

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 53/MP/2014**

**Coram**

**Shri Gireesh B Pradhan, Chairperson**

**Shri A.K. Singhal, Member**

**Shri A S Bakshi, Member**

**Date of Order : 17.9.2015**

**In the matter of**

Petition under Section 79 (1) (b) read with Section 79 (1) (c) and Section 79 (1) (f) of the Electricity Act, and Article 8 and Article 14 of the Power Purchase Agreement dated 21.03.2013 executed between EMCO Energy Limited and Electricity Department Dadra and Nagar Haveli for recovery of Capacity Charges arising due to non-scheduling of power as per the terms of the Power Purchase Agreement

**And in the matter of**

EMCO Energy Limited  
701/704, 7<sup>th</sup> Floor, Nirman Centre,  
A-Wing, Bandra Kurla Complex,  
Bandra, Mumbai-400051

**Petitioner**

**Vs**

1. DNH Power Distribution Corporation Limited  
(Formerly Known as Electricity Department, Dadra and Nagar Haveli)  
Vidyut Bhawan, Opp. Secretariat,  
Silvasa – 396230
2. Power Grid Corporation of India Ltd  
R-9, Qutab Institutional Area,  
Katwaria Sarai, New Delhi – 1100016
3. Gujarat Energy Transmission Corporation Ltd  
Sardar Patel Vidyut Bhawan,  
Race Course, Vadodara – 390007
4. Western Regional Load Despatch Centre,  
F-3, MIDC Area,  
Andheri (East), Mumbai - 400093

**Respondents**

**Parties Present**

- 1) Shri Amit Kapur, Advocate, EMCO
- 2) Shri Vishrev Mukherjee, Advocate, EMCO
- 3) Shri Akshat Jain, Advocate, EMCO
- 4) Shri Anand K. Ganesan, Advocate, DNH Power

- 5) Ms. Pragya Singh, WRLDC
- 6) Shri S. Usha, WRLDC

### ORDER

The Petitioner, EMCO Energy Limited, has filed the present petition claiming capacity charges from DNH Power Distribution Company Limited (DNH), Respondent No.1, for the entire contracted capacity of 200 MW on account of the inability of the petitioner to supply the contracted capacity due to the alleged failure of DNH to ensure sufficient capacity for evacuation of 200 MW from the Delivery Point and the constraints being faced at the Delivery Point due to overloading. The specific prayers made in the petition are as under:

“60. The Petitioner therefore most humbly and respectfully pray that this Hon’ble Commission be pleased to adjudicate upon the present Petition to:-

- (a) Declare that the Petitioner is eligible to claim Capacity Charges for the unscheduled contracted capacity for the months November, 2013-February, 2014 and continue to be eligible for the same until the Petitioner is granted open access for the scheduling of the entire contracted capacity as per the terms of the DNH PPA;
- (b) Direct the Respondent to pay Rs. 55,52,27,413 towards the capacity charges due for the period from November 2013 to February 2014 along with interest thereon in terms of the PPA; and
- (c) 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 has developed a coal-based thermal power plant with an installed capacity of 600 MW (2X300 MW) (**the generating station**) in the Waroora Taluka, District Chandrapur in the State of Maharashtra. The first unit of the generating station was commissioned on 19.3.2013 and the second unit on 1.9.2013. The petitioner entered into following longer-term Power Purchase Agreements (PPA) for sale of power from the generating station:

- (a) PPA dated 17.3.2010 with Maharashtra State Electricity Distribution Company Limited for 200 MW;

(b) PPA dated 1.3.2013 for 150 MW with GMR Energy Trading Limited with back to back PPA dated 27.11.2013 by GMR Energy Trading Limited with Tamil Nadu Generation and Distribution Company Limited;

(c) PPA dated 21.3.2013 with Electricity Department of Dadra and Nagar Haveli for 200 MW.

3. The petitioner was granted long-term access (**LTA**) for 520 MW by Respondent No 2, Power Grid Corporation of India Ltd (**PGCIL**) under letter dated 22.10.2007 as under:

(a) Madhya Pradesh Power Transmission Company Limited (MPPTCL): 200 MW,

(b) Maharashtra State Electricity Distribution Corporation Limited (MSEDCL): 200 MW,

(c) Gujarat Urja Vikas Nigam Limited (GUVNL): 100 MW. And

(d) Western Region Constituents: 20 MW.

4. DNH intended to procure power through competitive bidding on long-term basis and accordingly on 15.3.2012 issued RFP document under Case-1 Bidding. RFP document was amended on 23.5.2012. Under the amended RFP document, the proposed delivery point was Ambheti sub-station of PGCIL. The petitioner who submitted its bid was declared successful for supplying 200 MW of power to DNH at a levelised tariff of ₹4.618 per unit and the Letter of Intent dated 14.8.2012 was issued in its favour. DNH thereafter filed a petition before the Joint Electricity Regulatory Commission for State of Goa and Union Territories (**the Joint Commission**) for approval of the Power Purchase Agreement it had proposed to enter with the petitioner and for adoption of tariff. After approval by the Joint Commission by

order dated 19.2.2013, the petitioner executed the Power Purchase Agreement dated 21.3.2013 (**PPA**) with DNH for supply of power in the following manner:

<b>Scheduled Delivery Date</b>	<b>Scheduled Capacity (MW)</b>
1.4.2013	100 MW
1.7.2013	Additional 50 MW (Total 150 MW)
1.10.2013	Additional 50 MW (Total 200 MW)
<b>Total</b>	<b>200 MW</b>

5. As per Schedule 1 of the PPA, the Delivery Point is Ambheti 400/220 kV sub-station of PGCIL, Vapi Gujarat. As per the PPA, the load increase with effect from 1.7.2013 and 1.10.2013 was subject to the commissioning of the ICT-3 at Ambheti sub-station, which was commissioned in March, 2013.

6. Earlier, on receipt of Letter of Intent dated 14.8.2012 for supply of power to DNH, the petitioner vide its letter dated 1.9.2012 approached PGCIL for change in the LTA beneficiaries allocation. In terms of the said letter dated 1.9.2012, the petitioner requested PGCIL to change the beneficiaries of LTA as under:

<b>Ser No</b>	<b>Target Beneficiaries/ Region</b>	<b>LTA Quantum Allocated</b>	<b>Modification Sought</b>
1	MPPTCL (WR)	200 MW	100 MW
2	MSEDCL (WR)	200 MW	200 MW
3	GUVNL (WR)	100 MW	-
4	DNH(WR)	-	200 MW
5	WR constituents	20 MW	20 MW

7. In continuation of its earlier letter dated 1.9.2012, the petitioner again wrote letters dated 12.3.2013 and 14.3.2013 to PGCIL for change in the LTA allocations. On commissioning of the first unit of the generating station on 19.3.2013, the petitioner under its letter dated 21.3.2013 informed PGCIL about the commissioning of the generating station

and its plan to schedule power to DNH with effect from 1.4.2013 in accordance with the PPA. The petitioner again sought permission for the change in LTA beneficiaries.

8. PGCIL in its letter dated 28.3.2013 sought recommendations from Respondent No 3, Gujarat Energy Transmission Corporation Ltd (**GETCO**) on the petitioner's request for change of beneficiaries for LTA. GETCO did not agree to the change sought by the petitioner and conveyed its decision to PGCIL under its letter dated 12.4.2013. The reason for refusal of concurrence by GETCO conveyed in the said letter dated 12.4.2013 is extracted hereunder:

*"As we got little relief, to the tune of 60 MW on 66 kV system, after commissioning of 400/220 kV, 315 MVA (3rd) ICT at Vapi (PG) substation along with 400 kV D/C Navsari (PG) - Vapi (PG) line, but 66 kV network is fully loaded and our customers are denied power. In the existing conditions, UT of DD & DNH is drawing 200 MW from 66KV GETCO grid, in view of above, we don't recommend this 100 MW/200 MW LTA to DNH before transfer of entire load from GETCO network and also already granted 40.5 MW MTOA to DNH shall be withdrawn with immediate effect."*

9. The petitioner supplied 100 MW of power to DNH from April, 2013 to June, 2013 in terms of the PPA with Ambheti sub-station as the delivery point by availing short-term open access. The petitioner approached DNH for its consent for scheduling of 150 MW of power from July 2013, which was denied by DNH on the ground of overloading of Ambheti sub-station which was the agreed delivery point. Thus, the petitioner supplied 100 MW of power during July, 2013 as well. DNH granted consent for scheduling of 150 MW power for August and September, 2013 and 200 MW for October, 2013 which was scheduled by WRLDC, thereby the supply materialized.

10. On 29.8.2013 PGCIL had convened a meeting of the constituents of Western Region to discuss the applications for connectivity and open access received by it. On the

petitioner's request for LTA for supply of power to DNH, it was noted at the meeting that because of overloading of GETCO network, interconnection between GETCO and DNH had limited the transfer capacity to DNH. Accordingly, interconnection was being opened in a phased manner. It was decided that the petitioner would be allowed LTA for transfer of 200 MW power to DNH after commissioning of Kala sub-station, which was being implemented by PGCIL. It was also agreed at the meeting that till commissioning of Kala sub-station the petitioner could avail short-term open access for power supply to DNH.

11. The petitioner thereafter used to apply for short-term open access for conveyance of 200 MW power to DNH after obtaining consent of DNH for November, 2013 to February, 2014. However, power actually scheduled by WRLDC was 100 MW for November, 2013, 90 MW for December, 2013 and January, 2014 and 108 MW during February and March, 2014.

12. The petitioner raised invoices for capacity and energy charges for the months of April, 2013 to February, 2014 for actual supply and for capacity charge for power not scheduled by WRLDC. DNH has made payment against the invoices raised for actual supply, but has denied its liability to pay capacity charge for the power not scheduled by WRLDC. The petitioner wrote letters to DNH for payment of capacity charge relying upon clause 4.2.2 of Schedule 4 of the PPA. DNH has, however, repudiated the petitioner's claim.

13. Based on the averments in the petition that the petitioner has entered into PPAs with the distribution utilities in the States of Maharashtra and Tamil Nadu and the Union Territory of DNH, the petitioner has claimed that it has the composite scheme for generation and sale of electricity in more than one State and accordingly, the Central Commission has the jurisdiction to regulate its tariff under clause (b) of sub-section (1) of Section 79 of the

Electricity Act and adjudicate the tariff-related disputes under clause (f) of sub-section (1) of Section 79. The petitioner has also claimed that the dispute involves use of inter-State transmission of electricity, the regulation of which is a function assigned to the Commission under clause (c) of sub-section (1) of Section 79 and for this reason also, adjudication of the dispute is within the jurisdiction of the Commission under clause (f) of sub-section (1).

14. GETCO in the reply dated 6.6.2014 has stated that in its letter dated 12.4.2013 to PGCIL it did not recommend grant of LTA to the petitioner for transfer of power to DNH on account of the system constraints. GETCO has stated that even earlier in its letters dated 3.11.2012 and 22.2.2013 it had already apprised PGCIL of the constraints in its network. GETCO has stated that 300-400 MW load of DNH and Daman & Diu was being catered through its network causing critical loading. GETCO has given the load profile that caused system constraints at the relevant time.

15. PGCIL in its reply affidavit dated 6.6.2014 has endorsed the averments made by the petitioner regarding the deliberations at the meeting of the Western Region constituents held on 29.8.2013. PGCIL has stated that load of the Union Territories of Daman & Diu and Dadra & Nagar Haveli was being fed from 400/220 kV, 3X315 MVA transformer at Vapi sub-station of PGCIL and 66 kV lines from Vapi and Bhilad sub-station of GETCO. It has been stated that on account of the increased load of the two Union Territories, overloading of 200/66 kV transformers at Vapi and Bhilad sub-stations was being reported by GETCO for the previous 2 years. PGCIL has stated that in order to meet the increasing load of DNH, it has implemented 400/220 kV, 2X315 MVA sub-station at Kala in Union Territory of DNH through LILO of one ckt of 400 kV Vapi-Navasari D/C transmission line. However, for drawal of power from Kala sub-station, DNH was to implement 220 kV D/C lines to Kharadpada and Khadoli

sub-stations. These works were given to PGCIL in June, 2012 on deposit work basis with completion schedule of October, 2014. PGCIL has stated that 220 kV Kala-Khadoli D/C transmission line was expected to be completed by June, 2014. With the availability of the transmission line, there would be no constraints for supply of 200 MW power to DNH from ISTS.

16. WRLDC in its reply dated 1.7.2014 has stated that DNH in order to meet its load requirements is using 400 kV Vapi-Khadoli D/C transmission line and 400 kV Vapi-Kharadpada D/C transmission line and 66 kV Bhilad-Silvasa D/C transmission line of GETCO. WRLDC has stated that, as agreed at the meeting of Western Region constituents on 29.8.2013, LTA for power transfer of 200 MW power to DNH would be granted only after the availability of 400/220 kV Kala sub-station and that till commissioning of Kala sub-station and implementation of further evacuation transmission line by DNH, the petitioner could apply for short-term open access for the purpose of power supply to DNH. WRLDC has submitted that Kala sub-station along with 315 MVA, 400/220 kV ICT-1 and ICT-2 and 80 MVAR Bus Reactor has been commissioned on 1.1.2104, with LILO of 400 kV Vapi-Navasari transmission line at Kala sub-station. However, LTA could not be granted to the petitioner since 220 kV Kala-Khadoli D/C transmission line was not ready.

17. From 1.4.2013, power is being scheduled to DNH through short-term open access against long term margin surrendered by DNH by non-requisition of its allocation from Kawas, Gandhar and RGPPL. WRLDC has stated that for long-term scheduling of the power from petitioner to DNH, long-term access (LTA) and long-term PPA are the pre-requisites. However, as the petitioner has not been granted LTA WRLDC cannot schedule power to be supplied to DNH by long-term scheduling.



18. DNH has filed two separate reply-affidavits; one on 7.7.2014 and other on 8.8.2014. In the affidavit filed on 7.7.2014 DNH has raised the preliminary objection on maintainability of the petition alleging lack of jurisdiction of the Commission to adjudicate the dispute. According to DNH, PPAs executed by the petitioner with MSEDCL and TANGEDCO have different tariffs and were signed at different points of time and therefore, it cannot be said that the petitioner as a generating company has a composite scheme for generation and sale of electricity in more than one State. According to DNH, the necessary condition for invoking clause (b) of sub-section (1) of Section 79 is that sale of power by the generating company has to be at uniform tariff. DNH has pointed out that in accordance with paragraph 2.4 of the competitive bidding guidelines of the Central Government the Commission would have jurisdiction only when there is joint procurement by more than one distribution licensees on common terms and conditions including common tariff. DNH has submitted that the PPA was executed pursuant to competitive bidding process undertaken under Section 63 of the Electricity Act. The entire bidding process was undertaken under the supervision and control of the Joint Commission. Therefore, according to DNH, the jurisdiction to adjudicate dispute is vested in the Joint Commission under clause (f) of sub-section (1) of Section 86. The bidding documents were subject to the approval of the Joint Commission. The specific condition in the bidding process was that the entire responsibility with regard to the supply of electricity up to the periphery of DNH was that of the bidders. DNH has averred that the present claim of the petitioner is contrary to the very basis of the bidding process and the approval granted by the Joint Commission under Section 63. DNH has alleged that the petitioner, by filing the present petition is only seeking to avoid adjudication by the Joint Commission and the petitioner's approach is misconceived.

19. On merits, DNH in the affidavit filed on 8.8.2014 has pointed out that the basic condition in the bidding process was that the entire responsibility for delivery of electricity up to the delivery point which is the interconnection point of DNH with Ambheti sub-station was of the petitioner. Therefore, the petitioner was obligated to arrange for open access up to Ambheti sub-station, but the petitioner has not been granted LTA by PGCIL because GETCO opposed the petitioner's proposal. DNH has argued that there are no transmission constraints to take supply of electricity at the delivery point that is the STU interface at the Ambheti sub-station. DNH has averred that it took steps in a bona fide manner and to assist and help the petitioner in as much as shifting of load to another 400/220 kV sub-station of PGCIL at Kala from where a substantial portion of the existing capacity is to be shifted. By this shifting of the existing capacity, DNH would ensure that capacity at the Ambheti sub-station becomes available to the petitioner, despite the fact that under the PPA there is no such obligation of DNH. DNH has stated that the petitioner has been denied LTA up to Ambheti sub-station by PGCIL because of which power supply could not be availed. DNH has further stated that rejection of LTA to the petitioner for supply of 200 MW power to DNH was not on account of downstream constraints in the system of DNH or for non-availability of transmission corridor downstream of the Ambheti sub-station.

20. The petitioner has filed its rejoinders to the reply-affidavits filed by DNH. In its rejoinders the petitioner has generally reiterated the submissions made in the petition.

21. The fundamental dispute is between the petitioner and DNH who was the sole respondent impleaded by the petitioner. However, PGCIL, GETCO and WRLDC were impleaded as respondents at the instance of the Commission as the Commission desired to have their assistance in adjudication of the dispute raised by the petitioner.

## **Analysis and Decision**

22. We have heard learned counsel for the petitioner as well as DNH. We have perused the material available on record and have given thoughtful consideration to the issues involved. The following two issues arise for our consideration:

(a) Whether the petition is maintainable before the Commission?

(b) Whether DNH is liable to bear the capacity charges as claimed by the petitioner?

23. As regards the first issue, the petitioner has submitted that it has a composite scheme for generation and sale of electricity in more than one State and is therefore in tariff related matters it is amenable to the jurisdiction of the Commission by virtue of clause (b) of sub-Section (1) of Section 79 of the Electricity Act. Hence, according to the petitioner, adjudication of the dispute regarding recovery of the capacity charges falls within the jurisdiction of the Commission under clause (f) of sub-section (1) of Section 79. Per contra, DNH has argued that entire competitive bidding was carried out under the supervision and control of the Joint Commission and the tariff discovered in the process was also adopted by the Joint Commission. Therefore, it is only the Joint Commission which has the jurisdiction in the present case. DNH has argued that as per para 2.4 of the Bidding Guidelines, the Commission would have jurisdiction only when there is a joint procurement by more than one distribution licensees on common terms and conditions including common tariff. Since, sale of electricity by the petitioner to the utilities in the States of Maharashtra and Tamil Nadu is at different tariff than that agreed under the PPA with DNH, and PPAs with those utilities were executed on different dates independent of the PPA with DNH, the petitioner's generating

company cannot be said to be having the composite scheme, as required under Section 79 (1) (b) of the Act and therefore, the petition is not maintainable before the Commission.

24. The issue of jurisdiction raised by DNH is no longer integra so far as this Commission is concerned. The same issue had arisen before this Commission in Petition No. 155/MP/2012 (Adani Power Ltd Vs Uttar Haryana Bijli Vitran Nigam Ltd. The Commission in its order dated 16.10.2012 decided as under:

“23. The discussion in the preceding para leaves unanswered the crucial question whether it is necessary that sale of electricity to more than one State should be conceived at the very beginning. clause (b) of sub-section (1) of Section 79 does not prescribe so. The dictionary meanings of the phrase ‘enter into’ include ‘to participate in, engage in take an active role or interest in; to form a constituent or component or part or ingredient of; to become party to’. The starting point for participation or engagement or performance of active role for sale of electricity to more than one State can be any time after conception of the generating station. The generating company can be said to have entered into the composite scheme of generation and sale of electricity in more than one State once it commits sale of electricity in more than one State. Such a stage is reached when the generating company makes the binding commercial arrangement for supply of electricity to more than one State, that is, when it executes the PPAs in more than one State or enters into any other similar arrangement. To say that the composite scheme should be at the inception stage will amount to frustrating the legislative intent of the Act. Such a course is not open while interpreting a statutory provision. Further, such an interpretation will defeat the legislative mandate since in that case jurisdiction of this Commission can be ousted at the whims of the generating company. To illustrate this point, the generating company may initially sell electricity to one State and later on it may supply power to another State. Another situation is that the generating station may be commissioned as captive power plant but at subsequent stage the generating company may enter into the arrangement for sale of power to more than one State. If it is held that the composite scheme should be at the inception stage, such like cases would be taken out of the jurisdiction of this Commission. This could never be the intention of enacting clause (b) of sub-section (1) of Section 79. Therefore, it is our considered opinion that a generating company may enter into the composite scheme for generation and sale of electricity in more than one State at any time during the life of the generating station(s) owned by it. Any other interpretation will also impinge on the policy of common approach on the matters of tariff of the generating companies supplying electricity to more than one State enshrined in clause (b) of sub-section (1) of Section 79. In this view of the matter, it is concluded that Adani entered into composite scheme for generation and sale of electricity in more than one State on 7.8.2008 when it signed PPAs with the distribution companies in the State of Haryana. Adani has also stated that it is in the process of establishing generating stations in different States. For this reason also, Adani as a generating company, has the composite scheme for generation and sale of electricity in more than one State. Therefore, regulation of tariff of Adani as a generating company is within the jurisdiction of this Commission.”

25. The above view was reiterated by this Commission in the order dated 16.12.2013 in Petition Nos. 79/MP/2013 and 81/MP/2013 (GMR Kamalanga Energy Ltd and another Vs Dakshin Haryana Bijli Vitran Nigam Ltd and others), the relevant part of which is extracted as under:

“30. It is seen that the PPAs with the entities in the three States were executed on different points of time and for different quantum. The PPA with GRIDCO for supply of 262.5 MW of power was initially executed by the petitioner on 28.9.2006. Later on the revised PPA was entered into on 4.1.2011 for supply of power from Stage II of the Project having capacity of 350 MW. PTC signed agreements dated 7.8.2008 with the Haryana utilities and also signed the PPA dated 12.3.2009 with the petitioner as a back-to-back arrangement for supply of power. On 9.11.2011, the petitioner entered into PPA with Bihar State Electricity Board for supply of 282 MW gross power at Bihar STU bus-bar interconnection point. The tariff agreed to under the PPA was adopted by Bihar Electricity Regulatory Commission on 27.11.2012. Based on these facts, GRIDCO has urged that since PPAs have been entered into on different points of time, it cannot be said that the petitioner has the composite scheme for generation and sale of electricity in more than one State. The objection raise by GRIDCO should not detain us longer as this issue has already been decided by this Commission in its order dated 19.10.2012 in Petition No 155/MP/2012 (Adani Power Limited vs. Uttar Haryana Bijli Vidyut Nigam Ltd). This Commission has held that for the purpose of jurisdiction under clause (b) of sub-section (1) of Section 79 of the Electricity Act, 2003 it is not necessary that the composite scheme for generation and sale to more than one State should be at the beginning. It has been held by this Commission that the composite scheme can be entered into by the generating company at any stage subsequently and the jurisdiction gets vested in this Commission as and when the generating company enters into the composite scheme.”

26. It is pertinent to mention that the above orders of the Commission have been challenged by the aggrieved parties before the Appellate Tribunal for Electricity. At present, there is no stay on the operation of these orders. Therefore, we are deciding the issue of composite scheme in the present case in the light of our decisions quoted above, subject to the final decision by the Appellate Tribunal in the appeals.

27. In the present case, there is no dispute that the petitioner has directly executed agreements for supply of power to the State of Maharashtra and Union Territory of DNH (which is a 'State' as defined under the General Clauses Act). The petitioner is also supplying power to the State of Tamil Nadu through GMR Energy Trading Company Ltd. In

the light of the earlier decisions of this Commission noted above, there can be no doubt that the petitioner has the composite scheme for generation and sale of electricity in more than one State and as such falls within the jurisdiction of this Commission under clause (b) of sub-section (1) of Section 79 of the Electricity Act. Therefore, any dispute on tariff related matters is to be adjudicated by this Commission or referred for arbitration under clause (f) of sub-section (1) of Section 79 of the Electricity Act. DNH has relied upon the decision of the Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Ltd Vs Essar Power Ltd [(2008) 4 SCC 755]. In Gujarat Urja Vikas Nigam, the issue raised was whether the disputes between a licensee and the generating company were to be resolved by arbitration under the Arbitration and Conciliation Act, 1996 or under the Electricity Act. It was held by the Hon'ble Supreme Court that in such cases, the dispute has to be resolved by resorting to the mechanism provided under the Electricity Act. The issue raised by DNH in the present case was not decided by the Hon'ble Supreme Court, directly or indirectly. Accordingly, the preliminary objection as to the jurisdiction is decided in favour of the petitioner.

28. As regards the second issue, the petitioner's submission is that in terms of the RFP and DNH PPA, the petitioner is required to obtain long term open access for supply of power from the power station bus bar to the injection point and from injection to delivery point. The respondent is required to ensure availability of interconnection facilities at the delivery point for evacuation of power before the scheduled delivery date. As per the PPA, the delivery point is Ambheti 400/202 kV sub-station of PGCIL. The petitioner's contention is that delivery point as Ambheti sub-station was given by DNH in the RFP who was aware of the existing infrastructure for evacuation of power from the delivery point and the transmission network capabilities. Since, DNH choose Ambheti sub-station as the delivery point with full

knowledge of the existing capacity of load transfer at Ambheti sub-station and even after the commissioning of ICT-III in March, 2013, the sub-station is not capable of handling the increased load, the petitioner was not granted LTOA for supply of power to the respondent on account of insufficient capacity at delivery point. The petitioner has submitted that obligation for evacuation of power beyond delivery point is solely that of DNH. The petitioner has stated that it is responsible for transmission of power from the generating station to the delivery point which is Ambheti sub-station of PGCIL and thereafter it was the responsibility of DNH to ensure existence of sufficient facilities at the delivery point for further evacuation of power. Based on these submissions, the petitioner has urged that liability to pay the capacity charges for the supply not scheduled by WRLDC be fastened to DNH. DNH has, however, argued that there were no transmission constraints for conveyance of electricity beyond the delivery point but the petitioner did not deliver power at the delivery point since it was not allowed open access for the required capacity. Accordingly, DNH does not have any liability towards the petitioner.

29. RFP document issued by DNH made the following provisions in Section 1, para 1.3.1 titled "Scope" in relation to transmission access:

"Seller shall be responsible for arranging transmission access from the Injection Point to the Delivery Point. Such arrangement shall be as per the regulations specified by the Appropriate Commission, as amended from time to time.

The Seller shall initiate action for development of the requisite transmission system from the Injection Point to the Delivery Point by co-coordinating with the CTU and concerned STU in accordance with the relevant regulations of the Appropriate Commission.

The Seller shall be wholly responsible to arrange transmission access from the Interconnection Point to the Injection Point.

The Procurer shall be wholly responsible to arrange transmission access from the station switchyard of the generating source being in the same state as that of the Procurer."

30. From the above provisions of the RFP document, it is seen that it was the responsibility of the seller (petitioner) to arrange for the transmission access up to the delivery point.

31. Article 3 of the PPA specifies the conditions subsequent to be satisfied by the seller and the buyer. Clause (c) of Article 3.1.1 provides for the following:

“(c) The Seller shall have obtained the necessary permission for long term open access or short term open access (for the initial period) as deemed necessary for the transmission system from the Injection Point up to the Delivery Point and have executed the Transmission Service Agreement with the transmission licensee for transmission of power from the Injection Point up to the Delivery Point and provided a copy of the same to the Procurer.”

32. Clause (f) of Article 3.1.1 of the PPA further provides as under:

“The Seller shall have obtained all Consents, Clearances and Permits required for supply of power to the Procurer as per the terms of this Agreement. ....”

33. The PPA further reinforces the obligation on the seller to ensure delivery of power at the delivery point as it provides that the seller has to obtain the open access, long-term or short-term, up to the delivery point and has to execute the Transmission Service Agreement with the transmission licensee for conveyance of power from the injection point to the delivery point and provide a copy of the same to the procurer. Under the terms of the PPA, the procurer has the obligation to off-take power beyond the delivery point to the load centre. In view of the agreed terms, the petitioner had the sole responsibility to arrange for open access upto the delivery point for sale of power to DNH. The petitioner had originally got LTA to MSEDCL, MPPTCL, GUVNL and WR constituents. After the petitioner was selected as the successful bidder to supply 200 MW power to DNH, it applied for revision of long term



access. PGCIL consulted GETCO for its concurrence which was denied in the following terms:

“As we got little relief, to the tune of 60 MW on 66 kV system, after commissioning of 400/220 kV, 315 MVA (3<sup>rd</sup>) ICT at Vapi (PG) substation along with 400 kV D/C Navsari (PG)-Vapi (PG), line, but 66 kV network is fully loaded and our customers are denied power. In the existing conditions, UT of DD & DNH is drawing 200 MW from 66kV GETCO grid.

In view of above, we don't recommend this 100 MW/200 MW LTA to DNH before transfer to entire load from GETCO network and also already granted 40.5 MW MTOA to DNH shall be withdrawn with immediate effect.”

Thereafter the issue was discussed by PGCIL in the 18<sup>th</sup> meeting of the Western Region Constituents held on 29.8.2013 in which the following decisions were taken:

“The requirement of transmission system with earlier indicated beneficiaries as well as with modified beneficiaries as required by GMR EMCO, has been examined and it is observed that the existing transmission system is adequate to transfer power for earlier beneficiaries as well as modified beneficiaries, except DNH. Presently, UT DNH has been drawing its share through interconnection with”

- (a) ISTS system at 220 kV Vapi sub-station
- (b) GETCO system at 220 kV and 66 kV level.

Recently due to overloading of GETCO network, the interconnections between UT DNH and GETCO are being opened in a phased manner. This has limited the transfer capacity to DNH. However, a 400/220 kV substation at Kala in UT of DNH is under implementation by PGCIL. It is proposed to modify the beneficiaries of GMR EMCO as per their request after availability of 400/220 kV Kala substation.

After discussion, it was agreed to grant LTA to GMR EMCO for 520 MW:- MPPTCL-100 MW, MSCDCL-200 MW, WR-20 MW with existing system and DNH-200 MW with the availability of 400/220 kV Kala substation being implemented by PGCIL. Till then, GMR EMCO may apply short-term open access for power supply to DNH.”

Thus, the petitioner was not granted LTA by PGCIL due to constraints in the system and DNH has in way contributed to it. Moreover, as per Article 4.2.1(d) of the PPA, the seller is responsible at its own cost and risk to obtain open access for transmission of aggregated contracted capacity of power from the injection point to the delivery point. After denial of long term access, the petitioner supplied power by availing short term open access which was

granted subject to the availability of transmission margin as indicated in para 34 of the petition. Since the petitioner could not meet the requirement of availing the open access for the transmission of aggregated contracted capacity of power in terms of Article 4.2.1 (d) of the PPA, the petitioner has to bear the consequence of the same in terms of the PPA.

34. For the foregoing reasons, the petitioner is not entitled to any reliefs prayed for and the petition is accordingly dismissed.

sd/-  
**(A.S. Bakshi)**  
Member

sd/-  
**(A.K. Singhal)**  
Member

sd/-  
**(Gireesh B Pradhan)**  
Chairperson