

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 63/MP/2013 with
I.A. Nos. 10/2013 and 27/2013**

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

**Date of Hearing: 10.09.2013
Date of Order: 21.02.2014**

In the matter of

Petition under Section 79 (1) (c) of the Electricity Act, 2003 read with Regulations 18 and 32 of 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 (a) relinquishment of long term of open access from 250 MW to 0 MW and (b) change in target region from Northern Region, Western Region to Southern Region.

**And
In the matter of**

Lanco Kondapalli Power Limited,
Lanco House, Plot No. 4, Software Units layout,
HITECH City, Mahapur, Hyderabad- 5000 081

....Petitioner

Vs

1. Power Grid Corporation of India Limited,
B-9, Qutab Institutional Area, Katwaria Sarai
New Delhi-110 016.
2. Western Regional Power Committee
F-3, MIDC Area, Andheri East
Mumbai-400 093.
3. Central Electricity Authority
Sewa Bhawan, Ramakrishna Puram
New Delhi-110 066.
4. Chhattisgarh State Power Generation Company Ltd.



Raipur.

5. State Load Despatch Centre
CS Power Transmission Co. Ltd.
(A successor Company of SCEB)
Danganiya, Raipur-492 010.
6. Gujarat State Electricity Corporation Ltd.
Vidyut Bhawan, Race Course
Vadodara-390 007.
7. Gujarat Energy Transmission Corporation Ltd.
Sardar Patel Vidyut Bhawan,
Race Course
Vadodara-390 007.
8. Dakshin Gujarat Vij Company Ltd.
Nana Varachha Road,
Kapodara
Surat-395 006.
9. Paschim Gujarat Vij Company Ltd.
Paschim Gujarat Vij Seva Sadan,
Nana Mave Road, Laxminagar,
Rajkot-360 004.
10. Madhya Gujarat Vij Company Ltd.
Sardar Patel Vidyut Bhawan,
Race Course, Vadodara-390 007.
11. Uttar Gujarat Vij Company Ltd.
UGVCL, Visnagar Road,
Mehsana-384 001.
12. State Load Despatch Centre
Gujarat Energy Transmission Co. Ltd.
132kV Gotri Sub Station Compound,
Near TB Hospital Gotri Road,
Vadodara-390 021.
13. Madhya Pradesh Generation Company
Block No. 9, Shakti Bhawan,
Rampur, Jabalpur-482 008.
14. Madhya Pradesh Power Transmission Company
Block No. 2, Shakti Bhawan



- Rampur, Jabalpur-482 008.
15. Madhya Pradesh Paschim Kshetra Vidyut Vitran Co. Ltd.
Indore.
 16. Madhya Pradesh Madhya Kshetra Vidyut Vitran Co. Ltd.
Bhopal.
 17. M. P. Poorv Kshetra Vidyut Vitran Company Ltd.
Shakti Bhawan, Jabalpur-482 008.
 18. State Load Despatch Centre
M. P. Power Transmission Co. Ltd.
Nauagaon
Rampur, Jabalpur-482 008.
 19. Maharashtra State Power Generation Company Ltd.
Vayushakti Nagar, Navi Mumbai
Maharashtra.
 20. Maharashtra State Electricity Transmission Co. Ltd.
Prakashganga, C-19, E-Block
Bandra Kurla Complex, Bandra (E)
Mumbai-51.
 21. Maharashtra State Electricity Distribution Co. Ltd.
Admin Building, 407, Rasta Peth
Pune, Maharashtra-411 001.
 22. State Load Despatch Centre
Thane-Belapur Road, P.O. Airoli
Navi Mumbai-400 708.
 23. Electricity Department
Government Bhawan, 4th Floor
Panji.
 24. Secretary (Power)
Plot No. 35, OI DC Complex
Near Fire Station, Somnath
Nani Daman-396 210.
 25. UTs of Daman and Diu and Dadra and Nagar Haveli
Electricity Department
Dadra & Nagar Haveli
Khanvel-396 230.

26. NTPC Ltd., NTPC Bhawan
SCOPE Complex
Institutional Area, Lodhi Road
New Delhi-110 003.
27. Nuclear Power Corporation of India Ltd.
Nabhikiya Urja Bhawan
Anushaktinagar, Mumbai-400 094.
28. Tata Power Trading Company Ltd.
Tata Power Mahalaxmi Receiving Station
Senapati Bapat Marg
Lower Parel, Mumbai-400 013.
29. NHPC Ltd.
NHPC Office Complex
Sector-33, Faridabad-121 003.
30. SJVN Ltd.
Himfed Building, New Shimla
Shimla-171 009.
31. THDC India Ltd.
Bhagirathipuram
Tehri, Uttaranchal.
32. Bhakra Beas Management Board
Sector-19B, Madhya Marg
Chandigarh-160 019.
33. Powergrid Corporation of India Ltd.
Saudamini, Plot No.2, Sector-29
Near IFFCO Chowk
Gurgaon-122 001.
34. National Load Dispatch Centre
18-A, Shaheed Jeet Singh Sansanwal Marg
Katwaria Sarai, New Delhi-110 016.
35. Delhi Transco Ltd.
Shakti Sadan, Kotla Marg
New Delhi-110 002.
36. Indraprastha Power Generation Co. Ltd.
Sub Station Building

Ring Road, ITO, Delhi-110 002.

37. Haryana Vidyut Prasaran Nigam Ltd.
Shakti Bhawan, Sector-6
Panchkula
38. State Load Despatch Centre
Haryana Vidyut Prasaran Nigam Ltd.
SLDC Complex, HVPNL
Sewah, Panipat-132 108.
39. Distribution Company of Haryana by Rotation
Uttar Haryana Bijli Vitran Nigam Ltd.
Vidyut Sadan, Plot No. C16
Sector-6, Panchkula
40. HPSEB Ltd.
Vidyut Bhawan
Shimla-171 004.
41. H. P. Power Transmission Corporation Ltd.
Barowalias House
Khalini, Shimla-171 002.
42. Civil Secretariat
Jammu/Srinagar.
43. Power Development Corporation
Jammu/Srinagar.
44. Punjab State Transmission Corporation Ltd.
Patiala.
45. Punjab State Power Corporation Ltd.
Patiala.
46. Rajastha Rajya Vidyut Prasaran Nigam Ltd.
Jaipur
47. State Load Despatch Centre
New SLDC Building
Heerapura, Jaipur.
48. Distribution Company of Rajasthan by Rotation
Jaipur.



49. UP Power Transmission Corporation Ltd.
Lucknow.
50. UP Rajya Vidyut Utpadan Nigam Ltd.
Lucknow.
51. State Load Despatch Centre
Lucknow.
52. Distribution Company of U.P. by Rotation
Lucknow.
53. Power Transmission Corporation of Uttarakhand Ltd. (PTCUL)
Dehradun.
54. Uttarakhand Jal Vidyut Nigam Ltd.
Maharani Bagh, G.S.M. Road,
Dehradun-248 006.
55. State Load Despatch Centre
400kV Substation, Veerbhadra
Rishikesh.
56. Uttarakhand Power Corporation Ltd.
Maharani Bagh, G.S.M. Road,
Dehradun-248 006.
57. Electricity Department
UT of Chandigarh.
58. Northern Regional Power Committee
18-A, Qutab Institutional Area
Shaheed Jeet Singh Marg
Katwaria Sarai
New Delhi-110 016.
59. Gujarat Urja Vikas Nigam Ltd.
Sardar Patel Vidyut Bhawan
Race Course, Vadodara-390 007.

Following were present:

- 1 Shri Amit Kapur, Advocate for the petitioner
2. Shri Aprova Mishra, Advocate for the petitioner
3. Shri Sadapurva Mukherjee, Advocate for the petitioner
4. Shri R.P. Padhi, PGCIL



5. Shri A.M.Pavgi, PGCIL
6. Shri V.Suresh, SRLDC
7. Shri L.N.Mansharamani, SLDC, Jaipur
8. Shri Darshan Singh, SLDC, Delhi
9. Shri Anand K.Ganesan, Advocate, GUVNL and KPTCL

ORDER

This petition has been filed by Lanco Kondapalli Power Limited under Section 79 (1) (c) of the Electricity Act, 2003 read with Regulations 18 and 32 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long Term and Medium Term Open Access in inter-State transmission and related matters) Regulations, 2009 (hereinafter referred to as "Connectivity Regulations") with the following prayers to:

- "(a) Direct PGCIL to relinquish the long term open access to Lanco from 250 MW to 0 MW;
- (b) Direct PGCIL to change the target region for supply for power from Western Region, Northern Region to Southern Region from the date of application dated 24.1.2012;
- (c) Direct PGCIL not to levy any compensation in terms of Regulation 18 of the Connectivity Regulations; and
- (d) Pass any such other and further reliefs as this Hon`ble Commission deems just and proper in the nature and circumstances of the present case."

2. The petitioner is a generating company and has established a gas-based power plant in the State of Andhra Pradesh with an installed capacity of 368 MW. In order to expand its gas based project, generating company commissioned phase-II with 366 MW capacity and fuel for the same was allocated from RIL KG-D-6 basin pursuant to the EGOM decision dated 28.5.2008. The petitioner submitted an application dated 25.2.2008 to PGCIL in the capacity of the Central Transmission

Utility for long-term open access (LTOA or LTA) for 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 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 for Southern Region held on 3.3.2009 whereat 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. 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. On 24.1.2012, the petitioner requested PGCIL to reduce LTOA from 350 MW to 250 MW and change in the beneficiary regions as the Southern Region and the target beneficiary State as Andhra Pradesh from the Northern Region and Western Region for the purpose of payment of point drawal charges due to following reasons:

- (a) The allocation of gas is made by EGoM only up to 70% of the installed capacity. i.e. 250 MW;
- (b) There is no stranded capacity due to reduction of long term open access;
- (c) Lanco in terms of EGoM policy has given undertaking to the effect that all power generated from the allocated gas shall be supplied to AP Discoms;
- (d) As per proviso to Regulation 12 (1) of the Connectivity Regulations an application is required to be filed if there is material change in the location of the application or change by more than 100 MW of power to be interchanged using the inter-State transmission system.

6. On 8.6.2012, PGCIL in terms of Regulation 18 of the Connectivity Regulations approved the relinquishment of LTOA from 350 MW to 250 MW with effect from 30.01.2012. PGCIL in its letter dated 8.6.2012 had clearly indicated that since there is no stranded capacity, there would not be any compensation applicable, both for the period falling short of 12 years of access rights as well for the period falling short of a notice period of one year. Subsequently, on 14.8.2012, the petitioner requested PGCIL to reduce the LTOA from 250 MW to 0 MW and change the target of beneficiary State to Andhra Pradesh due to non-availability of gas from KG-

D6 basin and discrepancy in fuel supply agreement. The request was followed by the petitioner's letter dated 4.9.2012, 6.10.2012 and 29.11.2012. However no decision has been taken by the respondent with regard to the relinquishment of long term open access by the petitioner. Pursuant to this, the petitioner is forced to pay transmission charges for LTOA granted to it in Northern and Western Regions.

Petitioner's Grievances

7. The petitioner has submitted that in terms of the Regulation 18 of the Connectivity Regulations, a long term open access customer can relinquish LTOA, fully or partly, before the expiry of full term of it by making payment of compensation for stranded capacity, if, any. The petitioner has submitted that since no system augmentation was done for its project, the existing (ISTS system) was erected based on the needs of the then existing beneficiaries with their consent to bear the costs thereof. As such, it cannot be claimed that any stranded capacity is being created in the ISTS due to reduction of LTOA grant to it. The petitioner has submitted that PGCIL has not taken any decision on its application dated 14.8.2012 for relinquishment of its LTOA from 250 MW to 0 MW despite repeated reminders. In the minutes of 14th SRPC meeting held on 16.4.2012, it was discussed that since inter-State Transmission System augmentation has not been carried out for the evacuation of power from Lanco, no compensation will be levied as per Regulation 18 of the Connectivity Regulations. Relying on Tamil Nadu Electricity Boards Vs. Sahelhi Exports Pvt. Ltd. [2011 ELR (APTEL)1702], the petitioner has submitted that



it is well settled principle of law that no compensation is payable if no stranded capacity is created on account of relinquishment.

8. The petitioner has submitted that it is required to supply its entire power to AP Discoms in terms of its undertaking dated 28.11.2011 which was tendered pursuant to Ministry of Power letter dated 30.9.2011. Regulation 11 of the Sharing Regulations provides for levying the demand PoC charges on generators where there is no identified beneficiary. The said PoC charges are in addition to the injection PoC charges. The petitioner has submitted that it will not be able to supply power in Northern and Western Regions as per Ministry of Power letters dated 30.9.2011, 22.3.2012 and 26.9.2012 along with its undertaking dated 28.11.2011. However, it is liable to make payments towards demand PoC charges in terms of Regulation 11 of the Sharing Regulations. The petitioner vide its several letters dated 24.12.2012, 21.3.2012, 2.4.2012 and 29.11.2012 had requested PGCIL to change its beneficiary region from Northern and Western Regions to Southern Region. However, till date no communication has been received from PGCIL in this regard. The petitioner has submitted that the issue was discussed in the 20th SRPC meeting held on 28.9.2012 and 15th Southern Region constituents meeting regarding LTA and connectivity application held on 4.1.2013 in which it was decided that the issue will be discussed in further meetings with all the SR constituents. However, in the absence of any decision, Lanco is required to make payments towards transmission charges for drawal point of injection.

9. The petitioner has filed an Interlocutory Application No. 10/2013 seeking interim direction to the respondent, not to raise any further bills for long term access available with the petitioner in Western Region and Northern Region in terms of CERC's Sharing Regulations.

10. The petitioner has further filed an Interlocutory Application No. 27/2013 seeking direction to PGCIL not to take any coercive action for non-payment of the following bills:

- (i) Bill No. B31306LAKPPLRO dated 4.7.2013 for the month of June, 2013 amounting to Rs. 4,00,64,655;
- (ii) Bill No. B11307LAKPPLRO dated 1.8.2013 for the month of July, 2013 amounting to Rs. 3.05,14,326;
- (iii) Bill No. B11307LAKPPLRI dated 8.8.2013 for the month of July, 2013 amounting to Rs. 11, 87,000.

11. The petitioner has submitted that he is suffering a loss of around Rs. 25 crore every month on account of non-availability of fuel. Since, Lanco is not using LTOA and not causing any stranded capacity in the system, it has been forced to pay LTOA charges. The same is adding additional burden over the Petitioner.

12. During the course of hearing on 28.5.2013, learned counsel for GUVNL submitted that any decision to change the target region for supply of power from Western Region/Northern Region to Southern Region should be taken after hearing the

beneficiaries of the Northern and Western Regions. He requested to issue direction to the petitioner to implead all beneficiaries of Northern and Western Regions. Accordingly, the petitioner was directed to implead the constituents of Northern and Western Regions as respondents to the petition. In compliance with our direction, the petitioner has impleaded the constituents of Northern and Western Regions as respondents to the petition.

Respondents Submissions

13. Southern Regional Load Despatch Centre has filed I.A. to implead SRLDC as respondent to the petition for submission of difficulties system operation due to change in target region/reduction of LTA/MTOA approval quantum. During the course of hearing on 16.7.2013, we directed the petitioner to implead SRLDC as respondent to the petition.

14. Southern Regional Load Despatch Centre (SRLDC) in its I.A. has submitted that PGCIL had granted LTOA to the petitioner after due system studies. On the request of the petitioner, LTOA was reduced from 350 MW to 250 MW by PGCIL in terms of Regulation 18 of the Connectivity Regulations. SRLDC has further submitted that since the target region for the petitioner was WR and NR, the system studies were carried out with assumptions of counter flow in the Southern Region network. While granting LTOA to the petitioner, no additional requirement of transmission network was envisaged by CTU. However, due to some reasons, while reducing LTOA from 350 MW to 250 MW, PGCIL had indicated that there is no stranded capacity, though it had the impact of increasing the loading of Vijaywada-Nellore 400 kV transmission lines.

SRLDC has submitted that the source and destination of each transaction plays a crucial role in determining the power flow on various transmission elements as well as net of power from through the inter-regional links. Based on the above approvals, and ATC of S1-S2 flow gate, CTU had granted further approval of LTA/MTOA transactions to other agencies/constituents. Any further reduction in LTOA granted to the petitioner may affect the import opportunities of SR constituents and since the present SR network is fully loaded at present, the petitioner may be directed to explore transactions through fresh LTOA/MTOA with entities in NEW grid as no associated evacuation transmission system plant for LANCO stage-II and the present SR network is fully loaded at present.

15. SRLDC has submitted that the power generated by the petitioner will generally flow through Vijayawada-Nellore-Almati/Sriperumpudur irrespective of its destination of sale of power to any of the entities in Southern Region and increase in loading on the said lines also significantly affects S1-S2 margin available for the constituents in S2 control area. Therefore, the petitioner's prayer for considering Southern Region as target region is not maintainable and it may affect the grid security. The petitioner may be permitted to make a fresh application for change of target region to ensure minimization of congestion issues during real time grid operation as well as secured grid operation.

16. The representative of the Southern Regional Load Despatch Center submitted that reduction in LTA capacity of the petitioner will cause reduction in injection of power at Vijayawada 400kV D/C transmission line. Accordingly there is almost no transmission capacity available for permitting the petitioner injection to SR. Infact on many occasions when there was no export transactions from LANCO, the import ATC from N-E-W grid SR was limited to offset the impact. The representative of SRLDC requested to direct CTU to conduct system studies with fresh base case on every request of reduction / withdrawal of LTA / MTOA approval quantum and come out with the details of impact on the existing transmission network, already approved LTA / MTOA transactions as well as requirement of system strengthening if any, on account of such reduction / withdrawal.

17. Gujarat Urja Vikas Nigam Limited (GUVNL) in its reply dated 25.7.2013 has brought to this Commission`s notice clause 4 of the BPTA which provides for payment of compensation in case of relinquishment by LTTC. GUVNL has further submitted that proviso to Regulation 18 of the Connectivity Regulations provides that the compensatory charges shall be paid for the stranded transmission capacity for a specified period does not mean that PGCIL needs to establish that the capacity has been stranded on account of relinquishment of the capacity by the petitioner/user. The stranded transmission capacity in the proviso refers to the capacity blocked for LTOA by the user i.e the petitioner. The petitioner had granted LTOA for 350 MW. Accordingly, the capacity of 350 MW was blocked for its use. If the petitioner seeks to relinquish any part of the above capacity, it is required to pay the compensatory

charges in terms of Regulation 18 of the Connectivity Regulations. GUVNL has submitted that the petitioner should be directed to pay the compensatory charges not only in respect of the relinquishment of 250 MW but also the additional 100 MW which was allowed to be relinquished by PGCIL on 8.1.2012. Any waiver from the payment of compensatory charges would result in other users of the inter-State Transmission System in the Northern and Western Regions cross-subsidizing the petitioner. As mentioned in Regulation '8' the compensatory transmission charges payable LANCO are to be utilized for reducing the revenue requirement of inter-state transmission licensee in the Northern and Western Region and consequently reduce the payment to be made by such other Long term access in the Northern and Western Regions. The petitioner has referred to various judgments of Hon`ble Supreme Court and High Court which are not relevant in the present case. GUVNL has suggested that in case LTA of the petitioner is reduced, it may be permitted to make afresh application for seeking connectivity and LTA. There is no force majeure affecting the performance of the petitioner's obligations assumed under TSA entered into with PGCIL. With regard to of the petitioner to change the target region for supply of power from Western /Northern Regions to Southern Region from the date of application dated 24.01.2012, the petitioner should make a fresh application for change of target region in accordance with Regulation 12 (1) of the Connectivity Regulations.

18. Learned counsel for GUVNL submitted that the petitioner is seeking to avoid payment of LTOA as per Regulation 18 of the Connectivity Regulations on the ground that the inter-State transmission system was not upgraded or established in pursuance

of the request for open access from the SR to WR. Such a plea of the petitioner is without any merit. The compensatory charges provided for in Regulation 18 of the Connectivity Regulations is a regulatory fee and is not dependent on any quid pro quo or services to be rendered to the petitioner. The decision taken in the 14th meeting of the Southern Regional Power Committee permitting the reduction of the long term capacity from 350 MW to 250 MW is required to be rectified as the same is inconsistent with the provisions of Regulation 18. The decision of the Appellate Tribunal for Electricity in the case of Tamil Nadu Electricity Board Vs. Saheli Export is distinguishable and has no relevance to the present case.

19. PGCIL has not filed any reply to the petition. However, PGCIL has filed its submissions vide affidavit dated 23.1.2014 which is extracted as under:

"2. The Lanoco Kondapalli Power Limited (LKPL) was granted Long Term Open Access (LTOA) under CERC Regulations, 2004 on 06.07.2009 for 350 MW with target beneficiaries in Western Region (200 MW) & Northern Region (150 MW) for its generation project near Vijayawada. The LTOA of LKPL basically envisaged long term power transfer from generation project in SR to target beneficiaries in WR and NR. The transmission system for effecting said LTOA involved utilization of Chandrapur 1000 MW HVDC back-to-back inter link between SR and WR besides regional grids of SR, WR and NR. Due to proximity of Ramangundam STPS (2100 MW) near Chandrapur HVDC the power transfer was to be effected through principal of displacement. It has been found that as till date of grant of LTOA to LKPL no long term allocation on inter-regional capacity of chandrapur HVDC back-to-back had been made and as the quantum was too small, no augmentation of transmission was found necessary except construction of dedicated transmission line for inter-connection of generation switchyard to nearest 400 KV substation of Vijaywada.

3. The LTOA was granted after the discussion in the Standing Committees of SR, WR & NR. Upon grant of LTOA, LKPL signed BPTA on 02.09.2009 and which became effective from September, 2009.

4. Subsequent to grant of LTOA to LKPL in 2009, number of proposed generation project in SR sought LTOA with target regions in NR and WR including gas based generation projects. Additionally the Krishnapatnam UMPP (4000 MW) generation project in SR also had share of 800 MW to Maharashtra in WR. Taking above into consideration it had been estimated that SR shall be surplus in power requiring power



transfer to target and identified beneficiaries in WR/NR. Accordingly, all future LTOA request were associated with inter-regional as well as regional strengthening. Within few years only due to delay in generation projects in Southern region, scenario has completely reversed, Southern Region which is facing huge deficit and the planned inter-regional links shall utilized for import of power.

5. The LKPL requested CTU on 24.01.2012, because of non-availability of gas, for reduction of LTA quantum from 350 MW to 250 MW and for changing the beneficiary as Andhra Pradesh (SR) in place of target beneficiaries in WR & NR. The request for reduction of LTA quantum from 350 MW to 250 MW has been considered in line with the Regulations-18 of the CERC Regulations, 2009. The issue for reduction in LTA quantum was deliberated in the 14th meeting of Southern Region Constituents on Connectivity & Long Term Access (LTA) held on 16th April, 2012 and upon approval of the Southern Region constituents, the reduction of LTA quantum from 350 MW to 250 MW was intimated to LKPL. However, CTU did not consider for change in target beneficiaries from WR & NR to SR, as LKPL did not furnish any long term PPA with SR constituents.

6. Subsequently, LKPL vide letter dated 14.08.2012 & 04.09.2012, have requested for reduction of LTA quantum from 250 MW to Zero MW citing non-availability of gas in KG D6 basin. The issue was deliberated in the 20th SRPC meeting held on 28.09.2012 and it was noted that constituents of SRPC had reservations in relinquishing the LTA rights by LKPL as reduction of LTOA quantum to zero shall effectively render the present LTA arrangement to mere Connectivity. In the same meeting POSOCO indicated that they have already filed a petition in CERC requesting that Long Term Access to be mandatory along with the Connectivity. Accordingly, the request of LKPL for reduction of LTA quantum of 250 MW to 0 MW from its generating plant has been kept under abeyance. The issue for reduction in LTOA quantum from 250 MW to 0 MW was further deliberated in the 15th meeting of Southern Region Constituents on Connectivity & Long Term Access held on 4th January, 2013 wherein the Southern Region constituents were not agreeable for reduction in the LTA quantum and proposed to discuss the matter in further meetings with all the SR constituents.

7. Here it is to mention that the LTOA is granted for long term use of 25 years and changes in power supply position cannot be predicted with certainty in the present era of high growth. Therefore, it is very difficult to predict that in future the scenario may not change and Southern Region becomes again surplus in power and utilize the inter-regional links for export of power. in the present arrangement of sharing of transmission charges, the transmission charges on account of all ISTS network are pooled and then shared by Designated ISTS Customers (DICs) in proportion to their capacity as per PoC mechanism. Naturally under such arrangement transmission charges on account of exit of one DIC shall have to be shared by remaining DICs.

8. Therefore, taking into consideration the long term (25 years) usage of ISTS network by LKPL, the uncertainty of regional power scenario and reluctance of existing

DICs for reduction of LTA quantum it is not possible to assess stranded capacity due to relinquishment of LTA."

20. During the course of hearing, learned counsel for the petitioner submitted as under:

- (a) In terms of Regulation 18 of the Connectivity Regulations, long term customer can relinquish its LTOA rights fully or partly by filing an application to CTU;
- (b) Having so admitted the position inexplicably, the respondent is not taking any decision on the requests by the petitioner to relinquish the entire LTOA. Consequentially, the petitioner is getting penalized and forced to pay transmission charges on account of delay on the part of the respondents in deciding the application by the petitioner.
- (c) In order to avoid any coercive steps, the petitioner has paid transmission bills dated 4.7.2013 and 1.8.2013.
- (d) Referring the judgments of Tamil Nadu Electricity Boards Vs. M/s Sahelhi Exports Pvt. Ltd. {(2011 ELR (APTEL) 1702)} and Chairman, TNEB Vs. Sree Rengaraaj {(2012 ELR (APTEL) 726)}, learned counsel for the petitioner submitted that no compensation is payable if there is no stranded capacity is created on account of relinquishment.

Analysis and Decision

21. We have heard learned counsels for the petitioner, GUVNL and the representatives of PGCIL and SRLDC and perused the relevant record of the case and also considered the submissions of the parties.

22. The petitioner has indicated that it was granted LTOA on 6.7.2009 for 350 MW and based on its request which was reduced to 250 MW on 8.6.2012 without payment of any compensation as there was no stranded capacity. However, none of the beneficiaries of the Southern Region, including SRLDC raised any objection to the affect that no stranded capacity will be created if the petitioner relinquishes its LTOA from 350 MW to 250 MW. GUVNL has submitted that the petitioner by applying for LTOA, has been given the vested right to use of the transmission system and as a result, other entities seeking such LTOA will lose priority. The petitioner has clarified that the power injected from its generating station will always flow from the Vijaywada-Nellore transmission line and further through the Nellore-Sriperumbudur line located in Andhra Pradesh, Karnataka, Tamil Nadu and Kerala, respectively, which were in existence before its generating station was commissioned. The said transmission lines have always been critically loaded in most instances and as result the corridors are being strengthened now. Therefore, there is never an instance when these assets remain unutilized due to relinquishment of LTOA by the petitioner and hence these assets do not qualify as stranded assets in terms of the Connectivity Regulations. The petitioner has submitted that due to non-availability of gas from KG D6 basin, it is unable to generate power from its generating station. The petitioner has submitted

that its application dated 24.1.2012 seeking reduction of LTOA from 350 MW to 250 was discussed in the 14th meeting of Southern Region constituents held on 16.4.2012 in which it was agreed that ISTS Augmentation has not been carried out for the power transfer requirement arising due to Lanco and while allowing reduction in LTOA, CTU in its letter dated 8.6.2012 had categorically recorded that since there is no stranded capacity, no compensation is payable by Lanco. According to GUVNL, as per Regulation 18 of the Connectivity Regulations, compensatory charges are to be paid for the organized development of the inter-State transmission network. However, in the present case, no such development of the inter-State network was undertaken by PGCIL, therefore no stranded capacity. The petitioner has submitted that PGCIL had not considered it as a long term customer except for its connectivity in Southern Region. GUVNL and SRLDC has submitted that the petitioner may be permitted to file fresh application for relinquishment of LTOA from 250 MW to 0 MW and change in target region. The petitioner has submitted that PGCIL has never directed LANCO to file a separate or fresh application in this regard. However, the petitioner is burdened with transmission charges due to delay in relinquishment of LTOA. The petitioner has submitted that clause 4 of the BPTA provides for an option for Lanco to relinquish its rights and obligations with the prior approval of this Commission and PGCIL. However, despite constant reminders, PGCIL has not taken any decision on its application.

23. SRLDC has stated that the LTA to the LANCO Kondapali Stage-II for WR and NR was given based on the system studies with assumption of counter flow in the Southern Region network. The reduction in Long Term Access to WR and NR would reduce the opportunity of SR constituent to that extent of availing power from NEW



Grid. According to the SRLDC, SR Region was considered a surplus in power requiring power transfer identified beneficiaries in targeted Western and Northern Region. However, due to delay in generation project in Southern Region, scenario has completely reversed, and Southern Region is facing there deficit now.

24. We are not inclined to accept the argument placed before us by SRLDC. In view of the fact that if the petitioner despite LTA does not generate power, the operational difficulties of SRLDC would not get eradicated and quantum of power import by SR would not increase irrespective of LTA. The quantum of power flow from WR to SR shall continue to be the same irrespective of the fact whether LANCO Kondapali generates power or not.

25. CTU has stated that taking into consideration the long term (25 years) usage of ISTS network by the petitioner, the uncertainty of regional power scenario and reluctance of existing DICs for reduction of LTA quantum, it is not possible to assess stranded capacity due to relinquishment of LTA of the petitioner. According to CTU, the issue was deliberated in the 20th SRPC meeting held on 28.9.2012 and it was noted that constituents of SRPC had reservations in relinquishing the LTA rights by the petitioner as reduction of LTOA quantum to zero shall effectively render the present LTA arrangement to mere connectivity. In the same meeting, POSOCO indicated that it has already filed petition before CERC requesting that Long Term Access to be mandatory along with the Connectivity. Accordingly, the request of the petitioner for reduction of

LTA quantum of 250 MW to 0 MW from its generating plant has been kept under abeyance.

26. It needs to be appreciated that provision of payment for stranded capacity was provided to ensure recovery of investment by the PGCIL. LTA applied by the petitioner did not entail any system stranding (a) capacity augmentation and no capital expenditure was incurred by CTU to meet its demand i.e. evacuation of power. Therefore, no asset would get stranded on account of the aforementioned reduction and there should not be any question of payment of compensation for stranded capacity. There is no provision in Connectivity Regulations for seeking consent of regional constituent for relinquishing LTA. The existing Connectivity Regulations provides for connectivity separate from LTA. The regional entity having connectivity has the liability to avail some form of open access and schedule power.

27. From the facts available on record it clearly emerges that with the reduction in transmission capacity allocated to the petitioner, there is no likelihood of the available transmission capacity for stage-II getting stranded. In the 14th meeting of SR constituents held on 16.4.2012 it was specifically indicated by PGCIL that taking into considering that (i) ISTS argumentation has not been carried out for the power transfer requirement of arising due to LKPL, (ii) regulation permits change of capacity up to 100 MW without filing fresh application, and (iii) regulation also provides for the long term customer to relinquish his rights, the request of Lanco may be agreed and Long-term Access intimation may be revised .

28. Since no system augmentation was done for Lanco, the existing (ISTS System) was erected based on the needs of the then existing beneficiaries with their consent to bear the costs thereof. Compensatory charges under Regulation 18 of the Connectivity Regulations are to be paid for the recovery of investment on the development of the inter-State transmission network to the extent of stranded capacity. Compensation is payable only for stranded transmission capacity caused on account of relinquishment and not merely on allocation/grant of LTOA. As such, it cannot be claimed that any stranded capacity is being rendered claimed in the ISTS due to reduction of long term open access granted to the petitioner. It is a well settled principle of law that no compensation is payable if there is no stranded capacity created on account of relinquishment. We, therefore, conclude that surrender of capacity by the petitioner neither render transmission capacity to be stranded nor does it affect the liability of others for payment of PoC charges.

29. Regulation 18 of the Connectivity Regulation with regard to relinquishment of access rights provides as under:

"Relinquishment of access rights

(1) A long term customer may relinquish the long-term access rights fully or partly before the expiry of the full term of long-term access, by making payment of compensation for stranded capacity as follows:

(a) *****

(b) Long-term customer who has not availed access rights for at least 12 (twelve) years-such customer shall pay an amount equal to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of 12 (twelve) years of access rights."



A long-term customer is liable to pay compensation of an amount equal to the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of twelve years of access rights in case he relinquishes access right before the expiry of period of 12 years. In the present case, we have held that the transmission capacity there will not be stranded. Therefore, the petitioner is not liable to pay any compensation in case it is allowed to surrender the capacity.

30. The petitioner has stated that the gas allocation to it was for a period of 5 years only. In the absence of long term fuel commitment for 25 years, it was unable to enter into long term contracts with any of the target beneficiaries in the Northern and Western Regions. Ministry of Power vide its letters dated 30.9.2011, 22.3.2012 and 26.9.2012 informed that natural gas from KG D6 basin will be supplied to it on the condition that the entire power will be supplied to the Andhra Pradesh Discoms. The petitioner has submitted that EGOM, in its decision dated 24.2.2012, decided that the existing and future allocation of NELP gas to power plants be subject to the condition that the entire electricity produced from the allocated gas shall only be sold to the distribution licensee at tariff determined or adopted by the tariff regulator of the generating station. According to the petitioner, the output of KG D6 basin gas has been reduced to 15% since August, 2011 and gas supply to the Lanco has stopped from 1.3.2013. Ministry of Power vide its notification dated 14.3.2013 advised all developers not to plan any new gas based generation till 2015. Therefore, under the

present scenario of uncertainty of gas, the petitioner is not able to sell power in Northern Region and Western Region. It is a matter of common knowledge that due to overall shortage of gas, capacity of many gas based projects is presently grossly underutilized and new projects are unable to take off. Therefore, due to non-availability of gas, the petitioner is unable to utilize LTA which is beyond the control of the petitioner. In the facts and the circumstances of the present case, we allow the petitioner to relinquish the long-term access rights to the tune of 250 MW, without payment of any compensation from the date of its application dated 14.8.2012. The petitioner shall be at liberty to make a fresh application at any stage for grant of access and the application, as and when made, shall be considered by PGCIL in accordance with the applicable Regulations.

31. The petition and IAs are disposed of with above directions.

Sd/-

(M. Deena Dayalan)
Member

Sd/-

(V.S. Verma)
Member

