advocate for the petitioner
Shri Vishal Anand, Advocate for the petitioner
Ms. Sadapurna, Advocate for the petitioner
Shri Rakesh Gupta, LANCO
Shri P.S.Naidu, LANCO
Shri M.G. Ramachandran, Advocate for GUVNL and PGCIL
Shri P.J.Jani, GUVNL
Shri Jasbir Singh, PGCIL
Shri R.P. PadhE, PGCIL
Shri S.K.Varshney, PGCIL
Shri L.N.Mansharamani, RVPNL

ORDER

Feeling aggrieved by the provisional bill dated 24.8.2012 (the impugned provisional bill) for the period March 2011 to June 2011 , issued by Power Grid Corporation of India Ltd (PGCIL), Respondent No 1, the petitioner has filed the present petition with the following prayers, namely-

“a) That this Hon'ble Commission may declare that the provisional bill dated 24.8.2012 for the period March 2011 to June 2011 raised by the Respondent No.1 on the basis of the Revised Regional Energy Accounts (REA) for transmission charges is invalid; and

b) Direct the Respondent No.1 to withdraw the said the provisional bill dated 24.8.2012; and

c) Direct the Respondent No.2 herein not to revise the Regional Energy Accounts for the period prior to 1.7.2011 and

d) Such other orders as this Hon'ble Commission may wish to pass for doing substantial justice in the matter and to uphold the provisions of the Act of 2003.”

Background Facts

2. The petitioner is a generating company and has established a gas-based power plant at Kondapalli located in Krishna District in the State of Andhra Pradesh with total capacity of 1466 MW. The petitioner submitted an application dated 25.2.2008 to PGCIL for grant of long-term open access (LTOA or LTA) of inter-State transmission of electricity in accordance with the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2004 (the Open Access Regulations) for which the quantum of power to be transmitted was 350 MW. PGCIL's sub-station at Nunna in Southern Region was identified as the point of injection of power. The petitioner proposed to carry power up to Nunna sub-station of PGCIL through a 400 kV D/C dedicated transmission line. Since there was no identified buyer of power for which LTOA was sought, the petitioner identified Western Region and

Northern Region as the target regions for supply of 200 MW and 150 MW of power respectively.

3. The petitioner's request for grant of LTOA was considered at the meeting of the Standing Committee of Southern Region held on 3.3.2009 wherein it was agreed to allow connectivity to the petitioner at Nunna sub-station. It was further decided that the petitioner would share the transmission charges of Southern Region proportionate to its installed capacity, in accordance with Regulation 33 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (the Tariff Regulations) which have come into force on 1.4.2009. It was further decided that since the petitioner had not identified the buyers in Western and Northern Regions, it could sell power to the entities in Southern, Western and Northern Regions by availing the short-term open access on payment of applicable short-term transmission charges. Based on the decision, PGCIL conveyed the decision under its letter dated 6.7.2009 to grant LTOA to the petitioner for a period of 25 years from the date of commencement of open access. Accordingly, the Bulk Power Transmission Agreement dated 2.9.2009 (BPTA) was executed between the petitioner and PGCIL. Under the BPTA it has been agreed that the capacity in Western Region shall be 150 MW from September 2009 to February 2010 and 200 MW from March 2010 onwards. As regards Northern Region, it has been agreed that during September 2009 to February 2010 the capacity shall be 80 MW and thereafter 150 MW from March 2010 onwards. The BPTA further provides that LTOA granted to the petitioner shall be regulated in accordance with the Open Access Regulations and the terms and conditions specified by the Commission from time to time and that the tariff shall be payable by the petitioner in accordance with the Tariff Regulations.

4. The provisions in relation to long-term access in the Open Access Regulations were repealed with effect from 1.1.2010 with the enforcement of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in

inter-State Transmission and related matters) Regulations, 2009 (the Connectivity Regulations) by virtue of clause (1) of Regulation 34 thereof. However, clause (2) of Regulation 34 saved the long-term access granted under the Open Access Regulations. Regulation 26 of the Connectivity Regulations provides that transmission charges for use of the inter-State transmission system for long-term customers and medium-term customers shall be recovered in accordance with the terms and conditions of tariff specified by the Commission from time to time. The Commission framed the Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010 (the Sharing Regulations) with effect from 1.7.2011. The Sharing Regulations were amended vide notification dated 24.11.2011, and have come into effect on 25.11.2011, the date of their publication in the Official Gazette.

5. At the Commercial Committee meeting of Western Regional Power Committee (WRPC) held on 23.12.2011 it was decided to include the demand of Point of Connectivity (PoC) charges introduced under the Sharing Regulations, as amended, in the Regional Transmission Accounts (RTA) of the petitioner. At the meeting PGCIL was advised to communicate the date of effect of LTA to the petitioner, based on which Regional Energy Accounts (REA) would be revised incorporating inclusion of the petitioner for the period prior to implementation of the Sharing Regulations, that is, 1.7.2011. The matter was reviewed at the Commercial Committee meeting held on 10.4.2012, when PGCIL was again asked to formally communicate to WRPC all details (quantum, data etc) of effect of LTAs to the petitioner as also certain other entities.

6. Pursuant to the above decisions, REA of Western Region have been revised for the period March 2011 to June 2011 and PGCIL has raised the impugned provisional bill for an amount of ₹10,00,90,930, said to have been raised based on the Sharing Regulations..The petitioner by its letter dated 31.8.2012 took up the matter with PGCIL for withdrawal of the impugned provisional bill on the ground that the Sharing Regulations could not be applied retrospectively from a date prior to 1.7.2011 and it had already paid the transmission charges for LTA and also short-term open access in accordance with the Tariff Regulations. The

petitioner's representation was discussed at the Commercial Committee meeting of WRPC held on 8.10.2012 when PGCIL justified the impugned provisional bill was raised in accordance with the 2009 Tariff Regulations after revision of REA since the Sharing Regulations could not be applied retrospectively. It was also emerged during the said meeting that WRPC was in the process of revising REA since 2.9.2009 when the BPTA was executed till February 2011 and PGCIL would thereafter raise bill for the said period. The petition has been filed against the above background facts.

Petitioner's Grievances

7. The petitioner has submitted that it has been regularly paying LTA charges for Southern Region and also for short-term open access charges for the supply contracts in Southern, Western and Northern Regions in accordance with clause (3) of Regulation 25 of the Open Access Regulations, 2008 as billed in accordance with the decision of the Southern Region Standing Committee dated 3.3.2009. The petitioner has submitted that the Sharing Regulations are prospective in their application and cannot apply prior to 1.7.2011. The petitioner has disputed PGCIL's plea as raised at the Commercial Committee meeting of 8.10.2012 that the impugned provisional bill has been raised in accordance with the Tariff Regulations since it takes into consideration the demand PoC charges and the concept of Target Region introduced for the first time through the amendment of the Sharing Regulations published in the Official Gazette on 25.11.2011. The petitioner has urged that these concepts introduced through the Sharing Regulations or their amendment could not have been the basis for raising the impugned provisional bill purportedly under the Tariff Regulations.

8. The petitioner has argued that if the proposed revision of the transmission charges since 2.9.2009 is accepted it amount to payment of the transmission charges more than twice for the same capacity since it as already paid LTA charges and the short term open access

charges. The petitioner has alleged that the methodology adopted by PGCIL is without any basis and is irrational and accordingly the impugned bill is invalid and is liable to be set aside

9. The petitioner has also filed I.A.No.52/2012 for interim relief seeking direction to the respondents not to take any coercive action in pursuant to the provisional bill dated 24.8.2012 during the pendency of the petition.

Submissions by PGCIL

10. PGCIL in its reply has submitted that as per the terms of said BPTA, LTA for 230 MW (Western Region 150 MW and Northern Region 80 MW) was applicable from September 2009 to February, 2010 and thereafter LTA for 350 MW (Western Region 200 MW and Northern Region 150 MW), was applicable w.e.f. March, 2010 onwards. The commencement of LTOA was in line with the capacity of Unit-I (230 MW) and Unit-II (130 MW) of the Petitioner. PGCIL has submitted that the petitioner had not identified the beneficiaries and therefore, as per clause (7) of Regulation 33 of the Tariff Regulations, the petitioner is under an obligation to make the payment of the transmission charges for Southern Region - 350 MW, Western Region - 350 MW and Northern Region(through Western Region)-150 MW and is to billed accordingly.

11. It has been stated that the first unit of the petitioner's generating station was commissioned in December 2009. Accordingly, the name of the petitioner was captured in REA of Southern Region issued by Southern Regional Power Committee (SRPC) w.e.f December 2009. Accordingly, bills for Southern Region transmission system were raised by PGCIL from December 2009. It has been further stated that after enforcement of the Sharing Regulations, the name of the petitioner has been captured in RTA of Southern Region and bills are being raised accordingly with effect from 1.7.2011. PGCIL has stated that the bills raised for Southern Region are being regularly paid by the petitioner.

12. PGCIL has stated that the name of the petitioner was not captured in REAs of Western and Northern Regions issued by the concerned Regional Power Committees and hence bills for

these two regions could not be raised. However, amendment of the Sharing Regulations in December 2011 provides that besides payment of injection PoC charges, LTA customers (where beneficiaries are not identified) are also required to pay a minimum of withdrawal PoC charges of the target region. Accordingly, bills were raised by the PGCIL on account of injection charges of Southern Region corresponding to 350 MW and minimum of NEW GRID charges for 350 MW (Western Region - 200 MW and Northern Region - 150 MW) as per the RTAs issued by the concerned RPCs.

13. PGCIL has stated that WRPC issued revised REAs for the period March 2011 to June, 2011 wherein the petitioner was captured. Accordingly, PGCIL raised bills for Western Region transmission system for the said period. PGCIL has pointed out that WRPC has not yet revised REA for the period December 2009 to June 2011 as per the terms of the BPTA and as such bills for tariff for this period shall be raised subsequently as and when the revised REA for the said period is issued by WRPC. PGCIL has brought out that NRPC too has not revised REA for Northern Region for the period December 2009 to June 2011 and accordingly bills for Northern Region transmission system shall also be raised by PGCIL subsequently, after issuance of the revised REA for Northern Region

14. PGCIL has alleged that despite having agreed to make payment of the transmission charges in the BPTA, the petitioner has failed to make payment of transmission charges and total outstanding dues work out to ₹10.01 crore against which the impugned provisional bills raised for use of Western Regional transmission system.

Submissions by GUVNL

15. Gujarat Urja Vikas Nigam Ltd (GUVNL), Respondent No 63, has stated that the BPTA provides for sharing of the regional transmission charges as well as the transmission charges for inter-regional links. Therefore, the petitioner cannot now seek to wriggle out of its obligation for payment of these charges. The contention of the petitioner that it is not utilizing any of the

inter-regional links or effecting any transfer of power to other regions and hence is not required to share the charges is misconceived and without merit since sharing of the transmission charges is not linked to actual utilization. GUVNL has stated that the transmission charges are to be shared by the petitioner in terms of Regulation 33 of the Tariff Regulations.

Petitioner's Rejoinder

16. The petitioner, vide affidavit dated 19.03.2013, has reiterated the averments made in the petition. The petitioner has submitted that clause (7) of Regulation 33 only specifies that the transmission charges corresponding to plant capacity for which beneficiary has not been identified shall be payable by generating company and it does not permits PGCIL to charge the same capacity more than once, or in different regions. It has been pointed out that if the contention of GUVNL is accepted, it will amount to payment of transmission charges for 350 MW for Southern Region, 350 MW for Western Region and 150 for Northern Region which add up to 850 MW. In addition, the petitioner pays short-term open access charges for 350 MW. Thus, the petitioner is paying the transmission charges for 1200 MW which cannot be intended by clause (7) of Regulation 33. The petitioner has further submitted that as per the BPTA, it is liable to pay the transmission charges for "use" of the transmission system and not merely for obtaining LTOA. The terms used in the BPTA are "use" and "quantum of power to be transmitted" clarifies the intention of the parties at the time of execution of the BPTA i.e. transmission charges are payable only once the petitioner uses the transmission system and PGCIL has failed to understand the difference between "use" and LTOA. It has been submitted that LTOA enables it to use the transmission system which happens only when flow of power takes place. It has been stated that the impugned bill has been raised after about two years in the guise of correcting the billing mistake.

17. The petitioner in its rejoinder has prayed for exemption of sharing of the transmission charges in exercise of 'Power to Relax' under Regulation 44 of the Tariff Regulations on various grounds mentioned in the rejoinder and for the purpose of present petition it is not necessary to

take notice of the grounds narrated by the petitioner.

Analysis and Decision

18. We have heard learned counsel for the petitioner and GUVNL and have perused the relevant records.

19. There is no gain saying the fact that the transmission charges are payable by the petitioner in accordance with the Tariff Regulations for a period up to 30.6.2011 and the transmission charges thereafter are to regulated in accordance with the Sharing Regulations. The parties are *ad idem* on this issue. The petitioner's case as projected in the petition is that the impugned provisional bill has been prepared based on the Sharing Regulations, as amended and not on the basis of the Tariff Regulations. PGCIL in its reply has categorically stated that it has been prepared in accordance with the Tariff Regulations. Though in its rejoinder the petitioner has reiterated that the impugned provisional bill has been prepared by applying the PoC methodology, it has not made even a feeble attempt to establish its case apart from making the bald assertion. Therefore, we are inclined to accept PGCIL's claim that the impugned provisional bill is based on the Tariff Regulations. This should have end of the dispute.

20. In the rejoinder, the petitioner has stated that it is not liable to share for the transmission charges for Western and Northern Regions and the charges for inter-regional links since it is not using these transmission assets on long-term basis. In this regard, the petitioner has relied upon clause (1) of Regulation 33 of the Tariff Regulations and the following recitals in the BPTA :

"And whereas long term transmission customer has agreed to share and pay all the transmission charges of POWERGRID including Foreign Exchange Rate Variation (FERV), incentive, income tax and any other charges and taxes etc. for the use of its transmission system of Western region (WR), Northern Region (NR) and Southern Region (SR) including inter regional links/ULDC/NLDC charges and any additions thereof. M/s LANCO Kondapalli Power Private Limited shall bear the applicable regional transmission charges in a phased manner as per following quantum of power to be transmitted:

SR - 350MW, WR - 350 MW

NR- 150 MW(through WR)"

21. The petitioner has further stated that it is already sharing the transmission charges for Southern Region for the total capacity of 350 MW and is also paying the charges for availing short-term open access and in case it is made to share the transmission charges for Western and Northern Regions too, the total capacity for which the transmission charges are paid far exceeds the actual capacity of 350 MW.

22. As per the established procedure and practice, new causes cannot be raised in the rejoinder. However, in order to give quietus to the controversy, we examine the matter. The issue that requires to be decided is whether the petitioner has liability to share the transmission charges for Western and Northern Regions and the charges for inter-regional links for the period December 2009 when first unit of its generating station was commissioned to 30.6.2011. As has been noted above, the parties have agreed that the Tariff Regulations are applicable for the period up to 30.6.2011. Therefore, we have to consider the mechanism for sharing of the transmission charges laid down under the Tariff Regulations. Regulation 33, which is relevant for this purpose provides thus:

“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.”

23. Clause (1) of Regulation 33 defines the elements of the regional transmission charges payable by the ‘users’ of the regional transmission system. 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) that a generating company for whose generating station the associated transmission system has not been commissioned but such generating station is connected to the inter-State transmission system is liable to share the transmission charges applicable to the concerned region. It is an undisputed fact that there is no transmission system associated with the petitioner’s generating station located in Southern Region. Accordingly, the petitioner approached PGCIL for grant of LTOA to enable it to evacuate power outside Southern Region to Western and Northern Regions. Thus, LTOA was granted on the petitioner’s specific request. In this manner the petitioner’s generating station got connected to the inter-State transmission system of Western and Northern Regions, in addition of Southern Region. Therefore, by virtue of clause (2) of Regulation 33, the petitioner is liable to share the transmission charges for these regions.

24. During the course hearing it was vociferously argued by learned counsel for the petitioner that since it was not the ‘user’ of the transmission system of Western and Northern Regions, it has not incurred any liability to share the transmission charges for those regions. Learned

counsel relied upon clause (1) of Regulation 33 as well as the BPTA, which, according to learned counsel, contemplate sharing of the regional transmission charges by the users only. We are not inclined to accept the submission. The petitioner is deemed to be the user of the transmission system of Western and Northern Regions for the fact that the transmission capacity in these regions is earmarked for the petitioner who can use the capacity as per its requirement. No other person is being considered for LTOA against the transmission capacity reserved for the petitioner in the concerned regions. Further, clause (2) is the substantive provision which identifies the entities liable for sharing of the regional transmission charges and this clause does not limit the sharing by the users. Clause (1) describes only the manner of computation of the regional transmission charges. In any case, the petitioner had unequivocally agreed to share the transmission charges as seen from the following extract:

“Now, therefore in consideration of the premises and mutual agreements, covenants and conditions set forth herein, and in the Agreement as contained in the Annexure-1, Annexure-2 and Annexure-3 attached hereto which shall form an integral part of this Agreement, it is hereby agreed by and between the parties as follows:

a. Long term transmission customer shall share and pay the transmission charges including FERV, incentive, income-tax, any other charges and taxes etc of POWERGRID transmission system of WR, SR and NR including charges for inter regional links/ULDC/NLDC charges and any additional thereof.”

25. Clause (7) of Regulation 33 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 providing for payment of the transmission charges by the generating companies. The petitioner itself admits that it has not identified any beneficiary of its generating station in Western and Northern Regions for which it was granted LTOA. Therefore, in the absence of any identified beneficiaries the petitioner, generating company, cannot disown its liability to share the transmission charges for Western and Northern Regions in view of clause (7) of Regulation 33.

26. The next questions relates to the petitioner’s liability for sharing of the charges for

inter-regional assets. The petitioner has sought to insulate itself from the liability to pay the charges on the ground of non-user of the inter-regional links. Clause (3) of Regulation 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 only by the 'beneficiaries of the inter-State generating stations'. The question is whether the petitioner while availing long-term open access on the inter-State transmission system, can be said to be the beneficiary. 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". This issue was considered by the Commission in Petition No 29/2011 (Jindal Power Ltd Vs Gujarat Urja Vikas Nigam Ltd and others). The Commission in the order dated 8.5.2013, by majority, upheld the liability of the generating company not having the identified beneficiaries, to share the charges for inter-regional links even when it was not using these links. The relevant paragraphs of the majority order are extracted hereunder:

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

26. Even if it is accepted that the beneficiaries of the generating station are not identified there is no escape from the conclusion that the petitioner owes liability to share the transmission charges for the inter-regional links based on clause (7) of Regulation 33. Clause (7) provides that the transmission charges corresponding to any plant capacity for which a beneficiary has not been identified and contracted shall be paid by the concerned generating company. Regulation provides for sharing of the transmission charges, regional as well inter-regional. Clause (7) does not make any distinction between regional transmission charges and the transmission charges for inter-regional links. Therefore, the transmission charges for both types of assets are within the scope of clause (7). In case the beneficiary has been identified corresponding to whole or a part of the plant capacity, the transmission charges corresponding to such plant capacity are payable by the beneficiary under clause (3) of Regulation 33. However, for the balance unallocated capacity, if any, that is, the capacity for which the beneficiary has not been identified, the transmission charges are payable by the generating company granted the inter-State long-term access. The petitioner has not identified the beneficiary for supply of 500 MW of capacity for which it has been granted long-term access on the inter-State transmission system. Therefore, the petitioner cannot escape its liability to share the transmission of regional and inter-regional transmission assets.

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

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

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

29. The above observations of the Commission also make it explicit that the transmission charges for regional assets and the inter-regional form one package and are to be 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.

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

27. In view of the above discussion, we hold that the petitioner is liable to share the transmission charges for Western and Northern Regions as well as the charges for inter-regional links applicable to these regions in accordance with the Tariff Regulations.

28. The petitioner has sought exemption from sharing of the transmission charges and the charges for inter-regional links in exercise of 'Power to Relax' under Regulation 44 of the Tariff Regulations. It is an established principle of practice that such an issue raised for the first time in the rejoinder cannot be looked into.

29. In the light of above discussion, the petition is dismissed. There shall be no order as to costs.

SD/-

(M. Deena Dayalan)
Member

SD/-

(V. S. Verma)
Member