

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 310/MP/2014

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K Singhal, Member

Shri A.S. Bakshi, Member

Date of Order: 5.10.2015

In the matter of

Petition for regulation /directive for scheduling Un-requisitioned Power of Sasan Ultra Mega Power Project and direction to Load Despatch Centres to schedule Un-requisitioned Power

And

In the matter of

Sasan Power Limited
C/o Reliance Power Ltd
3rd Floor, Reliance Energy Centre,
Santa Cruz East,
Mumbai

Petitioner

Vs

1. Western Regional Load Despatch Centre
F-3, M.I.D.C. Area, Marol, Andheri (East),
Mumbai 400 093
2. Northern Regional Load Despatch Centre
18-A, Shaheed Jeet Singh Sansanwal Marg,
Katwaria Sarai, New Delhi 110 016
3. MP Power Management Company Ltd.
Shakti Bhawan, Jabalpur-482 008.
4. Paschimanchal Vidyut Vitran Nigam Ltd.
Victoria Park, Meerut-250 001
5. Purvanchal Vidyut Vitran Nigam Ltd.
Hydel Colony, Bhikaripur,
Post-DLW, Varanasi-221 004
6. Madhyanchal Vidyut Vitran Nigam Ltd.
4A-Gokhale Marg,
Lucknow-226 001

7. Dakshinanchal Vidyut Vitran Nigam Ltd.
220kV, Vidyut Sub-Station,
Mathura Agra By-Pass Road,
Sikandra, Agra-282 007
8. Ajmer Vidyut Vitran Nigam Ltd.
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur
9. Jaipur Vidyut Vitran Nigam Ltd.
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur
10. Jodhpur Vidyut Vitran Nigam Ltd.
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur
11. Tata Power Delhi Distribution Ltd.,
Grid Sub-Station Building, Hudson Lines,
Kingsway camp, New Delhi-110 009
12. BSES Rajdhani Power Ltd.
BSES Bhawan, Nehru Place,
New Delhi-110 019
13. BSES Yamuna Power Ltd.
Shakti Kiran Building, Karkardooma,
Delhi-110 092
14. Punjab State Power Corporation Ltd.,
The Mall, Patiala-147 001
15. Haryana Power Purchase Centre
Shakti Bhawan, Sector-6,
Panchkula (Haryana)-134 109
16. Uttarakhand Power Corporation Ltd.,
UrjaBhawan, Kanwali Road,
Dehradun-248 001

Respondents

Parties present:

For the Petitioner:

Shri J.J. Bhatt, Sr. Advocate, SPL
Shri Aditya Panda, Advocate, SPL
Shri Kamal Gupta, SPL
Shri N.K. Deo, SPL

For the Respondents:

Ms Anushree Badhan, Advocate, HPPC, Rajasthan &
GUVNL
Ms Poorva Saigal, Advocate, HPPC, Rajasthan & GUVNL

Shri Alok Shankar, Advocate, TPDDL
Shri Yashish Chandra, Advocate, TPDDL
Shri Rajiv Srivastava, Advocate, UPPCL
Shri Himanshu Shekhar, Advocate, JSEB
Shri G. Umopathy, Advocate, MPPMCL
Shri Aabhas Parimal, JUVNL

ORDER

The petitioner Sasan Power Limited (SPL) has filed the present petition under Section 79 (1) (f) read with Section 79 (1) (h) and (k) of the Electricity Act, 2003 (the Act) and Regulation 6.5 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010(Grid Code) seeking the following directions:

“(a) Hold that change in schedule for allocation of URS quantum of power shall be applicable for Sasan UMPP in accordance with the provision of the PPA without requiring the procurers and third parties to obtain short-term open access;

(b) Direct the WRLDC/NRLDC, to allow and treat the scheduling of URS quantum of power among the procurers of Sasan UMPP or to third parties as reallocation of power on temporary basis and not as open access transaction.”

2. The petitioner owns, operates and maintains a Coal Fired Ultra Mega Power Project based on linked captive coal mines using super critical technology with an installed capacity of 4000 Mw ($\pm 10\%$) at Sasan, District, Singrauli, Madhya Pradesh. The petitioner is fully owned by Reliance Power Limited which was selected as the successful bidder on the basis of the process of tariff based international competitive bidding under section 63 of the Act. The petitioner has entered into a Power Purchase Agreement (PPA) on 7.8.2007 with 14 procurers in 7 States who have been impleaded as Respondent Nos. 3 to 16 in the present petition.

3. The grievances of the petitioner in the present petition are as under:-
- (a) Sasan UMPP has been declaring its availability on daily basis and all the procurers have been scheduling power as per their allocations under the PPA. Despite being the most competitive thermal power project, the power plant is not being fully scheduled owing to the surrender of entire/part of the entitlement of the available capacity by some of the procurers due to several factors, including transmission constraints and low demand. This has resulted in Un-requisitioned Surplus Power (URS Power) which is not being utilised and is being lost.
- (b) URS Power includes (i) the quantum of power which has not been dispatched by the power plant owing to the original procurer not dispatching the same; (ii) the quantum of power which has not been taken within two hours by procurers entitled to exercise their first right to receive the quantum not dispatched by the original procurer; and (iii) the said quantum of power not being able to be sold to third parties.
- (c) Articles 4.4.2 and 4.4.3 of the PPA dated 7.8.2007 provide for a mechanism for utilization of a part of the available capacity which remains un-dispatched either by the original procurer or by the third parties and also provides for a mechanism by which the original procurer could recall the available capacity. As per the said provisions, if there is part of available capacity which has not been dispatched by the procurer ordinarily entitled to receive such part, the petitioner is required to first offer such available capacity at the same tariff to other procurers which are not ordinarily entitled to receive such part. If within two hours of such offering, any of the procurers have not availed either full or part of available capacity, the petitioner can sell the same to third parties.

(d) Despite the aforesaid provisions in the PPA, and despite the fact that WRLDC has been uploading on its website the availability of URS Power from Sasan UMPP on account of backing down/surrender of capacity by some of the procurers, WRLDC has refused to schedule the URS to the other procurers without obtaining short-term open access, thereby rendering redundant the provisions of Articles 4.4.2 and 4.4.3 of the PPA.

(e) The pre-condition to obtain short-term open access put forth by the WRLDC would make it impossible for putting into operation the provisions of the PPA. The Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 (Open Access Regulations) provides 24 hours to the SLDC to accord its concurrence as well as subjects the concurrence to checking of technical and operational constraints. Under Open Access Regulations, the SLDC has 3 working days to convey its concurrence to an application seeking short-term open access and 7 working days when short-term open access has been applied for the first time by any person. Moreover, SLDC can also return the application seeking short-term open access on the ground of any deficiency or defect within 2 days. Moreover, under the Open Access Regulations, a period of 2 days is required if the petitioner in accordance with Clause 4.4.3 of the PPA has to supply power to the original beneficiary which recalls the same after having waived of the requirements initially whereas as per the said Article, the petitioner has to schedule this power within 2 hours if the original procurers recalls the same. Further, as per the Grid Code, the procurer can revise the schedule by giving advance notice of four time blocks of 15 minutes each. As the procurers of Sasan UMPP normally surrender power at the last moment and again surrender of power is generally

for a limited period of 2-3 hours, it is difficult to take short term open access and schedule the power in such a short duration resulting into un-utilised URS.

(f) As per the Open Access Regulations, revision in schedule can be requested by an advance notice of two days. Therefore, once URS is scheduled to other procurers through short term open access, revision is possible only with an advance notice of two days. Consequently, URS transactions which are scheduled on contingency basis cannot be rescheduled in case the original beneficiary recalls the power resulting into schedule exceeding the declared capacity on account of recall and rescheduling by the original beneficiary of a part or whole of the URS power, leading to a possible liability of the generating station to pay the UI charges. Therefore, keeping in view the peculiarities of URS power, the provisions of short term open access are not applicable to the utilisation of URS power.

(g) Till 5.9.2014, approximately 105 MUs of power have been lost from Sasan UMPP on account of the unutilized URS power. On 3.7.2014, one of the procurers, namely, Haryana Power Purchase Centre surrendered its full share of 277 MW from 5.30 hrs to 11.15 hrs. On the same day, SLDC, Madhya Pradesh requested WRLDC to schedule the URS power to MPPMCL. However, WRLDC in its return message dated 3.7.2014 refused to schedule URS from the generating station on the ground that the dispensation available to NTPC for scheduling URS power without the need to be treated as open access transaction in terms of the Commission's order dated 11.1.2010 in Petition No. 134/2009, would not be available to the petitioner as the tariff of Sasan UMPP has been discovered through tariff based competitive bidding. Subsequently, the petitioner vide letter

dated 4.7.2014 requested WRLDC to schedule URS power to other procurers in accordance with the provisions of the PPA providing for change in schedule and without requiring open access as directed by the Commission in its order dated 11.1.2010 for the stations of NTPC. In response, WRLDC vide its letter dated 9.7.2014 did not accede to the request on the ground that as per the Commission's order dated 11.1.2010, the provision of scheduling URS power as per the Grid Code to the other procurers without short-term open access is applicable only in case of the generating stations of NTPC. By its letter dated 31.7.2014, MPPMCL also requested WRLDC to schedule URS power from Sasan UMPP.

- (h) The Commission in the said order dated 11.1.2010 observed that scheduling of URS power through the provision of short term open access prevents the use of full quantum of the URS power and creates a schedule for non-existent power thereby upsetting the load generation balance to some extent and directed that all the generating stations, governed by the Tariff Regulations of the Commission, be allowed to change schedule for the URS quantum of power from one beneficiary(s) to another beneficiary(s) within six time blocks or as per the Grid Code as amended from time to time. It was further directed in the said order that schedule revisions would be treated as reallocation of power on temporary basis and would not be taken as open access transactions.
- (i) WRLDC has mis-interpreted the directions of the Commission in order dated 11.1.2010 in Petition No. 134/2009 and has wrongly refused to schedule the URS power without obtaining short term access on the ground that Sasan UMPP is not governed by the Tariff Regulations of the Commission. The finding rendered by

the Commission in the said order that “all generating stations.....be allowed to change schedule....” manifestly shows that not only is the said order binding upon the parties to the said proceedings, but is a judgment in *rem* and would have an impact on the larger section of the power sector and not in *personamsimpliciter*. The said order dated 11.1.2010 involves inter alia an interpretation of the Open Access Regulations which apply to all generating companies irrespective of the fact as to whether their tariffs are determined under Section 62 or are adopted under Section 63 the Act. Therefore, the said order dated 11.1.2010 would be considered as a judgment in *rem* and it would be just and equitable to extend the same relief to the petitioner, especially when the facts are substantially similar.

- (j) The petitioner’s tariff has been discovered through a competitive bidding and adopted by this Commission under section 63 of the Act. All aspects of the generating station, including its commissioning, commercial operation, supply of power, URS capacity, etc. to the procurers are governed by the terms and conditions of the PPA. This Commission has jurisdiction on the said PPA having adopted the tariff of the petitioner. An amendment to the PPA can be carried out only upon approval of this Commission. Accordingly, this Commission has the full jurisdiction for regulation of URS power under section 79(1) (c) of the Act. It is a settled law that power to regulate is of wide import and the Commission’s power to regulate the inter-State transmission of electricity under section 79(1)(c) is wide enough to confer power to regulate scheduling of URS power and to lay down a mechanism for its full utilisation. Therefore, the Commission ought to provide for a framework for utilisation of URS power from Sasan UMPP treating the schedule revision as reallocation of power on temporary basis and not as open access transactions and to provide for the utilisation of URS power from Sasan UMPP

without the compulsion of the procurers of Sasan UMPP/third parties of obtaining short term open access.

(k) Refusal of WRLDC to schedule the URS power on the ground that the dispensation under the Commission's order dated 11.1.2010 is not available to Sasan UMPP is misplaced as revision in schedule of power i.e. rescheduling is permissible under Regulation 6.5 of the Grid Code and the said provisions do not restrict rescheduling of power of Sasan UMPP irrespective of the said plant's tariff being competitively determined under section 63 of the Act. In the event, the URS power which is scheduled on contingency basis cannot be rescheduled in case the original beneficiary recalls the power, grave injury and irreparable loss would be caused as unscheduled interchange charges may become payable by Sasan UMPP and URS power would remain bottled up. Hence these crucial concerns need to be addressed by the Commission by treating the revision of bilateral transactions not as open access transactions in order to facilitate utilisation of URS power of Sasan UMPP.

4. The petitioner has also filed IA 44/2014 in which it has been prayed that pending the disposal of the petition, WRLDC be directed to schedule the URS power of the petitioner to other beneficiaries and third parties without obtaining short term open access.

5. The petition was admitted on 16.9.2014. The respondents were directed to file their replies. Replies to the petition have been filed by Western Regional Load Despatch Centre (WRLDC), Northern Regional Load Despatch Centre, Madhya Pradesh Power Management Company Ltd. (MPPMCL), Tata Power Delhi Distribution Company Limited (TPDDCL) and BSES Rajdhani Power Ltd. (BRPL).

6. WRLDC and NRLDC in their combined reply dated 1.10.2014 have submitted as under:

(a) The URS power available from NTPC stations is scheduled as per the directions of the Commission in order dated 11.1.2010 in Petition No.134/2009 & IA No.54/2009 in the matter of providing flexibility in revision of daily schedule in case of bilateral transactions in order to facilitate utilisation of URS power to NTPC stations. The said order clearly states that all generating stations governed by the Tariff Regulations of the Commission be allowed to change the schedule for the un-requisitioned quantum of power from one beneficiary to another beneficiary of the same generating station on the requisition by these beneficiaries through provisions provided in the Grid Code. Since the Tariff Regulations, 2014 are not applicable in case of generating stations whose tariff has been discovered through competitive bidding under section 63 of the Act, the order of 11.1.2010 cannot be made applicable to Sasan UMPP and its beneficiaries in the present form. As an alternative arrangement, WRLDC has suggested that Sasan UMPP can explore the possibility of scheduling of URS power available through short term bilateral transactions subject to availability of transmission corridor.

(b) The Commission in the order dated 11.1.2010 has allowed the generating stations governed by the Tariff Regulations of the Commission to change schedule for the quantum of URS power through the provisions of Regulation 6.5 of the Grid Code and these scheduled revisions are to be treated as reallocation of power on temporary basis. In case of UMPPs, scheduling is done on the basis of the PPA and not through the allocation by Government of India.

Any change in the schedule for the URS power cannot be treated as reallocation of power on temporary basis.

(c) Beneficiaries of Sasan UMPP are spread across two regions i.e. West and North and 62.5% of the power is procured by beneficiaries of Northern Region. Many a times, West-North corridor remains congested and there are multiple applications for short term open access transactions on this corridor. For scheduling of power across congested corridors, any priority to URS power over open access bilateral contingency transactions would go against the basic principle of non-discriminatory open access.

(d) As per the order dated 11.1.2010, the schedule revision would be treated as re-allocation of power on temporary basis and the tariff would be governed by the terms and conditions of the Tariff Regulations applicable to the generating station. The liability of payment of capacity charge is on the beneficiary who is requisitioning the URS power. However, as per Article 4.4.3 of the PPA in case of UMPP, the liability of the capacity charge remains with the original beneficiary. Hence, these two types of generators cannot be treated at par.

(e) There are only three types of transactions under the regulations of the Commission, namely, Long Term, Medium Term and Short Term (bilateral and Power Exchange Collective) with priority clearly defined. The order dated 11.1.2010 created a new class of transmission access whose status would also fall under the ambit of one of the above stated categories. If the transmission corridor has to be optimally utilised, then the unutilised LTA/MoP allocation margins need to be left for the other products of open access for implementation in a non-discriminatory manner. Implementation of URS is difficult in congested

corridor where RLDCs are temporarily re-allocating the power from one beneficiary to another without having any type of access.

- (f) The petitioner's argument of advance scheduling for bilateral transactions requiring long timeline is baseless as Sasan UMPP being a regional entity of WR, needs to apply to WRLDC or any other RLDC(s) to schedule the power through STOA bilateral, be it day ahead or bilateral, and not through SLDC. Moreover, the petitioner's contention for scheduling of URS power to third party in terms of Commission's order dated 11.1.2010 is not valid as RLDCs cannot schedule power to third parties without having any type of access. RLDCs have to schedule in accordance with the regulations and to avoid timelines for a particular group of generators/customers may lead to discrimination among market players. With the implementation of Short Term Open Access bilateral transactions and Grid Code, adequate framework has been provided for scheduling of URS power.
- (g) The loss of 105 MUs stated by the petitioner on account of URS power is negligible in comparison to actual generation. During the period 31.12.2013 to 5.9.2014, the actual generation from Sasan UMPP excluding infirm power was 7648 MUs against which URS was 105.6 MUs which is 1.38% of the total generation during the period.
- (h) The finding of the Commission in order dated 11.1.2010 is not a finding in rem and does not cover UMPPs as they are not governed by the Tariff Regulations.
- (i) Despite the order of the Commission dated 11.1.2010 allowing the scheduling of URS power to other beneficiaries, the Plant Load Factor of NTPC plants are

falling as the same is dependent on fuel cost. The difference between the availability and plant load factor is the index of URS. Based on the data for the period 2009-10 to 2013-14, POSOCO has submitted that although the availability remained constant of the order of 90%, the URS quantum has gone up from 0.85% to 8.8%. The basic reason for the same is the high fuel prices and the uncertainty associated with URS power on account of original beneficiary's right to recall.

- (j) The order dated 10.1.2010 in Petition No.134/2009 led to discrimination between a beneficiary and a non-beneficiary. A beneficiary of a generating station would be availing URS power without paying open access charges whereas a non-beneficiary would have to pay open access charges for availing URS power. In case of generating stations of higher capacity such as UMPPs having beneficiaries spread all over the country, if URS power could be utilised between the said beneficiaries without following the open access procedure and without paying requisite charges under the regulations, it would defeat the basic objectives of open access and would lead to disputes in future.

7. WRLDC and NLDC have flagged the following generic points of concern with regard to scheduling of URS power of UMPPs in terms of the order dated 11.1.2009 for consideration of the Commission:

- (a) The petitioner's request strikes at the very foundation of non-discriminatory open access. It would lead to players having long term access rights coming up with demands which would derail the entire STOA mechanism. It would lead to market distortion and discrimination amongst the regional entities within and outside the region.

- (b) RLDCs have to discharge the statutory function of 'optimum scheduling and dispatch of electricity within the region in accordance with the contracts'. Contract in the scheme of things are either the long term in the form of allocation from Central Sector or long term open access or medium term open access or short term open access. Suomotu scheduling of URS by RLDCs becomes a fairly loose contract and would become prone to disputes.
- (c) Allowing URS to take a route without having any open access will lead to obstructing the freedom of other players to access the electricity market and defeating the non-discriminatory open access to all.
- (d) The Commission has to ensure that the delicate foundation of institutional mechanism is not rocked unilaterally. The Commission in its order dated 31.7.2008 in Petition No.32/2006 filed by NTPC had held that a decision of erstwhile NREB as illegal and arbitrary as NREB did not have the authority to decide the issues. Therefore, sufficient safeguards need to be put in place to ensure that RLDCs are not forced to implement any decision taken in RPC forum which is not in line with the provisions of the Act.
- (e) The present arrangement of URS followed in NTPC stations in line with the Commission's order dated 11.1.2010 leads to non-reporting of these transactions and provide misleading information to regulators/planners regarding development of short term market.
- (f) The objectives of scheduling of URS power in terms of Commission's order dated 11.1.2010 can be achieved with the implementation of ancillary services whereby available surplus power can be scheduled to the pool by the

System Operator, if a shortage situation is anticipated. If the original beneficiaries want to recall, the same be allowed within 6 time blocks. As the power would be scheduled to the pool, the generating station would be assured of recovery of energy charges irrespective of the prevailing frequency. If the DSM charge rate during the period in which power is scheduled to the pool is less than energy charge of the generating station, the difference may be paid from the surplus available DSM pool.

8. The petitioner in its rejoinder dated 20.10.2014 has refuted the contentions of WRLDC and NRLDC. The petitioner has submitted as under:

(a) Respondent Nos.1 & 2 have made submissions which are in the guise of a reply seeking review of the order dated 11.1.2010 passed by the Commission in Petition No.134/2009 and have questioned the entire mechanism of scheduling of URS power which have been permitted for Central Generating Stations. Further, the ratio of the order dated 11.1.2010 has been negated by Respondent Nos.1& 2 by erroneously contending among other grounds that the amount of URS power is very low.

(b) The treatment of URS power cannot be done in a manner different from that of CGS only because the tariff for the petitioner is determined through competitive bidding. The principles laid down in Petition No.134/2009 have to be followed in letter and spirit by the Respondent No.1 & 2 and any surplus power from the petitioner ought to be scheduled as URS power. The spirit of Open Access Regulations is that cheaper power should replace expensive

power for the overall benefit of the consumers and therefore, it is imperative that a mechanism to utilize the URS power is put in place.

- (c) Even amongst the competitively bid projects, the petitioner's project stands out as it is the most competitive thermal power project in the country and thirteen out of fourteen procurers are located in the Northern Region while the project and one procurer are located in the Western Region. Therefore, backing down by any of the thirteen procurers and scheduling URS power on temporary basis to other beneficiaries can only decongest the NR-WR corridor.
- (d) While the Commission's order dated 11.1.2010 facilitated despatch of URS power from the Central Generating Stations, costlier CGS could not benefit as per the data submitted by Respondent No.1 & 2 on account of merit order despatch. The main objective of open access is displacement of costlier power by cheaper power which is not being appreciated by Respondent Nos. 1 & 2.
- (e) The suggestions of Respondent Nos.1 & 2 to schedule URS power under short term open access is not a workable solution. Firstly, STOA is an energy product having single part tariff determined in short term market whereas URS is a temporary surplus arising out of a long term capacity contract for cheaper power where tariff is pre-determined for sale among original beneficiaries and treatment of revenue from third party sale is also specified in the PPA. Secondly, non-scheduling of URS is a loss of cheaper power whereas non-scheduling of power in the short term or power exchange market is due to various reasons including higher prices. Thirdly, URS power is available at much lower price than those in short term market. However, it cannot be made to compete with energy products of short term market as it comes with a

condition of possible call back with six time block notice as per the PPA with the beneficiaries and the Grid Code.

(f) Transmission systems for generating stations having long term access are designed for evacuation of full quantum of power from the generating stations. Transmission planning criteria provide inherent redundancies and allow sufficient variation in despatch of power from the original beneficiaries to others. This inherent flexibility is being utilised not only for scheduling of URS of Central Generating Stations but also to cater for 15% of un-allocated capacity from the Central Generating Stations which is allocated by the Government of India to other utilities. Since the systems are designed for specific plants with sufficient redundancies, transmission capacity constraints in scheduling of URS to other beneficiaries are rare and in any case, RLDCs schedule any transaction only when system permits and they have full power to deny any transaction in case of grid constraints. Hence scheduling of URS among the beneficiaries through the method of re-allocation is a scheduling under the LTA which is being done for CGS is the correct methodology.

(g) It is a known fact that the ancillary services are basically for seeking last minute support for real time load generation balance and other required grid support e.g. reactive generation support or load centric generation support by seeking a market mechanism for facilitating spinning reserves and enabling requisition of despatch from expensive power which is otherwise not despatched under merit order. Market mechanism for ancillary services is not for facilitating despatch of cheaper power and the attempt of Respondent Nos. 1 & 2 to mix URS scheduling issues with ancillary services is not proper.

(h) Respondent Nos. 1 & 2 brought out an issue during the hearing on 14.10.2014 that scheduling of URS as per the Commission's order dated 11.1.2010 upsets bilateral and power exchange scheduling under STOA which created difficulty, but did not state the nature of difficulty. Since Respondent Nos. 1 & 2 have not reported any difficulty in grid operation in implementing URS scheduling of Central Generating Stations as per the Commission's order dated 11.1.2010, there is no valid reason to oppose despatch of cheaper URS power through LTA scheduling mechanism as per Grid Code by treating this power as reallocation on temporary basis.

9. Replies to the petition have also been filed by some of the beneficiaries of Sasan UMPP, namely, Madhya Pradesh Power Management Company Limited (MPPMCL), BSES Yamuna Limited (BYPL), BSES Rajdhani Limited (BRPL), Tata Power Delhi Distribution Limited (TPDDL). The submissions of these respondents have been discussed in brief as under:

(a) MPPMCL in its replies dated 14.10.2014 and 25.11.2014 has submitted that the order dated 11.1.2010 is a specific order issued by the Commission in Petition No. 134/2009 filed by NTPC. In the said order, the Commission after taking note of the fact that earlier method of scheduling through short term open access prevented use of the full quantum of URS power and created a schedule for non-existent power, laid down the principle that utilisation of URS power should be done through the provisions of Regulation 6.5 of the Grid Code. The provisions of scheduling of URS power to other procurers have been provided in Article 4.4.2 and 4.4.3 of the Power Purchase Agreement and refusal of WRLDC to schedule the URS power to other procurers without

obtaining short term open access has rendered these provisions redundant. Further, Grid Code is applicable to all thermal power plants irrespective of whether their tariff is determined under section 62 or adopted under section 63 of the Act. Sasan UMPP is an inter-State generating station and similar to NTPC plants, allocation of capacity to various procurers of Sasan UMPP has been done by Government of India and therefore, the mechanism established for NTPC plants for utilisation of URS can be easily followed for Sasan UMPP. Moreover, the spirit and intent of the Act is to ensure supplying power to all its consumers at the most economical rate and thus to minimise power purchase cost. Under the provisions of section 28 of the Act, WRLDC is responsible for (i) economical operation of the grid in accordance with the Grid Code and (ii) optimum scheduling and despatch of electricity in accordance with the contracts entered into with the licensees or generating companies. Therefore, the action of WRLDC in not allowing scheduling of URS power deprives the beneficiaries the opportunity to avail URS power at extremely competitive rates and is, therefore, against the spirit and intent of the Act.

- (b) BRPL and BYPL in their replies dated 10.10.2014 have submitted that the terms of the PPA clearly contemplate a mechanism for utilisation of URS power in case any of the procurers refuses its contracted shares. As per Regulation 6.5 of the Grid Code read with the order dated 11.1.2010, scheduling of power has been allowed in the past without having to seek short term open access. The petitioner be immediately allowed to schedule such URS power as per the PPA without having to obtain short term open access rather than leaving such power unutilised and consequently wasting the same.

(c) TPDDL has submitted that under section 28 of the Act, RLDC is responsible for not just ensuring secure operation of the grid but also economic operation of the grid. The mandate of having most economic grid operation is also incorporated in the Grid Code and the Tariff Policy. The basic steps taken by any entity to reduce the cost of power or economic operation of the grid is to schedule the cheapest power to the maximum i.e. follow the merit order principles. Power from the Sasan UMPP being one of the cheapest available must be scheduled to the maximum and in the event, one of the beneficiaries is not in a position to take power, it should be scheduled to other beneficiary in terms of the PPA. Therefore, refusal to schedule URS power for reasons which have no legal basis causes WRLDC to be in breach of its original obligations under the Act to ensure most economical grid operation. Moreover, the basis for the Commission's order dated 11.1.2010 is not in the Tariff Regulations framed by the Commission but the provisions of the Grid Code and therefore, reliance of Respondent No.1 on the said order to suggest that it cannot be applied to projects whose tariff has been determined through competitive bidding is not in accordance with the order of the Commission. Further, UMPPs were conceived by the Government of India to bridge the gap between demand and supply of power economically as an UMPP is capable of operating at low tariff on account of economies of scale that the large size enables. In the event, certain part of the generation capacity remains unscheduled, then the plant economics is strained and the beneficiary whose capacity is surrendered is liable to pay the capacity charges and thus causing double loss to the efficient and economic grid operation. TPDDL has prayed the Commission to clarify that

the provision of URS power as laid down in the NTPC order shall apply to all URS power.

10. During the course of hearing on 27.11.2014, learned counsel for the petitioner as well as some of the procurer States submitted that since the tariff of Sasan UMPP has been adopted by this Commission, the order dated 11.1.2010 in Petition No.134/2009 would be applicable in case of Sasan UMPP. The representative of POSOCO submitted that the scheduling of URS power to third parties is not permissible in terms of the order dated 11.1.2010 in Petition No.134/2009. He further submitted that the petitioner has basically raised three issues for not scheduling URS power under STOA i.e. (a) a minimum of two days is required for STOA transactions; (b) recalling surrendered power is not possible if the power is sold to other beneficiary or third party under STOA and (c) transmission charges and RLDC charges should not be applicable to URS power when it is transacted through STOA. In order to address the concerns of the petitioner with regard to these issues, the representative of POSOCO suggested the following solutions to overcome the difficulty in implementation of scheduling of URS power:

(a) Under the Open Access Regulations, a minimum of 2 days is required for STOA transactions and within 6 time blocks, the power can be scheduled under STOA.

(b) The Commission in the Grid Code has allowed revision of the schedule under STOA when the generating unit trips which can be extended to URS also under the provision for removal of difficulty.

(c) The Commission may consider waiving off transmission charges and RLDC charges when URS power is transacted through STOA.

11. The Commission directed POSOCO to elaborate on its submission regarding the technical difficulties to schedule power from the competitively bid projects; to make detailed submissions on its suggestions made during the hearing; and to clarify whether POSOCO is in favour of revisiting the treatment of URS power from the Central Generating Stations as allowed vide order dated 11.1.2010 in Petition No.134/2009. POSOCO/WRLDC vide affidavit dated 18.10.2014 have submitted as under:

(A) Technical Difficulties to schedule power from competitively bid projects:

All UMPPs are covered under section 63 of the Act and are not governed by the Tariff Regulations of the Commission for the period 2014-19. The contention of the petitioner that allocation of power of Sasan UMPP is done by Government of India is not correct as the Government of India can re-allocate power only for the Central Generating Stations and not for UMPPs. Secondly, for scheduling of power, two pre-requisites have to be considered, namely, a PPA and an access. Regulation 8(6) of Connectivity Regulations provides that the grant of connectivity shall not entitle an applicant to interchange any power with the grid unless it obtains long term access, medium term open access and short term open access. In case of Central Generating Stations, the allocation of power is made by the Government of India and as per Regulation 2(m) of Connectivity Regulations, such allocations have been treated as "deemed long term access". When URS is scheduled, the allocation gets transferred from the original beneficiary to the temporary beneficiary and accordingly, the temporary

beneficiary gets deemed long term access. In case of Sasan UMPP, the URS scheduling would be without any access and would be contrary to the Connectivity Regulations. Thirdly, there could be some issues in scheduling of URS power when the corridors are congested and beneficiaries are in the different regions. In such cases, the priority of such URS power transactions vis-a-vis other open access transactions becomes difficult to determine. Hence the URS power if be scheduled, the same has to be done as per the margins available after the approved short term and medium term open access transactions which have already been scheduled to be transacted. Fourthly, consent of both buyer and seller are necessary for dispute-free scheduling by RLDC. Open Access applications are always with consent of both parties which is conducive for scheduling of URS power in a dispute free manner. Fifthly, the order dated 11.1.2010 has led to discrimination between a beneficiary and a non-beneficiary. The beneficiary of a generating station would be availing URS power without availing open access whereas a non-beneficiary would have to avail open access for URS power. In case of generating plants with higher capacity such as UMPPs having beneficiaries all over the country, there is a possibility that URS power could be utilised between the said beneficiaries without following the open access procedure and without paying requisite charges under the regulations leading to leakage of revenue. This would defeat the basic objective of the non-discriminatory open access. Finally, as held by the Supreme Court in Civil Appeal No. 3902 of 2006 (PTC India Ltd Vs. CERC), the provisions of the PPA have to be implemented in accordance with the regulations of the Commission and URS is also required to be scheduled under the Short Term Open Access Regulations notified by the Commission.

(B) Detailed submission on the solutions as suggested by POSOCO:

POSOCO has submitted that the essence of its submission during the hearing on 27.11.2014 has not been captured in para 5(a) of the RoP. POSOCO has explained that it does not agree with the petitioner's averment that the scheduling of URS power through STOA requires more time. On the contrary, the petitioner can apply for STOA on contingency basis wherein the access is granted by RLDCs in about an hour of the application. There are different products under the STOA and under the contingency product, the RLDCs try to schedule the power within a short time of six time blocks in accordance with the regulations. POSOCO has further submitted that even Article 4.4.2(b) of the PPA grants two hours' time to other beneficiaries of Sasan UMPP either to waive or not to exercise their first right to receive the URS power which means that PPA itself envisages two hours as the time required for scheduling of the URS power. POSOCO has clarified that all the STOA applications received including STOA applications for URS power should be treated at par and thereafter approved by respective RLDCs in accordance with the Open Access Regulations. As regards the revision of schedule, POSOCO has submitted that the main concern of the petitioner is that if the URS power is sold under open access and the original beneficiary requisitions the surrendered power, then the total schedule may exceed the declared capability. To address this concern, POSOCO has submitted that similar to the revision of schedule allowed in case of tripping of unit under Regulation 6.5.19 of the Grid Code, allowing revision of open access schedule may be considered by the Commission in case original beneficiary requisitions the URS power. As regards the payment of STOA charges, POSOCO has suggested that the Commission may consider waiving

off the application fee, RLDC operating charges and transmission charges under the Open Access Regulations for scheduling of URS power.

(C) Whether POSOCO wants modification of the treatment of URS power from the Central Generating Stations with similar arrangement: POSOCO has submitted that since there are many generators seeking implementation of the scheduling of URS power in terms of the Commission's order dated 11.1.2010, there is a need to devise a unified methodology for scheduling of URS power for Central Generating Stations and other generating stations. POSOCO has submitted that the order dated 11.1.2010 may be revisited and philosophies suggested may be applied to all the generating stations whose tariff is determined by the Commission under section 62 and whose tariff is adopted under section 63 of the Act. POSOCO has further submitted that the issues related to the scheduling of URS power can be addressed by implementation of ancillary services whereby available surplus power can be scheduled to a pool by the System Operator, if shortage situation is anticipated.

12. The petitioner in its affidavit dated 9.1.2015 has refuted the submissions of POSOCO. The petitioner has submitted that POSOCO has been scheduling URS power from the Central Generating Stations without any short term open access by treating the same as re-allocation of power on temporary basis in terms of the order dated 11.1.2010 without facing any technical difficulty. On the contrary, POSOCO has been opposing the scheduling of URS power from Sasan UMPP, even though its PPA expressly allows rescheduling of entitlements and scheduling of URS power. Since the tariff of the Sasan UMPP has been adopted by the Commission without any exceptions on any of the provisions of the PPA, the URS scheduling is applicable to

the Sasan UMPP as envisaged in the PPA which has the approval of the Commission. The petitioner has submitted that both Central Generating Stations and the Petitioner have long term PPAs and transmission network is built to evacuate power from their plants. The beneficiaries of Central Generating Stations and Sasan UMPP are paying PoC charges as long term customers. Therefore, there is no difference in treatment between the Central Generating Stations and the Sasan UMPP. The petitioner has submitted that in case of URS scheduling, swapping of transmission capacity booked is occurring among long term transmission customers with the intent of utilisation of cheaper URS power whose availability is informed at the last moment and cannot be utilised effectively if STOA is to be obtained. Since the Commission has allowed scheduling of URS power on the ground of equity and equality, the petitioner is entitled to the same benefits which involve swapping of transmission capacity reserves. As regards sale to third party, the petitioner has submitted that POSOCO has failed to mention any technical difficulty in this regard and since the PPA allows for sale to third parties, the petitioner is entitled for the same. As regards the technical difficulty in scheduling URS power to beneficiaries, the petitioner has submitted that the Commission's order dated 11.1.2010 in Petition No.134/2009 is not confined to those plants whose tariff is determined by the Commission under section 62 of the Act. The petitioner has submitted that when the said order was issued with reference to the petition filed by NTPC, no specific mention was made about UMPPs since no UMPP was operational at that time. The petitioner has further submitted that as per the Commission's order, schedule revision should be treated as temporary re-allocation and should not be treated as open access transactions. Since re-allocation on temporary basis is available as per the petitioner's PPA and consent of the beneficiaries is available on day to day basis, there should be no difficulty in

scheduling URS power from the petitioner's project. As regards the inter-regional c, the petitioner has submitted that its request for scheduling of URS power to other beneficiaries is subject to grid availability. The petitioner has further submitted that transmission network has been developed considering evacuation of the petitioner's power for beneficiaries in the Northern Region. Even Central Generating Stations like Kahalgaon, Talcher, Farakka in ER and Jhajjar in NR have allocations in other regions and POSOCO so far has not faced any difficulty in scheduling URS power from these stations to the beneficiaries of other regions across inter-regional corridors which are more congested such as WR-SR, NR-WR-SR and ER-WR-(W3)-SR. As regards the solution suggested by POSOCO, the petitioner has submitted that the solution is impractical for scheduling of URS power from the petitioner's power plant. As regards submission of POSOCO to revisit the decision in the order dated 11.1.2010 in Petition No.134/2009, the petitioner has submitted that having implemented the decision for a period of five years, POSOCO cannot be permitted to challenge the same in the present proceedings.

Analysis and Decision:

13. The Commission has considered the submissions made by the petitioner, POSCO (NRLDC/WRLDC) and the respondent beneficiaries. The dispute between the petitioner and POSOCO lies in a narrow compass i.e. whether the Sasan UMPP is entitled to the benefits of the directions of the Commission in order dated 11.1.2010 in Petition No.134/2009 or not. While the petitioner supported by the respondent beneficiaries are of the view that Sasan UMPP meets all requirements of the order dated 11.1.2010, POSOCO has insisted that the said order is only applicable to the generating stations whose tariff has been determined under section 62 of the Act, and not to the stations whose tariff has been adopted under section 63 of the Act.

POSOCO has also submitted that the prayers of the petitioner if allowed will dilute the requirements of scheduling on the basis of contract and open access. POSOCO has suggested a mechanism for scheduling of URS power through STOA with modifications in the procedure for revision of schedule and waiving off of STOA charges and other charges. The petitioner has rejected the solution on the ground that this will not cater to the requirement of scheduling of URS power which is available at very short notice and for short duration. After consideration of the submission of the parties, the following issues arise for consideration of the Commission:

- (a) Issue No.1: What is the scope and intent of the Commission's order dated 11.1.2010 in Petition No.134/2009?
- (b) Issue No.2: Whether the order dated 11.1.2010 in Petition No.134/2009 shall be applicable in case of scheduling of power from the UMPPs?
- (c) Issue No.3: Whether in view of the submissions of POSOCO, there is a necessity to revisit the decision in the order dated 11.1.2010 in Petition No. 134/2009?
- (d) Relief, if any, to be granted to the petitioner.

Issue No. 1: What is the scope and intent of the Commission's order dated 11.1.2010 in Petition No.134/2009?

14. To understand the problem in proper perspective, the genesis of the order dated 11.1.2010 needs to be capitulated. NTPC in Petition No.134/2009 submitted that NTPC was selling its URS power remaining surplus after the day ahead scheduling to willing beneficiaries at the tariff determined by the Commission.

However, with the notification of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 and the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) (Amendment) Regulations, 2009, revision of schedules for short term bilateral transactions was possible only with advance notice of two days. Consequently, URS transactions which were scheduled on contingency basis could not be scheduled in case the original beneficiary recalled the power. In such an event, UI charges were payable by the generator which dis-incentivised the generator from making efforts for utilisation of available surplus power and as a result, URS power remained bottled up on account of additional UI liability of the generator in the transactions under such eventuality. NTPC filed petition No.134/2009 seeking further amendment to the said regulations for incorporation of provisions providing flexibility in revision of bilateral transactions in order to facilitate utilisation of URS power of NTPC stations. NTPC in IA No. 54/2009 submitted that NTPC organised meetings with representatives of beneficiary utilities in which the beneficiaries did not agree to NTPC's proposal to provide consent for not recalling their URS power and not agreeing to assume UI liability in case of change of schedule. NTPC, in order to mitigate the risk of UI in sale of URS power, suggested that as an alternative to its prayer for amendment of Open Access Regulations, NTPC be allowed to claim a fixed additional comfort charge alongwith the applicable variable charges for sale of such power which will be refunded, if prior consent for sale is given by the beneficiaries on realisation from the buying entities and where prior consent is not given, the comfort charges would be retained by NTPC to mitigate any consequential UI liability. Accordingly, NTPC sought a comfort charge of 25 paise/kWh in case of power from liquid fuel and 50 paise/kWh for power from all other sources plus any other applicable charges.

15. The Commission vide order dated 11.1.2010 in Petition No 134/2009 with I.A. No. 54/2009 had decided that scheduling of URS power from one beneficiary to other beneficiary of a generating station would be treated as reallocation of power on temporary basis and would not be treated as open access transactions. Relevant portion of the said order dated 11.1.2010 with regard to URS power is extracted as under:

"10. The Commission is of the view that URS power must be availed to the utmost extent under the prevailing scenario of power shortage. The earlier method being adopted was through the provision of short-term open access, which prevented use of the full quantum of URS power and in fact created a schedule for non-existent power, thereby upsetting the load generation balance to some extent. We find that utilization of URS Power should be done through the provision of the IEGC. Para 6.5 of the IEGC clearly states as under:

"20. Revision of declared capability by the ISGS(s) (except hydro stations) and requisition by beneficiary (ies) for the remaining period of the day shall also be permitted with advance notice. Revised schedules/ declared capability in such cases shall become effective from the 6th time block, counting the time block in which the request for revision has been received in the RLDC to be the first one."

11. Therefore, we do not find any justification for amendment to the regulations for the above purpose. Accordingly, we direct that all the generating stations, governed by the Tariff Regulations of the Commission be allowed to change schedule for the unrequisitioned quantum of power from one beneficiary(s) to another beneficiary(s) of the same power station on the requisition by these beneficiaries through the provision provided in the IEGC, i.e. within six time blocks or as per the provisions of the IEGC as amended from time to time. In case the original beneficiary requests back for its share of power, then its schedule and schedule of beneficiary who had availed URS power would be revised in the six time blocks again, or as specified in the IEGC as amended from time to time. These schedule revisions would be treated as re-allocation of power on temporary basis and would not be taken as open access transactions. The tariff would be governed by the terms and conditions of the tariff regulations applicable to the generating stations."

16. From the above decision of the Commission, the following can be deduced:

(a) URS power must be availed to the utmost extent in the prevailing condition of power shortage;

- (b) The earlier method of scheduling URS power was through the provisions of short term open access which prevented the use of the full quantum of URS power and created a schedule for non-existent power which upset the load generation balance to some extent;
- (c) Utilisation of URS power should be done through Regulation 6.5.20 of the Grid Code which provides that revision of schedule for remaining part of the day can be done through the advance notice and shall be effective from the 6th time block counting the time block in which request was received as the first one;
- (d) All generating stations governed by the Tariff Regulations of the Commission shall be allowed to change schedule for URS power from one beneficiary to another beneficiary of the same generating station on the basis of the requisition of the beneficiaries within six time blocks or as specified in the Indian Electricity Grid Code as amended from time to time;
- (e) In case the original beneficiary requests back for its share of power, then its schedule and schedule of beneficiary who had availed URS power would be revised in the six time blocks again, or as specified in the IEGC as amended from time to time.
- (f) These schedule revisions would be treated as re-allocation of power on temporary basis and would not be taken as open access transactions.
- (g) The tariff would be governed by the terms and conditions of the tariff regulations applicable to the generating stations.

17. It is evident from the above that URS power which was earlier being scheduled under short term open access has been treated as re-allocation of power on temporary basis for the purpose of scheduling. Since it is considered as reallocation of power on temporary basis, the scheduling of this power is treated in the same manner as the power scheduled through long term access. Unlike the short term access, the revision of schedule in case of long term access is allowed at any time of the day with an advance notice of six time blocks which has been subsequently revised to four time blocks. In case of recall of URS power by the original beneficiary, the schedule of original beneficiary and the beneficiary who has availed the URS power would be revised in the same manner. As a result, there is no UI liability to the account of the generator or the concerned beneficiaries if the scheduling or recall of power is done within the prescribed time blocks.

18. It is pertinent to mention that the order dated 11.1.2010 in Petition No.134/2009 was made applicable to the generating stations whose tariff is determined in accordance with the Tariff Regulations of the Commission. This is so, even though Regulation 6.5.20 of the Indian Electricity Grid Code was applicable to the inter-State Generating Stations (ISGS). Regulation 6.5.20 of the Indian Electricity Grid Code {as amended vide Central Electricity Regulatory Commission (Indian Electricity Grid Code) (Amendment) Regulations, 2009} is extracted as under:

“20. Revision of declared capability by the ISGS(s) (except hydro stations) and requisition by beneficiary(ies) for the remaining period of the day shall also be permitted with advance notice. Revised schedules/declared capability in such cases shall become effective from the 6th time block, counting the time block in which the request for revision has been received in the RLDC to be the first one.

Provided that RLDC may allow only one revision, in case of Run of the River (ROR) and pondage based hydro generating stations, if there is large variation of expected energy (MWh) for the day compared to previous declaration.”

19. 'Inter-State Generating Stations' (ISGS) has been defined in the Indian Electricity Grid Code, 2006 as "a Central/other generating station in which two or more states have shares and whose scheduling is to be coordinated by the RLDC". Therefore, irrespective of whether the tariff of the generating station is determined as per the Tariff Regulations of the Commission, ISGS will include apart from Central Generating Stations, any other generating station in which two or more States have shares and whose scheduling is coordinated by RLDCs. This will include all generating stations covered under section 79(1)(b) of the Act if their scheduling is coordinated by RLDC. However, in order dated 11.1.2014, the Commission confined the applicability of the said order to the generating stations whose tariff is determined by the Commission. Though the reason for such a dispensation only in case of the generating stations whose tariff is determined by the Commission has not been elaborated in the order dated 11.1.2010, it appears to us that the said dispensation was on account of the provisions in the Tariff Regulations which enabled the beneficiaries of Central Generating Stations to temporarily surrender part of their firm shares in favour of other beneficiaries within and outside the region. However, Tariff Regulations are not only applicable to the Central Generating Stations which are covered under section 79(1)(a) of the Act but also to the generating stations which are covered under section 79(1)(b) i.e. generating stations having composite scheme for generation and sale of electricity in more than one State. Therefore, generating stations covered under section 79(1)(b) of the Act which have the PPAs which enable the beneficiaries to temporarily surrender their share of power in favour of other beneficiaries of the generating station will be eligible for the dispensation provided under the order dated 11.1.2010. The other reason for linking the applicability of the said order with the Tariff Regulations is that the URS power which shall be sold to

other beneficiaries will be at the regulated price determined by the Commission and the generator is prevented from selling the power at negotiated price or market determined price. Therefore, scheduling of URS power for sale to third party is not envisaged in the said order. If any of the generating stations whose tariff is determined by the Commission intends to sell URS power to any party other than the beneficiary of the generating station (hereinafter “the third party”), then it will be required to seek short term open access from the concerned RLDCs.

20. Indian Electricity Grid Code, 2006 (as amended from time to time) has been repealed and the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 (hereinafter “the Grid Code”) has been enacted in its place which came into force with effect from 1.5.2010. Regulation 6.5 of the Grid Code deals with scheduling and despatch procedure for long term access, medium term open access and short term open access with the caveat that the said procedure shall be read with the provisions of Open Access Regulations, 2008 which deals with short term open access. The scheduling procedure is briefly discussed as under:

(a) All inter-State generating stations alongwith their station capabilities and allocated/contracted shares of different beneficiaries shall be duly listed on the respective RLDC and SLDC websites.

(b) Each State shall be entitled to a MW despatch upto (foreseen ex-power plant MW capability for the day) x (State’s share in the station capacity) for all such stations. In case of hydro-electric stations, there would be a limit on daily MWh despatch equal to (MWh generation capacity for the day) x (State’s share in the Station’s capacity).

- (c) By 8 AM every day, the ISGS shall advise the concerned RLDC the station-wise ex-power plant MW and MWh capability foreseen for the next day i.e. from 0000 hrs to 2400 hrs of the following day.
- (d) The foreseen capabilities of the ISGSs and corresponding MW and MWh entitlement of each State shall be compiled by the RLDC every day for the next day and the concerned RLDC shall advise all beneficiaries by 10 AM.
- (e) The SLDCs shall advise RLDC by 3 PM their drawal schedule for each of the ISGSs in which they have shares, long term and medium term bilateral exchanges, and approved short term bilateral interchanges.
- (f) By 6 PM, RLDC shall convey the ex-power plant despatch schedule to each of the ISGS in MW for different time blocks for the next day and net drawal schedule to each regional entity in MW for different time blocks for the next day.
- (g) The SLDCs/ISGSs shall inform any modification/changes to be made in drawal schedule/foreseen capabilities, if any, to RLDC by 10 PM or earlier.
- (h) While finalising the daily despatch schedule for ISGS, RLDC shall ensure that the schedules are operationally reasonable, particularly in terms of ramping up or ramping down rates and ratio between maximum and minimum generation levels.
- (i) While finalising the drawal and despatch schedule, RLDC shall also check that the resulting power flow does not give rise to any transmission constraints. If case impermissible constraints are foreseen, RLDC shall moderate the schedules to the required level under intimation to the regional entities.

- (j) In case of any grid disturbance, scheduled generation of all ISGSs and scheduled drawal of all beneficiaries shall be deemed to have been revised to be equal to their actual generation/drawal for all time blocks affected by grid disturbance.
- (k) Revision of declared capability by the ISGSs having two part tariff and requisition by the beneficiaries for the remaining period of the day shall also be permitted with the advance notice. Revised schedules/declared capability in such cases shall become effective from 6th time block (since revised to 4th time block with effect from 14.2.2014), counting the time block in which request has been received to be the first one.
- (l) The regulation also provides for revision of schedules on account of forced outages from the 4th time block in respect of long term access and medium term open access, and from 4th time block in respect of short term open access by ISGS of the capacity of 100 MW and above who is also required to give the estimated time of restoration of the unit alongwith the request for revision.
- (m) RLDC can also issue revision of schedule at any point of time in the interest of better system operation. Revision of schedule shall become effective from the fourth time block starting from the time block in which revised schedule is issued.

The above procedures only capitulate the gist of the scheduling procedure and for the details, the regulation may be referred. For the purpose of the present petition, Regulation 6.5.18 which is parimaetria to Regulation 6.5.20 of Indian Electricity Grid Code, 2006 as amended, is extracted as under:

“18. Revision of declared capability by the ISGS(s) having two part tariff with capacity charge and energy charge (except hydro stations) and requisition by beneficiary (ies) for the remaining period of the day shall also be permitted with advance notice. Revised schedules/declared capability in such cases shall become effective from the 4th time block, counting the time block in which the request for revision has been received in the RLDC to be the first one, provided that RLDC may allow revision of the DC, at six hourly intervals effective from 0000, 0600, 1200 and 1800 hours in case of Run of the River (RoR) and pondage based hydro generating stations, if there is large variation of expected energy (MWh) for the day compared to previous declaration.”

21. In the Grid Code, ISGS has been defined as a Central generating station or other generating station, in which two or more States have shares. Therefore, for Regulation 6.5.18 of the Grid Code to be applicable, only following requirements are to be fulfilled:

- (a) The generating station should be an ISGS i.e. either it is a Central Generating Station or a generating station in which two or more States have shares;
- (b) The ISGS should have a two part tariff consisting of capacity charge and energy charge;
- (c) Either the ISGS or the beneficiary can revise the schedule during the day which will come into effect from the 4th time block counting the time block in which request has been made as the first one.

22. Therefore, even though the order dated 11.1.2010 in Petition No.134/2009 provides that only the generating stations whose tariff is determined as per the Tariff Regulations of the Commission will be entitled to go for revision of schedules for URS power, there is no embargo in the Grid Code which prevents other ISGS whose tariff is not determined by the Commission to seek revision of schedules in terms of Regulation 6.5.18 of the Grid Code if they have a two part tariff consisting of capacity

charge and energy charge. This will include the UMPPs who have a two part tariff and whose tariff has been adopted by the Commission.

Issue No.2: Whether the order dated 11.1.2010 in Petition No.134/2009 shall be applicable in case of scheduling of power from the UMPPs?

23. The petitioner's generating station is an UMPP conceived under the Ultra Mega Power Policy of the Central Government. As a policy measure, the Central Government allocated the power from the UMPP to the beneficiaries in the different States. In case of Sasan UMPP, allocation of power was made by Ministry of Power. In this connection, para 5 of the order dated 17.10.2007 in Petition No.109/2007 is relevant which is extracted as under:

"5. The applicant has submitted that allocation of power from Sasan UMPP along with other UMPPs was discussed and tentatively finalised in a meeting taken by the Secretary (Power), Government of India on 16.2.2006 with the Principal Secretaries/Energy Secretaries of the beneficiary States. The allocation of power from Sasan UMPP was finalised in the subsequent meetings taken by Secretary (Power) on 22.9.2006 and Additional Secretary (power) on 29.9.2006 by re-allocating 250 MW and 50 MW from the earlier allocations of Chandigarh and Delhi respectively to Madhya Pradesh. The final allocation of power from Sasan UMPP is as under:

Ser No.	Procuring States	Allocated Capacity (MW)	Contracted Capacity (MW)
1	Delhi	450	
2	Haryana	450	
3	Uttar Pradesh	450	
4	Rajasthan	400	
5	Punjab	600	
6	Uttarkhand	100	
7	Madhya Pradesh	1500	
	Total	4000	

24. Sasan UMPP was awarded to REL on the basis of competitive bidding carried out under section 63 of the Act. The successful bidder entered into a PPA dated 7.8.2010 with 14 procurers in seven States. As per para 1.1 (ii) of Schedule 7 of the

PPA, “the tariff shall be paid in two parts comprising of capacity and energy charge.”

Schedule 6 of the PPA dealing with Availability Factors provides as under:

“The following matters shall be determined as per the provisions of the Grid Code:

- a. Availability declaration and calculation of Availability or Availability Factor;
- b. Requirement of Spinning Reserves;
- c. Procedure for revision of Availability;
- d. Consequences of failure to demonstrate capacity or mis-declaration of capacity;
and
- e. Other matters which may be related to Availability or Availability Factor.”

25. Articles 4.3 and 4.4 of the PPA of Sasan UMPP deal with the available capacity and scheduled energy. The said Articles are extracted as under:

“4.3 Purchase and Sale of Available Capacity and Scheduled Energy

4.3.1 Subject to the terms and conditions of this Agreement, the seller undertakes to sell to the Procurers, and the Procurers undertake to pay the Tariff for all the Available Capacity upto the Contracted Capacity and Scheduled Energy of the Power Station, according to their then existing Allocated Contracted Capacity, throughout the terms of this Agreement.

4.3.2 Unless otherwise instructed by all the procurers (jointly), the Seller shall sell all the Available Capacity up to the Contracted Capacity of the power station to each procurer’s then existing Allocated Contracted Capacity pursuant to Dispatch Instructions.

4.4 Right to Available Capacity and Scheduled Energy

“4.4.1. Subject to the other provisions of this Agreement, the entire Contracted Capacity of the Power Station and all the Units of the Power Station shall at all times be for the exclusive benefit of the procurers and the Procurers shall have the exclusive right to purchase the entire Contracted Capacity from the Seller. The Seller shall not grant to any third party or allow any third party to obtain any entitlement to the Available Capacity and/or Scheduled Energy.

4.4.2. Notwithstanding Article 4.4.1, the seller shall be permitted to sell power, being a part of the Available Capacity of the Power Station to third parties if:

- (a) There is a part of Available Capacity which has not been Dispatched by the Procurer, ordinarily entitled to receive such part (Concerned Procurer); and
- (b) such part has first been offered, at the same Tariff, to the other Procurers (by the RLDC and/or the Seller), who were not ordinarily entitled to receive such part and they have chosen to waive or not to exercise their first right to receive such part of the Available Capacity within two (2) hours of being so offered the opportunity to receive such part.

4.4.3 If a Procurer does not avail of power upto the Available Capacity by the Seller corresponding to such Procurer's Allocated capacity, and the provisions of Article 4.4.2 have been complied with, the Seller shall be entitled to sell such Available Capacity not procured, to any person without losing the right to receive the Capacity Charges from the Concerned Procurers for such un-availed Available Capacity. In such a case, the sale realization in excess of Energy Charges shall be equally shared by the Seller within Concerned Procurer. In the event, the Seller sells such Available Capacity to the shareholders of the Seller or any direct or indirect affiliate of the Seller/shareholders of the Seller without obtaining the prior written consent of the Procurer, the Seller shall be liable to sell such Available Capacity to such entity at tariffs being not less than the Tariff payable by the relevant Procurer whose capacity is being sold pursuant to this Article. If more than one Procurers do not avail fully of their Allocated Contracted Capacity, provisions of this Article shall be applicable to them *mutatis mutandis* and in such case, fifty percent (50%) of the excess over Energy Charges recovered by the Seller from sale to third party shall be retained by the Seller and the balance fifty percent (50%) shall be provided by the Seller to the Concerned Procurer/s and sold by the Seller to third parties. During this period, the Seller will also continue to receive the Capacity Charges from such Procurers. Upon the Procurers or any Procurer who has not availed of the Available Capacity, as envisaged under this Article, intimating to the Seller of its intention and willingness to avail of the part of the Available Capacity not availed of and therefore sold to the third party, the Seller shall, notwithstanding anything contained in the arrangement between the Seller and said third party, commence supply of such capacity to the Concerned Procurer/s from the later of two(2) hours from receipt of notice in this regard from the Concerned Procurer/s or the time for commencement of supply specified in such notice."

26. From the provisions of the PPA quoted in paras 33 and 34, it emerges that the availability declaration and procedure for revision of availability in respect of Sasan UMPP shall be governed by the provisions of the Grid Code. In other words, Regulation 6.5 of the Grid Code including the provisions of Regulation 6.5.18 regarding revision of schedule shall be applicable in case of Sasan UMPP. Moreover, Sasan UMPP has a two part tariff consisting of capacity charge and energy charge which fulfils the conditions of Regulation 6.5.18 of the Grid Code. The PPA further permits the petitioner to sell the power generated from entire capacity of the generating station to the procurers only. In case of entire or part of the contracted capacity is not availed by a procurer, such capacity shall be first offered to the other procurers at the same tariff by RLDC and/or the seller i.e. Sasan UMPP. In case the

other procurers have either not exercised their first right to receive or have waived such right within two hours, then only the petitioner is permitted to sell power to the third parties. The PPA further provides that where the procurer who has not availed the contracted capacity (which has been sold to third parties) but gives an intimation to the seller to avail the said capacity, the seller is bound to commence supply of such capacity to the concerned procurer within two hours of the receipt of the intimation or the time of commencement of supply mentioned in the notice. In order to make the provisions of the PPA regarding recall of power by the original beneficiary within two hours, Sasan UMPP can make use of the provisions of Regulation 6.5.18 of the Grid Code which permits all ISGS to revise schedule with a notice of 4 time blocks.

27. The petitioner has prayed for revision of schedule in terms of the order dated 11.1.2010 while selling to the third parties. We have considered the provisions of the Grid Code. Regulation 6.5.18 of the Grid Code applies to ISGSs and their beneficiaries. Beneficiary has been defined 'as a person who has a share in the ISGS'. A third party will refer to a party who is not a beneficiary of the ISGS. In our view, revision of schedule on account of sale to third party and recall of power from third party when the original beneficiary requires the same will not be covered under Regulation 6.5.18 of the Grid Code. For sale to third party, the concerned ISGS will have to seek short term open access from the concerned RLDC. The only contingency provided under Grid Code for revision of schedule in case of transactions under short term open access is on account of forced outage as provided in Regulation 6.5.19 of the Grid Code. POSOCO has stated that all URS power from UMPP may be scheduled under short term open access and revision of schedule may be permitted under Regulation 6.5.19 by exercising the power of removal of difficulty. In our view,

suggestion of POSOCO if accepted will generate similar requests for revision of schedules from the generators who are selling through short term open access irrespective of whether tariff is regulated by this Commission or not. We direct the staff to examine whether flexibility of revision of schedule under short term open access can be given for reasons other than forced outage or unit tripping keeping in view the paramount need for safe and secure grid operation.

28. POSOCO's objections to grant the benefits of revision of schedule to the UMPPs mainly pertain to three aspects. Firstly, unlike the Central Generating stations where the allocations are treated as deemed long term access under Regulation 2(m) of Connectivity Regulations, there is no access in case of URS power of UMPP and in terms of Regulation 8(6) of Connectivity Regulations, no interchange can take place without any form of access. In our view, this reason cannot be accepted as the order dated 11.1,2010 is not confined to Central Sector Generating Stations but apply to all generating stations whose tariff is determined by the Commission. Moreover, all power which are included in the day ahead schedule are based on long term, medium term and short term open access and in case of revision of schedules, access is being interchanged among the beneficiaries only. Secondly, POSOCO has flagged that there could be problems of scheduling when the corridors are congested and beneficiaries are in different regions. The petitioner has submitted that only one beneficiary is located in the Western Region as Sasan UMPP and other 13 beneficiaries are located in the Northern Region and backing down by any of the thirteen procurers and scheduling URS power on temporary basis to other beneficiaries can only decongest the NR-WR corridor. In our view, scheduling of URS power is always subject to availability of the transmission corridors and power

is vested in the RLDCs under Regulation 6.5.20 of the Grid Code to revise the schedule at any point of time in the interest of grid operation. Therefore, inter-regional scheduling power among the beneficiaries of the same generating station is unlikely to cause congestion. Thirdly, POSOCO has submitted that consent from the buyers and sellers are necessary for dispute free scheduling. Since open access applications are always with the consent of buyers and sellers, they are conducive for scheduling of URS in a dispute free manner. In our view, in terms of Regulation 6.5.7(ii) of the Grid Code, net drawal schedule of regional entity is determined through the “summation of station-wise ex-power plant drawal schedules from all ISGS and drawal from/injection to regional grid consequent to other long term access, medium term and short term open access transactions, after deducting the estimated transmission losses”. Revisions of these schedules are allowed to ISGS and the beneficiaries under Regulation 6.5.18 of the Grid Code with an advance notice of 4 time blocks. Regulation 6.5.18 does not envisage submission of application for any type of access for revision of schedule. The advance notice prescribed in Regulation 6.5.18 serves as the consent of the ISGS and the beneficiaries for revision of schedules and the ISGS and its beneficiaries are statutorily bound to honour their consent once they exercise their option for revision of schedule. However, in order to allay the fears of POSOCO, we direct that the ISGS should submit the consent letters from both the surrendering beneficiaries and scheduling beneficiaries alongwith its request for change of schedule for URS power to the concerned RLDCs which will be treated as the agreements between the parties. Fourthly, another major concern expressed by POSOCO is with regard to the discrimination between beneficiaries and non-beneficiaries of an ISGS if the revision of schedule is allowed to the beneficiaries. In our view, there is distinction

between beneficiaries and non-beneficiaries of an ISGS and both cannot be treated in the same manner. A beneficiary has been defined as a person who has a share in the ISGS. Being a beneficiary of ISGS, it has certain liabilities towards the generating station which a non-beneficiary does not have. For example, a beneficiary has the liability to pay the capacity charges even though he does not draw the power from the generating station whereas the non-beneficiary does not have such liability. Above all, Regulation 6.5.18 of Grid Code permits revision of drawal schedules on account of ISGS and their beneficiaries only. It does not permit revision of schedule in case of short term open access which is governed by Regulation 6.5.19 of the Grid Code.

Issue No.3: Whether in view of the submissions of POSOCO, there is a necessity to revisit the decision in the order dated 11.1.2010 in Petition No. 134/2009?

29. POSOCO has submitted that since there are many generators seeking implementation of the scheduling of URS power in terms of the Commission's order dated 11.1.2010, there is a need to devise a unified methodology for scheduling of URS power for Central Generating Stations and other generating stations. POSOCO has submitted that the order dated 11.1.2010 may be revisited and philosophies suggested may be applied to all the generating stations whose tariff is determined by the Commission under section 62 and whose tariff is adopted under section 63 of the Act. As regards the methodology, POSOCO has submitted the following:

- (a) The petitioner can apply for STOA on contingency basis wherein the access is granted by RLDCs in about an hour of the application.

- (b) All the STOA applications received including STOA applications for URS power should be treated at par and thereafter approved by respective RLDCs in accordance with the Open Access Regulations.
- (c) Revision of schedule in the event of original beneficiary requisitioning the URS power shall be treated in the similar manner as revision of schedule in case of tripping of unit under Regulation 6.5.19 of the Grid Code which may be permitted by the Commission by exercising power under removal of difficulty.
- (d) As regards the payment of STOA charges, POSOCO has suggested that the Commission may consider waiving off the application fee, RLDC operating charges and transmission charges under the Open Access Regulations for scheduling of URS power.
- (e) POSOCO has further submitted that the issues related to the scheduling of URS power can be addressed by implementation of ancillary services whereby available surplus power can be scheduled to a pool by the System Operator, if shortage situation is anticipated.

30. In our view, scheduling of URS power through STOA on contingency basis is impracticable since URS power is typically available for a few hours and may result in un-utilisation of said power. As regards invoking power of removal of difficulty to allow revision of schedule under Regulation 6.5.19 when the original beneficiary recalls power, we are of the view that treating URS power as short term transactions and allowing recall of URS power under a provision relating to unit tripping will result in avoidable complications.

31. POSOCO has submitted that with the introduction of ancillary services, the problem of URS power will be addressed whereby available surplus power can be scheduled to the pool by the System Operator if shortage situation is envisaged. The Commission has notified the Central Electricity Regulatory Commission (Ancillary Services Operations) Regulations, 2015 which will come into operation from the date to be notified by the Commission. As per Regulation 5 of the said regulation, all Generating Stations which are regional entities and whose tariff is determined or adopted by the Commission for their full capacity shall provide reserve regulation ancillary services (RRAS). The objective of said regulations is to restore the frequency at desired level and to relieve the congestion in the transmission network. Thus, Ancillary Services Regulations will result in utilisation of substantial quantum of URS power of the generating stations whose tariff is determined or adopted by the Commission. However, Ancillary Services are linked to frequency and may not be sufficient to absorb the entire URS power. In the UMPPs like Sasan, power is available at a cheaper price than many of the coal based thermal generating stations and beneficiaries should not be deprived of the benefits of such power. Therefore, in our view, apart from the ancillary services, the generating stations whose tariff is either determined or adopted by this Commission should be allowed revision of schedules under Regulation 6.5.18 of the Grid Code.

32. The order dated 11.1.2010 in Petition No. 134/2009 was issued in the context of Indian Electricity Grid Code, 2006 in the then prevailing condition of shortage of power. Since then ground situation has undergone changes. The power supply position in the country has improved during the past 5 years. The Commission has adopted the tariff of 4 UMPPs out of which two are in operation. The Commission has also introduced 24x7 market in power exchanges and notified the regulations on

ancillary services. In view of these developments, the directions given in the order dated 11.1.2010 in Petition No.134/2009 are modified as under:

(a) All generating companies whose tariff is determined by this Commission under section 62 or adopted by this Commission under section 63 of the Act shall be permitted to revise their schedule for URS power from one beneficiary to another beneficiary of the same power station in terms of Regulation 6.5.18 of the Grid Code within 4 time blocks. Consent of the original beneficiary and the new beneficiary shall be submitted by the ISGS intending to avail revision of schedule to the concerned RLDC by mail.

(b) If the original beneficiary requests back its share of power, then its schedule and the schedule of beneficiary who had availed URS power shall be revised in 4 time blocks again. Concerned ISGS shall submit the request of the original beneficiary to recall the power to concerned RLDC by mail.

(c) The revision of schedules shall be permitted under Regulation 6.5.18 in respect of URS power subject to availability of transmission corridor and in case of congestion, RLDCs shall be at liberty to revise the schedule in terms of Regulation 6.5.20 of the Grid Code.

(d) Revision of schedule for sale of URS power to third parties shall not be permitted. Concerned ISGS may seek short term open access for sale of URS power to third parties.

(e) NLDC and RLDCs are directed to implement the above directions. In case any difficulty is experienced, NLDC/RLDCs/ISGSs/Beneficiaries are granted liberty to bring such difficulty to the notice of the Commission.

Relief to be granted to the petitioner

33. In view of the above discussion, the petitioner shall be permitted to revise schedule for URS power from one beneficiary to another beneficiary of Sasan UMPP in accordance with Regulation 6.5.18 of the Grid Code and in terms of our directions in Para 32 above. The petitioner shall not be permitted to revise the schedule for sale to third parties which shall be governed in accordance with the regulation on short term access.

34. This order disposes of Petition No.310/MP/2014.

sd/-
(A. S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson