

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 210/MP/2014
With I.A. 47/2014**

**Coram:
ShriGireesh B. Pradhan, Chairperson
ShriA.K. Singal, Member
Shri A.S. Bakshi, Member**

**Date of Hearing: 18.11.2014
Date of Order: 16.10.2015**

In the matter of:

Petition under Section 79 (1) (c) of the Electricity Act, 2003 read with Regulation 35 of Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2004.

**And
In the matter of:**

AD Hydro Power Limited
Bhilwara Towers,
A-12, Sector-1
Noida-201 301

...Petitioner

Vs

1. CTU (Planning)
Power Grid Corporation of India Ltd.
Saudamini Plot No. 2, Sector 29,
Gurgaon-122 001
2. Directorate of Energy
Govt. of Himachal Pradesh
Shanti Bhawan, Phase-III, Sector VI,
New Shimla, Shimla-171 009
3. Himachal Pradesh State Electricity Board Ltd.
Kumar House, Vidyut Bhawan,
Shimla-171 004
Himachal Pradesh
4. Northern Regional Power Committee
18-A, S. Jeet Singh Marg,

Katwaria Sarai,
New Delhi-110 016

...Respondents

Following were present:

Ms. Seema Jain, Advocate for the petitioner
Shri Sumit Garg, AD Hydro
Shri P.K.Giri, AD Hydro
Ms. Kakuli Sen Gupta, AD Hydro
Shri Sanjay Jana, AD Hydro
Shri Pradeep Chauhan, Directorate of Energy, Govt. of HP
Shri A.M.Pavgi, PGCIL

ORDER

The petitioner, AD Hydro Power Private Ltd., has filed the present petition under Section 79 (1) (c) of the Electricity Act, 2003 (Act) read with Regulation 35 of Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2004 with the following prayers:

- “(a) Pass an order For refund Rs. 10,68,51,147 from Respondent No. 1 and/ or Respondent No. 2 towards the transmission charges paid by the Petitioner on free power along with interest thereon.
- (b) Direct Respondent No. 1 to raise invoices towards transmission of free power on Respondent No.2 or reduce the LTOA of the petitioner.
- (c) Pass any other order or orders that this Commission deems fit in the facts and circumstances of the case.”

Facts of the case:

2. The petitioner has set up a 192 MW (2X96 MW) Hydro Electric Power plant at Prini, Tehsil Manali, Distt. Kullu in Himachal Pradesh (hereinafter referred to as the project). On 22.2.2001, an Implementation Agreement (IA) was signed between the Government of Himachal Pradesh and Rajasthan Spinning and weaving Mills Ltd. for implementation of the project. In terms of clause 4.17 of the IA to take up the 192 MW

Power, the petitioner's company was conceived to implement the project. In terms of clause 5.1 of the IA, the petitioner was required to supply free power to the Government of Himachal Pradesh (Respondent No. 2 herein) as under:

“Government Supply:

The company shall supply to the Government or its agent during the agreement period at the interconnection point without any cost or charges to the government, the quantum of electrical energy generated as specified below (Government Supply):-

(i)	Commencing from the date of synchronization of the first Unit and for the first twelve (12) years from Commercial Operation Date (COD) of the Project	Twelve (12) percent of Deliverable Energy.
ii)	For the next twenty eight (28) years after expiry of the period specified in (i) above	Eighteen (18) percent of Deliverable Energy.

3. In terms of clause 1.2.37 read with obligations of Government of Himachal Pradesh under clause 4.9 and the obligations of the petitioner under clause 5.18 of the IA, the power generated from the project is required to be transferred and sold outside the State of Himachal Pradesh.

4. Due to non-availability of adequate State transmission network in the vicinity of the project, clause 5.18 of the IA provided that the petitioner shall approach PGCIL to provide suitable integrated transmission system or otherwise shall tie up the arrangements for evacuation of power matching with commissioning of the project in consultation with CEA/HPSEB and PGCIL. The petitioner on 18.7.2005 made an application to CTU for grant of Long Term Open Access (LTOA) under the provisions of the Central Electricity Regulatory Commission (Open Access in Inter State Transmission) Regulations, 2004, as amended from time to time (OA Regulations) for transmission of energy outside the State. On 21.7.2006, CTU granted LTOA to the

petitioner from PGCIL's Pooling Point at Panarasa. Due to delay in commissioning of the Parbati Pooling Point, a decision was taken during the LTOA meeting held on 25.4.2007 to revise the pooling point from Panarasa to Nalagarh. Accordingly, CTU granted revised LTA to the petitioner with interconnection point at Nalagarh sub-station on 26.4.2007 which contained a condition that the petitioner would construct a 175 km long 220 kV Double Circuit ADHPL-Nalagarh dedicated transmission system to inject the entire power at Nalagarh sub-station of PGCIL as per scheme approved in the LTOA meeting. The LTA intimation further contained a condition that the petitioner would have to sign Bulk Power Transmission Agreement with PGCIL for sharing of the regional transmissions charges. Since no system strengthening was involved, PGCIL granted connectivity and LTA to the petitioner who was required to construct two nos. of additional 220 kV bays at its own cost at Nalagarh sub-station. Accordingly, the petitioner constructed the 220 kV Double Circuit ADHPL-Nalagarh dedicated transmission system and two bays at Nalagarh sub-station of PGCIL to facilitate evacuation of power from the project including the free power to Government of Himachal Pradesh.

5. The petitioner during the LTOA meeting held on 30.5.2009 brought to the notice of PGCIL that it was required to supply 12% free power for the first 12 years and 18% after 12 years to the Government of Himachal Pradesh. In response, PGCIL stated that since all power from the project would be injected into ISTS grid, the transmission charges would be paid for full capacity and in case the direct drawl arrangements are made without utilizing ISTS system for drawl of free power, the transmission charges for free power would not be applicable.

6. Pursuant to decision taken during the LTOA meeting held on 30.5.2009,PGCIL revised LTA vide its letter dated 17.7.2007 for an installed capacity of 192 MW indicating the drawee utility as “Northern Region Utilities”. On 11.9.2009, the petitioner signed BPTA with PGCIL. As per the provisions of the BPTA, the petitioner is required to pay the applicable charges and other charges corresponding to 192 MW and in case of direct drawl arrangement for direct drawl of free power to Govt. of Himachal Pradesh, without utilizing ISTS system, the transmission charges for such free power would not be applicable to the petitioner from the date of such arrangement. The petitioner started injection of power from the project since 2010 at Nalagarh sub-station of PGCIL through its dedicated transmission system which included the free power component to the Govt. of HP. The petitioner has been paying the transmission charges for the entire quantum of power transmitted beyond inter-connection point which includes free power.

7. The petitioner has submitted that it took up the matter with Government of Himachal Pradesh regarding reimbursement of transmission charges for free power which it was not required to pay in terms of contractual obligations under the IA signed between the petitioner and Government of Himachal Pradesh. The petitioner has submitted that despite repeated requests, the Government of Himachal Pradesh declined to reimburse the transmission charges for evacuation of free power and advised the petitioner to withdraw its claim in this regard. The petitioner has submitted that since a substantial amount of Rs.10,68,51,157 has been paid to PGCIL as on 31.3.2014 for supply of free power of Govt. of Himachal Pradesh, the petitioner vide letter dated 19.5.2014 requested the CTU to (i) revise the long term

access (LTA) by considering the free power component to the account of Govt. of HP; (ii) take up the matter with Govt. of Himachal Pradesh in NRPC forum; (iii) raise the PoC invoices towards free power share directly on Govt. of Himachal Pradesh to recover the transmission charges and (iv) give credit of transmission charges already paid on free power to the petitioner.

8. The issue was taken up by the petitioner in the 26th meeting of commercial sub-committee of Northern Regional Power Committee held on 30.5.2014 in which CTU informed that in case, Himachal Pradesh State Electricity Board (HPSEB) agrees to bear the transmission charges for evacuation of free power, the request of the petitioner can be considered as the total quantum of LTOA shall remain the same. However, the representative of HPSEB declined to give any commitment in this regard as the free power from the project belonged to Government of Himachal Pradesh. It was decided in the said meeting that the petitioner would take up the matter with Government of Himachal Pradesh and in the event of the matter not being resolved, the petitioner should approach the Commission for suitable directions.

9. Pursuant to the decision taken in the said meeting dated 30.5.014, the petitioner vide letter dated 11.7.2014 requested Government of Himachal Pradesh to reimburse the transmission charges paid by the petitioner for evacuation of free power at the earliest and to pay all the transmission charges for free power directly to CTU in future. In response, Government of Himachal Pradesh vide its letter dated 4.8.2014 informed the petitioner that the Government of Himachal Pradesh is selling its share

of free power in the project in the short term power market and is paying the applicable open access charges and therefore, the claim of the petitioner regarding transmission charges for 12% free power is not tenable. The petitioner is stated to be making payment to PGCIL towards transmission charges after deducting the transmission charges applicable on free power share from April, 2014.

10. PGCIL vide its letter dated 23.7.2014 informed the petitioner that the petitioner is liable to make payment of transmission charges for 192 MW power from the project as per the provisions of the BPTA and the dispute regarding liability for transmission charges for 12% of free power is a bilateral issue between the petitioner and the Government of Himachal Pradesh and no payments to CTU can be withheld by the petitioner on account of the above issue as advised in the commercial sub-committee meeting of NRPC dated 30.5.2014. In the above background, the petitioner has filed the present petition seeking directions to PGCIL to refund the transmission charges already recovered for 12% of free power and to raise invoice for the same on Government of Himachal Pradesh.

Submission of the Petitioner:

11. The petitioner has submitted that PGCIL coerced it into obtaining LTOA equivalent to its installed capacity despite its submission that free power was being given to the Government of Himachal Pradesh. The petitioner has submitted the action of PGCIL is contrary to its position in respect of other generators who have been granted LTOA after deducting free power being supplied to the Government of Himachal Pradesh. The petitioner has submitted that such discriminatory approach

of PGCIL is against the principles of natural justice and in gross violation of Article 14 of Constitution of India. The petitioner has submitted that it has already complied with all obligations for delivery of free power at the inter-connection point by providing the dedicated transmission system to the physical touch point at Nalagarh sub-station at its own cost. In terms of the IA, the petitioner is liable to supply free power at inter-connection point to the Government of Himachal Pradesh. After delivery at the inter-connection point, free power becomes the property of the Government of Himachal Pradesh and any expenses with regard to the evacuation of free power is to be incurred by the Government of Himachal Pradesh and not by the petitioner.

12. The petitioner has filed Interlocutory Application (IA) No. 47/2014 seeking direction to CTU not to demand the transmission charges/encash Letter of Credit (LC) on free power from the petitioner till resolution of the dispute raised in the petition. The petitioner has submitted that CTU vide its letter dated 3.9.2014 requested the petitioner to pay the pending dues which are more than 60 days latest by 8.9.2014 and make full payments against the PoC bills failing which LC would be encashed towards the pending dues. The petitioner has submitted that coerced by the letter of CTU, the petitioner released the entire payment of Rs. 1,07,49,346/- towards the transmission charges applicable on 12% free power 'under protest'.

13. The matter was heard for admission on 14.10.2014. After hearing the counsel for the petitioner and representative of PGCIL, the Commission directed the parties to file their replies. The Commission directed PGCIL to submit the information in respect of the LTOA granted to all hydro generators who sought the access to ISTS

alongwith treatment of free power thereof. Replies to the petition have been filed by PGCIL and Government of Himachal Pradesh.

Replies of Respondents:

14. PGCIL in its reply dated 11.11.2014 has submitted that the petitioner was granted LTA for 192 MW and signed BPTA with CTU on 11.9.2009. As per Clause 2 of the BPTA, the petitioner is required to pay transmission charges corresponding to 192 MW and in case of direct drawal arrangement for free power to Government of Himachal Pradesh without utilizing the ISTS, the transmission charges for such power would not be applicable on the petitioner from the date of such arrangement. PGCIL has submitted that since no such direct arrangement has been made for drawl of free power, billing for the transmission charges is being continued on the petitioner. PGCIL has submitted the issue was raised by the petitioner in NRPC forum and NRPC advised the petitioner to take up the matter with Government of Himachal Pradesh or approach the Commission for appropriate directions. PGCIL has submitted that LTOAs/LTAs have been granted to the applicants as per the LTA quantum applied by them. PGCIL has submitted that the following hydro generators were granted LTA by CTU:

- (a) AD Hydro-Allian Duhangan HEP Project-192 MW
- (b) JPVL-Karcham Wangtoo HEP-880 MW
- (c) HSPL-Sorang HEP-100 MW
- (d) Lanco Green-Budhil BEP- 70 MW
- (e) Everest Power-Malana-86 MW

15. The petitioner in its rejoinder dated 13.11.2014 has submitted that PGCIL has furnished the details of LTA granted to the Designated ISTS Customers (DICs) without furnishing the installed capacity of such DICs. The petitioner has submitted that PGCIL has given LTA to some generators in the region after deducting the free power. There is no reason as to why the petitioner could not be granted LTA after deducting free power despite the petitioner having raised the issue with PGCIL in the Long Term Open Access meeting held on 30.5.2009 and PGCIL having granted LTAs to other generators in the region after deducting the quantum of free power.

16. Government of Himachal Pradesh in its reply dated 29.10.2014 has submitted as under:

(a) As per the prevailing hydro policy of the State, Government of Himachal Pradesh is entitled for free power from the petitioner`s project.

(b) As per clause 5.1 of the IA, the petitioner is required to supply power to the Government of Himachal Pradesh or its agent during the agreement period at the Inter-connection point, without any cost or charges. As per clause 1.2.28 of the IA, inter-connection point means the physical touch point where the transmission system of PGCIL or of the transmission utility evacuating power from the project is connected to the project.

(c) Since the petitioner is supplying free power at Nalagarh sub-station of PGCIL which is the inter-connection point of project transmission line with the

PGCIL transmission system, the petitioner is liable to pay all the transmission charges as per the IA.

(d) State of Himachal Pradesh is surplus in power during summer/monsoon months and is deficit during winter period. Considering this aspect, Government of Himachal Pradesh is selling its power including free power from the petitioner's project in the short term market and utilizing the free power within the State to meet its requirements during winter months. Accordingly, Government of Himachal Pradesh is paying/bearing the short term open access transmission charges and losses as per the applicable regulations.

(e) Government of Himachal Pradesh has not given its consent to the petitioner to avail LTA for free power and is making efforts to tie up this free power on long/medium term with any beneficiaries. Therefore, there is no question of paying long term open access transmission charges as power is being sold presently through short term mode. Government of Himachal Pradesh is bearing double transmission charges and losses for its share in Central/joint sector hydro power stations allocated at HP periphery and suffering a loss on this account as almost whole free power is being sold in short term market during summer/monsoon months.

(f) The claim raised by the petitioner to the Government of Himachal Pradesh on account of transmission charges for free power share is not tenable, as Govt. of HP Government of Himachal Pradesh is already paying

STOA charges for utilizing PGCIL system as per applicable Regulations of the Commission.

17. The petitioner in its rejoinder dated 12.11.2014 to the reply of Govt. of HP has submitted as under:

(a) As per clauses 4.9 and 5.18 of the IA, the petitioner is required to tie up with PGCIL for taking the power from the project out of the State. Accordingly, the petitioner had to tie up the evacuation of power including free power with PGCIL due to non-availability of State Transmission Network.

(b) The application for grant of LTOA was in terms of the conditions of the IA for evacuating the power from the project out of the State and in the purview of PGCIL and therefore, there was no further requirement of concurring with Government of Himachal Pradesh before applying for LTOA to PGCIL.

(c) PGCIL despite knowing the fact that Government of Himachal Pradesh is an identified beneficiary of free power, while granting the revised LTOA, considered the applicability of transmission charges a bilateral issue between the petitioner and Government of Himachal Pradesh and therefore, the petitioner raised the bills on Government of Himachal Pradesh.

18. During the course of hearing on 18.11.2014, the Commission directed PGCIL to submit the details regarding inter-State open access for all hydro generating stations in India. PGCIL vide its affidavit dated 10.12.2014 has submitted the details called for.

PGCIL has submitted the names of hydro generating stations connected to ISTS, their installed capacity, quantum of LTA sought as per LTA application, quantum of LTA granted by PGCIL and liability of transmission charges for free power component. PGCIL has submitted that most of the hydro generators such as KSK Dibbin Power Pvt. Ltd., Patel Hydro Power Pvt. Ltd., SEW Nafra Power Corporation Ltd., PTC India Ltd. (Teesta-III), Sneha Kinetic Power Project Ltd. etc., had applied for LTA for entire quantum of power which may include free power and LTA was granted to them as per their LTA applications. PGCIL has submitted that the petitioner had applied for LTA for 192 MW and had agreed for payment of entire transmission charges including free power. The petitioner had also agreed that in case direct drawl arrangements are made for free power to home State without utilizing the ISTS, the transmission charges for such power would not be applicable on the petitioner from that date onwards. Since presently no such drawl arrangements have been made for free power, the transmission charges corresponding to free power is applicable to the petitioner. PGCIL has further stated that there are certain other cases where PGCIL has granted LTA for reduced quantum at the request of LTA applicants after reducing free power component. In case of Lanco Hydro Energy Private Limited (installed capacity= 76 MW), it had applied for 76 MW. However, PGCIL granted LTA of 66.88 MW after reducing free power to home State based on its request. In case of hydro generators such as NTPC Ltd. (Tapovan Vishnugarh) and GMR Energy Limited (Bajoli Holi HEP), PGCIL had granted LTA of reduced quantum as their generating stations were connected to intra-State network.

19. The petitioner vide its affidavit dated 22.11.2014 has submitted a detailed statement towards the calculation of transmission charges to the tune of ₹ 12,62,71,425/- on free power share charged by CTU from the date of commissioning of the project upto May 2014 and has submitted that CTU has not discharged its responsibility given to it in the Connectivity Regulations in granting the LTOA and collecting transmission charges from the petitioner correctly and has unjustly burdened the petitioner with transmission charges of more than ₹12 crore till May 2014 and is still likely to get the bills for later period for free power component to Government of Himachal Pradesh for which the petitioner is not liable to pay in the first place.

Analysis and Decision:

20. We have heard the learned counsels and representatives of the parties. We have considered the pleadings of the parties, including reply filed on behalf of the respondents and the documents available on record.

21. The petitioner has filed IA No. 47/2014 seeking direction to CTU not to demand the transmission charges/encash Letter of Credit (LC) on free power from the petitioner till resolution of the dispute raised in the petition. The petitioner has submitted that from April, 2014 onwards, it made payments towards transmission charges after deducting the transmission charges applicable on free power share. CTU vide letter dated 23.7.2014 informed the petitioner to pay the transmission charges for the entire quantum of 192 MW and drawl of 12% free power by Govt. of HP is a bilateral issue between them. In response, the petitioner vide letter dated 6.8.2014 requested the CTU

to wait till disposal of the present petition. However, CTU advised the petitioner to make entire payment within 3 days failing which LC would be encashed. Accordingly, on 8.9.2014, the petitioner paid Rs. 1,07,49,346/ under protest withheld by it on account of free power share Government of Himachal Pradesh. In our view, the petitioner having approached the Commission for adjudication of the dispute regarding its liability for payment of transmission charges for free power should not have made the payment to PGCIL after deducting the charges for free power without leave of this Commission. The petitioner has now made the payment of transmission charges, there is no reason for PGCIL to encash the Letter of Credit. The IA has become infructuous and is accordingly, disposed of.

22. The following issues arise for our consideration:

- (a) Whether the petitioner was liable to obtain the Long Term Access for the entire capacity including the free power allocated/agreed to be supplied to home State and pay the charges therefor?
- (b) Who should pay for injection/drawal charges for Free Power component?
- (c) Whether charges already paid for LTA towards Free Power be refunded to the petitioner?

Issue No. (i): Whether the petitioner was liable to obtain the Long Term Access for the entire capacity including the free power allocated/agreed to be supplied to home State and pay the charges therefor?

23. The petitioner made an application for grant of LTA to CTU on 18.7.2005 as per the provisions of the OA Regulations, 2004 for 192 MW equivalent to the installed

capacity of the project. CTU vide letter dated 26.4.2007 granted LTA to the petitioner for injection of power at Nalagarh sub-station of PGCIL as per decision taken in the LTOA meeting held on 25.4.2007. The petitioner vide letter dated 7.1.2009 requested CTU to revise its LTOA. In the LTOA meeting held on 30.5.2009, the petitioner's request to revise its LTA with drawee utility having been changed from 'Haryana' to 'Northern Region Utilities' was agreed. In the said meeting, though the petitioner raised the issue of supply to 12% free power to the Government of Himachal Pradesh for the first 12 years and 18% thereafter, the petitioner was informed that since all power from its project would be injected into ISTS, the petitioner would have to take LTOA for the entire capacity and pay transmission charges therefor and in case direct drawal arrangements for free power without utilizing ISTS, transmission charges for free power would not be applicable. The minutes of said meeting dated 30.5.2009 is extracted as under:

"POWERGRID informed that the case of long term open access of AD Hydro was discussed and agreed with NR constituents in various meetings and following system was finally agreed in long-term open access meeting held on 25.4.2007.

Allain Dhungan HEP-Nalagarh 220 kV D/C line (to be constructed by AD Hydro at their cost as dedicated system)

Accordingly, the long term open access to M/s A.D. Hydro was granted for transfer for power to Haryana and intimation for the same was discussed to them subject to the signing of BPTA for payment of regional transmission charges. Presently, the above 220 k V D/C line & 220 kV bays at Nalagarh are under construction.

It was further informed that the issue of signing of BPTA was taken with M/s A.D. Hydro during April 2008 & during December 2008, with Haryana as a beneficiary. Recently, M/s A.D. Hydro vide their letter dated 07/01/2009 have stated that they want to change the beneficiary as "Any Utility in Northern Region" instead of Haryana.

Member (P.S.) enquired about the status of the generating project from the representative of AD Hydro. AD Hydro Representative informed that Allian would be coming up in April 2010 and Dhungan would be coming up in November 2010.

Member (PS),CEA stated that LTOA to M/s AD Hydro can be granted for Northern Region. All the Members agreed for the same.

AD Hydro also informed that they need to supply 12% free power for the first 12 years & 18% after 12 years. It was explained that since all the power would be injected into ISTS grid, the transmission charges would be for the full capacity and incase direct drawal arrangements are made without utilizing ISTS system for drawl of free power, the transmission charges for free power would not be applicable. Member (PS) opined that HP &AD Hydro should mutually work out for drawl of free power.

POWERGRID stated that AD need to sign the BPTA for NR regional transmission charges for 192 MW and it was agreed that AD Hydro would sign the BPTA for payment of Northern Regional Transmission charges for 40 years within one month after issuance of the Minutes.”

Based on the decision taken in the said meeting held on 30.5.2009, PGCIL vide its letter dated 17.7.2009 revised LTA of 192 MW with Northern Region constituent as beneficiaries. In the LTA intimation, the following were categorically mentioned:

“Note:

- (a) Since full power (including free power) is to be injected into ISTS system, the transmission charges would be applicable for full capacity. In case direct drawal arrangements are made for drawal of the free power of free power to Himachal Pradesh without utilizing ISTS system, the transmission charges for free power would not be applicable.
- (b) As discussed in LTOA meeting, BPTA to be signed within one month of issuance of MOM. In the event of non-signing of BOTA within the specified time, the LTOA would be treated as cancelled and fresh application would be required.
- (c) The regional transmission charges shall be applicable from April, 2010.”

24. Subsequent to the issue of LTOA, the petitioner approached HPSEB to decide the drawal point for 12%/18% of free power from the project by the Government of Himachal Pradesh. HPSEB held a meeting with the petitioner on 23.7.2009 in which the following was mutually agreed:

“(a) The HP Government share of free power of 12% for 12 years and 18% thereafter for ADHPL Generation shall be drawn by HPSEB within the State by injection into the State Grid itself. This drawal by HPSEB shall be for 40 years in line with the Implementation Agreement signed with HP Government ADHPL informed that based on this they shall sign BPTA with PGCIL for their installed capacity of 192 MW minus free power as above.”

25. The petitioner, vide its letter dated 29.7.2009 informed PGCIL that HPSEB has advised the petitioner to sign the BPTA only for installed capacity of 192 MW minus free power (12% of first 12 years and 18% thereafter for the next 28 years) and requested PGCIL to sign the BPTA by 10.8.2009. Relevant portion of the said letter is extracted as under:

“In continuation of our e-mail dated 20.7.2009 on the above subject, please be informed that we have held a meeting with HPSEB at Shimla on 23rd July 2009.

Accordingly, we have been advised by HPSEB to sign BPTA only for the installed capacity of 192 MW minus free power (12% for first 12 years and 18% thereafter for the next 28 years). We are now ready to sign the BPTA with PGCIL, in line with this decision.

Please advise us your availability and suitable date for signing the BPTA, in the week beginning 10th Aug`09, as per its draft already forwarded by us, vide our e-mail dated 26th May`09, which shall be amended/corrected in the light of the above MOM dt. 23rd July`09 reached with HPSEB.”

26. There does not appear to be any response of PGCIL to the above letter of the petitioner. On 11.9.2009, the petitioner entered into BPTA with PGCIL for the installed capacity of 192 MW indicating point of drawal as Northern Region.

27. The petitioner has submitted that as per decision taken during the meeting held on 30.5.2009, it paid the transmission charges for 192 MW and took up the issue of reimbursement of transmission charges towards free power with the Government of Himachal Pradesh. However, Government of Himachal Pradesh declined to reimburse the transmission charges on the ground that the claim made by the petitioner is not tenable as all the expenses incurred for transfer of the Govt. of HP free power from the petitioner's 192 MW project up to inter-connection point has to be borne by the petitioner. The petitioner has submitted that in view of the stand taken by the Govt. of HP and in order to resolve the issue towards free power and for change in the LTOA conditions, the petitioner vide its letter dated 19.5.2014 requested the COO, CTU (Planning), to revise the LTA granted to it by considering free power component to the account of the Govt. of HP so that transmission charges on free power are raised on and paid by the Govt. of HP. The petitioner further requested PGCIL to give credit of BPTA/PoC amount already paid by it on free power. The petitioner vide its letter dated 1.5.2014 informed PGCIL that the LTA granted to the petitioner was for entire installed capacity whereas auxiliary losses and line losses in dedicated transmission line are to the tune of 4% i.e. 7.68 MW. The petitioner further informed that the LTA granted towards free power of 12% for first 12 years and 18% for the balance 28 years are on the account of the Govt. of HP and requested for reduction of losses of 7.68 MW, LTA of 22.12 MW for first 12 years and 33.18 MW for balance 28 years.

28. It is noted that the matter regarding reduction of LTA to 169 MW for first 12 years and 158 MW for next 28 years and reimbursement of approximately Rs.10.68 crore

already paid by the petitioner on account of free power was taken by the petitioner in the 26th meeting of Commercial Sub-Committee of NRPC held on 30.5.2014 in which the petitioner also requested that in case reduction of LTA is not feasible, PGCIL may raise two separate bills i.e. one on the petitioner for actual power on its account and another on the Govt. of HP for free power. The representative of CTU (Planning) informed that the petitioner`s request can be accepted if the HPSEB agrees to bear the transmission charges of free power as the total quantum of LTA would remain the same. In the said meeting dated 30.5.2014, the representative of HPSEB stated that since the free power from the generation project is of Government of Himachal Pradesh, HPSEB cannot give any commitment in this regard. In the said meeting, it was decided that the petitioner shall take up the matter with the Government of Himachal Pradesh and in case matter is not resolved, it can approach the Commission for suitable direction. Accordingly, the petitioner vide its letter dated 11.7.2014 requested the Government of Himachal Pradesh to review the matter in light of deliberations held in NRPC meeting dated 30.5.2014 and to reimburse transmission charges on free power as on date and pay all transmission charges on free power directly to PGCIL in future. In response, Government of Himachal Pradesh vide its letter dated 4.8.2014 reiterated its earlier stand and submitted that the Government of Himachal Pradesh is selling its free power share in short term market and is paying transmission charges accordingly and therefore, the claim made by the petitioner is not tenable.

29. Government of Himachal Pradesh has submitted on affidavit that it has not given its consent to the petitioner to avail LTA for free power as it is making efforts to tie up the free power on long term/medium term with any beneficiaries and in the absence of

long term or medium term PPA, it is selling power under short term open access and paying the charges accordingly. It is further noted that even though on the advice of HPSEB, the petitioner has requested PGCIL to sign the BPTA for the capacity less free power which was not agreed by PGCIL as a result of which the petitioner had to sign the BPTA for 192 MW.

30. The question therefore arises as to whether PGCIL was justified in not acceding to the request of the petitioner to sign for BPTA less the free power. PGCIL's contention is that since the entire power from the petitioner's project would be injected into ISTS through 400 kV Nalagarh sub-station of PGCIL, the petitioner is liable to take the LTA for the entire capacity and pay the transmission charges accordingly.

31. The petitioner applied for LTOA and connectivity as per the OA Regulations, 2004. Regulation 9(iii) of the OA Regulations, 2004 provides that the application for long term access shall contain the following:

(ii) The application shall contain the details, such as capacity needed, point(s) of injection, point(s) of drawal, duration of availing open access, peak load, average load and such other additional information that may be specified by the nodal agency. The nodal agency shall issue necessary guidelines, procedure and application forms within 30 days.

The above provisions clearly give the liberty to the LTOA applicant to apply for LTOA for the capacity needed and not for the entire capacity of the generating station. Therefore, there is no compulsion on the LTOA applicant to apply for LTOA for the entire capacity for the generating station if the generating station is connected only to ISTS. The generating station may choose to apply for LTOA for part capacity and intend to sell the remaining capacity under STOA (under OA Regulations, 2004, there was no MTOA) or

may enter into an agreement under which it is the responsibility of the buyer to take power from the inter-connection point. In these cases, the LTOA applicant can apply for LTOA for capacity less than its installed capacity even though the evacuation from the project has to be through ISTS only.

32. Let us consider the arrangement of the petitioner with the Government of Himachal Pradesh as per the IA. In terms of Clause 5.1 of the IA, the petitioner is required to supply to the Govt. of HP or its Agent at the inter-connection point without any cost or charges to the State Government @ 12% of the deliverable energy for the first 12 years from the date of commercial operation and @ 18% of the deliverable energy for the next 28 years. Clauses 4.9 and 5.18 of the IA provides for evacuation of power which is extracted as under:

Obligation of Government

“4.9 . Evacuation of power: The government shall provide necessary assistance to the Company in tying up the transmission system for evacuation of power from the project out of Himachal Pradesh through the transmission system of the HPSEB, Power Grid Corporation of India Limited (PGCIL) or any other such utility(ies).

Obligation of Comany

5.18. Evacuation of Power: The company shall cause the Power Grid Corporation of India Limited to provide suitable integrated transmission system or otherwise tie up the arrangements for evacuation of power from the project matching with commissioning of the project for the evacuation of power from the project. This shall be done in consultation with CEA/HPSEB and PGCIL.”

As the State transmission network was not available in the vicinity of the project, the petitioner applied to PGCIL for LTOA for 192 MW on 18.7.2005. PGCIL granted LTOA vide its letter dated 21.7.2006 with Panarasa as the pooling point. Subsequently, in the LTOA meeting held on 25.4.2007, it was decided to change the pooling point to

Nalagarh sub-station of PGCIL. Accordingly LTOA was granted to the petitioner for 192 MW from Nalagarh pooling station vide letter dated 26.4.2007 subject to the condition that the petitioner would construct 220 kV D/C ADPHL-Nalagarh dedicated transmission systems and two additional bays at Nalagarh sub-station. Clause 1.2.28 of the IA defines inter-connection point as the physical touch point(s) where the transmission system of PGCIL or of the transmission utility, evacuating power from the project is connected to the project. Therefore, Nalagarh sub-station of PGCIL is the inter-connection point in terms of the IA. It is pertinent to note that PGCIL was not required to carry out system strengthening beyond Nalagarh as capacity was available to accommodate the LTOA for 192 MW. Since the petitioner was required to construct the dedicated transmission line from its project to Nalagarh, the connectivity line falls within the purview of the petitioner and not that of PGCIL.

33. As per the IA, it is the responsibility of the petitioner to deliver the 12%/18% free power at the Nalagarh sub-station of PGCIL. Though the IA is silent about who shall apply for LTOA/LTA for this free power, the fact remains that 12%/18% free power is the property of Government of Himachal Pradesh after the date of commercial operation and it is responsibility of the Himachal Pradesh to evacuate this power beyond Nalagarh sub-station. Therefore, the responsibility of Government of Himachal Pradesh to evacuate the quantum of free power from Nalagarh sub-station onwards and liability to pay the transmission charges therefor cannot be transferred unilaterally by PGCIL to the petitioner without taking the consent of the Government of Himachal Pradesh. It is not in dispute that the petitioner applied for LTOA for 192 MW which included the free power. But the petitioner had raised the issue of free power in the LTOA meeting held on

30.5.2009 and subsequently, after discussion with HPSEB wrote a letter dated 29.7.2009 for signing of BPTA for the installed capacity after excluding free power. These efforts were made by the petitioner before signing the BPTA on 11.9.2009. It appears that the request of the petitioner to exclude the free power from the LTA quantum has not been seriously considered in either the LTOA meeting or subsequently by PGCIL and the petitioner has been made to sign the BPTA for 192 MW on the ground that the petitioner's project being connected to ISTS it is required to sign the BPTA for the entire installed capacity and the petitioner should mutually decide the issue of transmission charges with Government of Himachal Pradesh in respect of free power. The petitioner as per the decision in the LTOA meeting took up the matter with Government of Himachal Pradesh who declined to accept the liability on the ground the Government of Himachal Pradesh is selling power under short term open access and paying the charges therefor.

34. The Commission directed PGCIL to submit details of all hydro stations in India which are connected to ISTS network and treatment of free power from those hydro stations in the matter of grant of LTA. On perusal of PGCIL's affidavit dated 10.12.2014, it is evident that there is no uniformity in the treatment of free power from hydro stations connected to ISTS network. It is observed that most of the hydro generators had applied for LTA for the entire quantum of power. According to PGCIL, LTA was granted as per their LTA applications. It is however noted that there are some cases where PGCIL has granted LTA for capacity less than the installed capacity where the applicants sought LTA after reducing free power component. In case of Lanco Hydro Energy Private Limited (installed capacity= 76 MW), it had applied for LTA of 76 MW but PGCIL

granted LTA of 66.88 MW after reducing free power to home State based on the request of the applicant. In case of Malana-II and Karcham Wangtoo HEP which are directly connected to ISTS and where direct drawl arrangements have not been made by the State Govt. for availing free power, PGCIL granted connectivity and LTA for the reduced quantum i.e. less than installed capacity. In the present case, PGCIL`s decision for granting LTA to the petitioner for the full quantum without excluding free power despite the written request of the petitioner and directing the petitioner to pay transmission charges for the entire LTA quantum till direct drawl arrangement is made by Government of Himachal Pradesh for utilizing its free power share without using ISTS, is neither supported by any statutory provision nor any decision of the Commission nor the practice followed by PGCIL in case of other hydro generators.

35. In view of the fact that the petitioner made a written request to PGCIL vide letter dated 29.7.2009 for signing the BPTA for the installed capacity minus free power which was prior to the date of signing the BTPA and the PGCIL has permitted other generators to sign BPTA for reduced quantum than the installed capacity even though these generators are connected to ISTS only as in the case of the petitioner, we are of the view that the petitioner is entitled for LTA/BPTA for the quantum of installed capacity minus the free power. Accordingly, PGCIL is directed to reduce LTA of the petitioner by deducting 12% for the first 12 years and 18% for the balance 28 years in accordance with the Implementation Agreement from effective date of LTA and revise the BPTA/TSA accordingly.

Issue No. (ii): Who is liable to pay for injection/drawl charges for Free Power component?

36. The petitioner has submitted that as per IA, the petitioner is required to supply 12% power for first 12 years and 18% power for next 28 years free of cost at the interconnection point which is the Nalagarh sub-station of PGCIL. The petitioner is stated to have discharged this obligations under the IA by delivering 12% of the deliverable energy at Nalagarh through the 175 km long 220 kV D/C ADHPL-Nalagarh dedicated transmission line. Government of Himachal Pradesh in its affidavit dated 29.10.2014 has submitted that State of Himachal Pradesh is surplus in power during summer/monsoon months and is deficit during winter period. Considering this aspect, Government of Himachal Pradesh is selling its power including free power from the petitioner`s project in the short term market and utilizing the free power within the State to meet its requirements during winter months. Accordingly, Government of Himachal Pradesh is paying/bearing the short term open access transmission charges and losses as per the applicable regulations. The representative of Government of Himachal Pradesh clarified during the hearing that the State Government does not intend to be an LTA Customer.

37. We are of the view that liability of transmission charges arises only if the person or entity has availed long term access or medium term access. If the person or entity is selling power through short term open access, it is liable to pay the STOA charges and not the transmission charges. After delivery of 12% of the deliverable power by the petitioner at Nalagarh sub-station, the said power becomes the property of Government of Himachal Pradesh. Since the State Government wants to sell the power by obtaining

short term open access, it is liable to pay the STOA charges only and not the transmission charges. However, PGCIL is free to grant LTA to the quantum released in terms of direction given in para 35 above to any other consumer asking for it. In that case, sale of power by HP under STOA shall be as per extent regulations.

Issue No.(iii): Whether charges already paid for LTA towards Free Power be refunded to the petitioner.

38. According to the petitioner, it has already paid an amount of Rs.10,68,51,147/- towards free power component as on March 2014 and is continuing to pay the same and has prayed for refund of the same along with interest thereon.

39. We have already held herein above that from the interconnection point, free power is the property of the Government of Himachal Pradesh from the date of commercial operation of the project. The commercial operation of the project occurred in the year 2010 and accordingly, the petitioner started supply of free power at inter-connection point. We have come to the conclusion in response to Issue No.1 that the petitioner is entitled to LTA for the quantum of installed capacity minus free power from the date of operationalization of LTA. It logically follows that the petitioner cannot be saddled with the transmission charges for the quantum of free power. It is also pertinent to mention that Government of Himachal Pradesh has been selling the free power by availing short term open access. In other words, the capacity has been utilized by selling free power through short term open access and the charges so collected are disbursed to the DICs in proportion to their share in the ISTS. Accordingly, CTU is directed to refund transmission charges collected by it from inter-connection point onwards corresponding to the free power component of the project from the date of

commercial operation of the project till the LTA granted to the petitioner is revised as per this order along with a simple interest of 9% per annum. The charges towards such refund shall be adjusted from the amount collected through Short Term Open Access within a period of 3 months from the issue of the order after offsetting the benefit of STOA charges received by the petitioner, if any, on account of payment of STOA charges for sale of free power by Government of Himachal Pradesh.

40. The petition and IA are disposed of in terms of the above.

Sd/-
(A. S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson