

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Dr. M.K. Iyer, Member

Date of Order: 8th of December, 2017

Petition No. 203/MP/2015

In the matter of:

Petition under Section 79 (1) (c) of the Electricity Act, 2003 for adjudication of dispute between GMR Kamalanga Energy Limited and Power Grid Corporation of India Limited in relation to illegal threat of encashment of the bank guarantee furnished in relation to the long term open access granted to the petitioner.

And

In the matter of:

GMR Kamalanga Energy Limited
Building No. 302, New Shakti Bhavan,
Near Terminal 3, Indira Gandhi International Airport,
New Delhi-110 037

.....Petitioner

Vs

Power Grid Corporation of India Limited,
'Saudamini', Plot No.2,
Sector -29, New Delhi -110 037

.....Respondent

For petitioner : Shri Sanjay Sen, Senior Advocate
Shri Alok Shankar, Advocate
Shri Karan Kartik, GMR

For respondent : Ms. Suparna Srivastava, Advocate, PGCIL
Shri A.M. Pavgi, PGCIL
Shri Jyoti Prasad, PGCIL



Petition No. 41/MP/2016

In the matter of:

Petition seeking modification in the quantum of Long Term Access granted under the Bulk Power Transmission Agreement dated 24.2.2010 from 800 MW to 647 MW in the light of the discussions recorded in the Minutes of the Meetings held with Eastern Region constituents on 5.1.2013 and 27.8.2013 read with Sections 38 and 79 (1) (c) of the Electricity Act, 2003.

And

In the matter of:

GMR Kamalanga Energy Limited
10th Floor, 'D'Block, IBC Knowledge Park,
Bannerghatta Road,
Bangalore- 560029

.....Petitioner

Vs

1. Power Grid Corporation of India Limited,
B-9, Qutab Industrial Area,
KatwariaSarai,
New Delhi-110 016.

2. Central Electricity Authority,
SewaBhawan,
Rama Krishna Puram,
New Delhi-110066

.....Respondents

For petitioner : Shri Sanjay Sen, Senior Advocate
Shri Ramji Srinivasan, Senior Advocate
Shri Hemand Singh, Advocate
Shri Matragupta Mishra, Advocate
Shri Tushar Nagar, Advocate
Shri Nimesh Jha, Representative
Shri Ajay Kumar Nathani, Representative
Shri Madhup Singhal, Representative

For respondents : Ms. Suparna Srivastava, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL
Shri Swami Verma, PGCIL

ORDER

The Petitioner, GMR Kamalanga Energy Limited (GKEL) has filed the Petition No. 203/MP/2015 under Section 79(1)(c) and (f) of the Electricity Act, 2003 ('the Act')



seeking a declaration that the demand letters dated 17.2.2015, 19.5.2015 and 5.8.2015 issued by Power Grid Corporation of India Limited (PGCIL) are illegal and de hors the agreed terms of the BPTA; and for directions to PGCIL to return original bank Guarantees of Rs.40 crore and payment of Rs.22.67 lakh towards bank charges for extension of the BGs.

2. GKEL has filed Petition No.41/MP/2016 seeking a declaration that 800 MW LTA granted to the Petitioner by PGCIL under the BPTA dated 24.2.2010 stands modified to 647 MW (387 MW in NR and 260 MW in ER) and Letter of Credit to be opened by the Petitioner as payment security mechanism towards LTA is liable to be reduced accordingly.

3. Since issues involved in both petitions relate to return of Bank Guarantee (BG), opening of Letter of Credit (LC) and operationalization of the LTA of GKEL, both petitions are being disposed of through a common order.

Facts of the case:

4. The Petitioner has set up a thermal power plant ('generating station') at village Kamalanga in District Dhenkanal, Odisha with an installed capacity of 1050 MW. As per the Memorandum of Understanding (MoU) dated 9.6.2006 by GMR Energy Limited (the predecessor of the Petitioner) with the Government of Odisha and PPA dated 28.9.2006 with GRIDCO, 25% of power from the Project was agreed to be supplied to GRIDCO. The PPA with GRIDCO was subsequently amended on 04.01.2011 to revise the installed capacity of the Project to 1400 MW with the addition of another unit of 350 MW and to replace M/s GMR Energy Ltd. with the Petitioner as the developer of the Project and Seller of power to GRIDCO.



5. GMR Energy Limited entered into a PPA dated 12.3.2009 with PTC India Limited for supply of 300 MW net power to Haryana Discoms on long term basis for a period of 25 years commencing from the date of commercial operation of the generating station. For the purpose of evacuation of power from the project, the Petitioner entered into a BPTA dated 24.2.2010 with CTU for availing LTA for inter-State transmission of 800 MW of power from its generating station on long term basis, out of which the Petitioner was to evacuate 200 MW to utilities in SR and remaining 600 MW to utilities in NR. In terms of the BPTA, the Petitioner was required to develop the generating station and the dedicated transmission line for evacuation of power from its generating station upto Angul switchyard. In accordance with clause 6 of the above BPTA, the Petitioner furnished two BGs for Rs.40 crore (Rs.22.50 crore + Rs.17.50 crore) security towards the development of the Project. The BGs were to be kept valid initially for a period upto six months after the expected dates of commissioning schedule of the generating units of GKEL and could be extended as per the requirement to be indicated during co-ordination committee meetings.

6. Subsequently, the Petitioner entered into a PPA with the erstwhile Bihar State Electricity Board (BSEB) on 9.11.2011 for supply of 260 MW of power on long term basis, for a period of 25 years with delivery point as Bihar STU bus-bar interconnection point. In the meeting convened by PGCIL on 5.1.2013 to discuss the issues involving connectivity/MTOA/LTA, it was decided that GRIDCO's share of 25% of the power from the generating station would be availed by isolating one unit of the said generating station by connecting it with LILO of Talcher-Meramundali D/C line or through GMR-Meramundali 400 kV D/C line. As per the decision arrived at



the said meeting, one unit of 350 MW of the Petitioner's Project would be directly connected to the STU for supply of power to GRIDCO.

7. The Petitioner wrote certain letters dated 7.1.2013, 10.6.2013, 5.9.2013 and 1.9.2014 to PGCIL seeking migration of a quantum of 260 MW from the LTA quantum pertaining to Northern Region to Eastern Region for supply of power on long term basis to BSEB. The Petitioner through a letter dated 25.9.2014 intimated PGCIL about the amendment to be made to the BPTA dated 24.2.2010 for grant of LTA of 260 MW in the Eastern Region for supply of power to BSEB. In response to the said letter, PGCIL vide letter dated 20.10.2014 advised the Petitioner to apply for a fresh LTA qua the PPA with BSEB, and further advised the Petitioner to relinquish/reduce the LTA by 260 MW in the Northern Region. The Petitioner on 31.10.2014 applied for grant of a fresh LTA of 260 MW in the ER for supply of power to BSEB which was granted on 15.4.2015. Since, the Petitioner did not sign the LTA Agreement, PGCIL vide its letter dated 3.6.2015 informed the Petitioner about cancellation of the LTA of 260 MW in ER. The Petitioner sent a letter dated 30.09.2015 to PGCIL seeking modification in the LTA/BPTA quantum of 800 MW so as to make the same commensurate with the net exportable quantum of power from the Petitioner's two Units which were remaining connected to the CTU. The Petitioner also made an online application dated 30.9.2015 in accordance with the fourth proviso of Regulation 12 of the Connectivity Regulations read with the directions of the Commission passed in Petition No. 92/MP/2014 for grant of 260 MW LTA in ER for ensuring supply of power to Bihar Discoms. PGCIL vide its letter dated 15.01.2016 declined to modify the BPTA dated 24.02.2010 to revise the LTA quantum from 800 MW to 647 MW as sought by the Petitioner.



8. Units I, II and III of the generating station were declared under commercial operation in April, 2013, November, 2013 and March, 2014 respectively and the 400 KV S/C dedicated transmission line from its Project to Meramundali achieved CoDon 21.12.2014.

9. CTU, vide its letter dated 17.2.2015 directed the Petitioner to extend the validity period of the BGs and directed the issuing bank to treat the said letter as a claim for invocation of the BGs, in case the extension as requested is not provided by the petitioner prior to the expiry date of the BGs. The Petitioner, vide its letter dated 4.3.2015 informed CTU that as per the BPTA, the Petitioner has commissioned the 400 KV D/c GMR - Angul Pooling station Transmission Line along with the associated line bays on 21st December 2014 for evacuation of power from its generating station and requested PGCIL to activate the LTA as early as possible as Power is being evacuated through Angul Pooling Station since 22.12. 2014. The Petitioner also requested PGCIL to release the BG and refrain from making the conditional claims to the bank against the bank guarantee. IDBI Bank in its letters dated 9.3.2015 extended the BG till 30.6.2015. PGCIL vide its letter dated 9.5.2015 asked the Bank either to extend the BG by one more year and in case, the BG is not extended, then the letter be treated as a notice for encashment of BG. The Bank on the instruction of the Petitioner extended the validity of BG upto 30.9.2015 vide its letters dated 1.6.2015. The Petitioner in its letters dated 3.6.2015, 24.6.2015, 29.6.2015 and 15.7.2015 also reiterated its request for return of the Bank Guarantee claiming that the purpose of the BG as per the BPTA has been complied with. PGCIL again in its letter dated 5.8.2015 instructed the Bank to extend the BG by another one year and in case, the BG is not extended, then the letter be treated as a notice for encashment of BG. The Petitioner has challenged the letters dated 17.2.2015,



9.5.2015 and 5.8.2015 asking the Petitioner for extending the validity of the BG on the ground that the said requirement is in violation of the provisions of the BPTA.

10. In the meanwhile, PGCIL issued a notice dated 17.7.2015 for opening of LC for an amount of Rs. 22.51 crore for LTA of 800 MW. During the hearing of the Petition No.203/MP/2015 on 3.9.2015, PGCIL submitted that in terms of clauses 2 and 6 of the BPTA, it is necessary that adequate security mechanism is available to PGCIL at every point of time. PGCIL further submitted that the transmission systems for operationalization of LTA have been commissioned and LTA of the Petitioner can be operationalized subject to opening of LC of approximately of Rs.22.50 crore by the Petitioner. Since, the amount of BGs submitted by the petitioner was more than the required LC, the Commission directed PGCIL to return the excess amount of Rs. 17.50 crore to the petitioner immediately. The Commission further directed the Petitioner to open required LC for operationalization of LTA within one week and PGCIL to operationalize LTA of the petitioner within one week thereafter and the remaining amount of BG shall be returned to the Petitioner after opening of LC for operationalization of LTA.

11. The Petitioner challenged the directions of the Commission to the Petitioner to open the LC for operationalization of LTA and linking the Construction BG with opening of LC in Appeal No.266/2015 before the Appellate Tribunal for Electricity (Appellate Tribunal). In its order dated 25.7.2016, the Appellate Tribunal directed that the "Impugned Order shall be given effect to by all concerned, irrespective of pendency of the appeal, before this Appellate Tribunal".

12. The Petitioner filed Petition No.41/MP/2016 seeking modification of its LTA from 800 MW to 647 MW and for reducing the Letter of Credit commensurate to the



capacity covered under the LTA. During the hearing of the petition on 22.3.2016, the Commission directed the Petitioner to open the LC for 647 MW within one week subject to the final decision in the petition to which the learned counsel for the Petitioner agreed to take necessary steps to open LC for 647 MW. Further, during the hearing on 12.4.2016, the Commission reiterated its directions to the Petitioner to open the LC for 647 MW. During the hearing of the petition on 26.5.2016, the learned counsel for the Petitioner submitted that the Petitioner has surrendered LTA of 413 MW out of the total LTA quantum of 800 MW and accordingly, the Petitioner has opened the Letter of Credit for 387 MW. Learned counsel submitted that the said relinquishment was communicated to PGCIL vide letters dated 22.4.2016 and 12.5.2016 in terms of Regulation 18 of the Connectivity Regulations. Learned counsel for PGCIL submitted that CTU has not acceded to the petitioner's alleged relinquishment of 413 MW vide letter's dated 22.4.2016 and 11.5.2016. Learned counsel further submitted that the prayers in the petition need to be amended, as the petitioner is seeking to alter its position and the petitioner should be directed to comply with the directions for opening of LC for 647 MW. Learned counsel for the petitioner sought permission to file amended petition which was allowed. The Commission directed the petitioner to open an LC for 647 MW as per the earlier direction dated 12.4.2016.

13. During the hearing of the Petition No.41/MP/2016 on 15.9.2016, learned counsel for the Petitioner submitted that as per the Commission's direction, the petitioner has opened the LC for 647 MW. Learned counsel further submitted that the petitioner is not filing amended petition as it is seeking a declaration that its LTA has been modified from 800 MW to 647 MW (387 MW in NR and 260 MW in ER)



commensurate with the exportable capacity from two units (3x350 MW) of the generating station.

Pleadings in Petition No. 203/MP/2015

14. The Petitioner has submitted that in terms of clause 6 of the BPTA, the BGs were required to be furnished as security towards the damages recoverable by PGCIL in the event, the Petitioner fails to complete the generation project and/ or dedicated transmission line. The Petitioner having successfully completed all its obligations which were required to be completed prior to the operations period under the BPTA, the purpose for providing security to PGCIL by way of the BGs stands fulfilled. As such, PGCIL ought to have on its own volition returned the BGs to the Petitioner. According to the Petitioner, PGCIL without assigning any reason vide letter dated 17.02.2015 commenced raising demands for extension of the validity period of the BGs and directed the issuing bank to treat the letter as a claim for invocation of the BGs in the event extension of the BGs, as demanded, is not provided prior to the expiry date. The Petitioner has submitted that owing to the illegal demands for extension of the BGs, the Petitioner has been incurring expenses in terms of bank charges for extending the validity period of the BGs. The Petitioner has submitted that the PGCIL's action in getting the BG extended is legally untenable for the following reasons:

- (a) PGCIL has represented that it is entitled to the bank guarantees and the same must be kept alive. The representation is entirely baseless and is the sole basis of conditional claims and direction to keep the bank guarantee alive. Therefore, the demand for extension of the term of the bank guarantee and conditional claim for encashment of bank guarantee amounts to fraud and in



the event such illegal and fraudulent demands is given effect to, irretrievable harm would be caused to the Petitioner.

(b) A public authority must act in a fair manner, not just in public law but also under private law. PGCIL is a public authority. The manner in which PGCIL has raised conditional claims to encash the bank guarantee without even responding to the request of the Petitioner, is not in accordance with the principles of fairness that a public authority is mandated to act and therefore the impugned communication is liable to be set aside as illegal.

(c) Allowing PGCIL to enforce the conditional claim would amount to allowing unjust enrichment of PGCIL at the expense of the Petitioner.

15. PGCIL in its reply while refuting the contentions of the Petitioner has submitted as under:

(a) On 24.2.2010, the Petitioner together with the other generators signed a BPTA with PGCIL in which they agreed and undertook under clause 2 of the BPTA to share and pay to PGCIL transmission charges in accordance with the Regulations/tariff order issued by the Commission including the sharing mechanism. Clause 2 of the BPTA provides for opening of the Letter of Credit for 105% of estimated average monthly billing and to provide security in the form of an irrevocable BG in favour of PGCIL equivalent to two months of average monthly billing. However, as per clause 3.6.3 of the BCD (Billing, Collection and Disbursement) Procedure to the Sharing Regulations, LTA customer is required to furnish LC for an amount equivalent to two point one (2.10) times the average first bills. Therefore, as per the provisions of the BCD



Procedure, PGCIL vide letter dated 17.7.2015 informed the IPPs including the Petitioner that the transmission system planned for evacuation of power from its generating station was nearing its commercial operation and was ready for operationalization and therefore, the Petitioner was required to open the necessary LC in terms of Clause 3.6 of the BCD Procedure. However, the said LC was not furnished by the Petitioner.

(b) Clause 6 of the BPTA required the bank guarantee to be initially valid for a period upto 6 months after the expected date of commissioning schedule of generating units and its validity could be extended as per the requirement to be indicated during co-ordination meeting for which a provision was made in clause 7 of the BPTA. A combined reading of the provisions of clauses 6 and 2 of the BPTA would show that right from the grant of LTA to the Petitioner and during the construction of the generation project together with its transmission system and thereafter during the entire period of power transmission by the Petitioner under the long term access granted to it by PGCIL, it was necessary that an adequate security mechanism in the form of BG (together with the LC in post-commissioning stage) was available with PGCIL. Had the BG under clause 6 been contemplated to subsist only through the construction period, then the words 'transmission charges' would not have been inserted in clause 6 of the BPTA as also in the format of the BG thereunder. As per the contractual obligations under the BPTA, there is requirement of firm commitment towards payment of transmission charges by opening of LC and BG. The Petitioner failed to extend the validity of the construction phase BG and hence CTU was within its right to encash the



same. This procedure is recognized in clause 23.5 (iv) of the Detailed Procedure notified under the Connectivity Regulations.

(c) The CTU was entitled to seek extension of the above BG till the petitioner opened the LC and furnished the BG as required under clause 2.0 of the BPTA, failing which it was entitled to encash the same. No illegality, arbitrariness or unjust enrichment can be attributed to the CTU and that there is no infirmity or illegality in CTU's request for extension of the aforesaid two BGs and their invocation in the event of any non-extension. The CTU's action is in accordance with the provisions of the BPTA executed with the petitioner under the provisions of the Connectivity Regulations and the Detailed Procedure.

(d) The liability arising out of the BPTA is not limited to successfully setting up generating unit(s) and associated transmission lines but is also to open proper security mechanism such as letter of credit, towards transmission charges in due course or when asked by the CTU.

(e) The BG is irrevocable and unconditional one which can be encashed by it without assigning any reason, on failure to fulfill the conditions envisaged under the Connectivity Regulations and the BPTA and as such the allegation that the CTU was encashing the BG without any prima-facie cause is incorrect and misplaced. As regards the allegation of unjust enrichment, all such receivables form part of the POC mechanism and there is no revenue gain for the CTU and hence the Petitioner's allegations are baseless, incorrect and devoid of merit.



16. During the hearing of the petition, learned Senior Counsel for the Petitioner submitted that the three units of the generating station were commissioned on April, 2013, November, 2013 and March 2013 respectively and the dedicated transmission line was commissioned on 21.12.2014. Thus, the petitioner complied with its obligations under the BPTA for the purpose for which bank guarantees were furnished. Learned Senior Counsel further submitted that PGCIL vide its letter dated 17.7.2015 requested the petitioner to open LC of ₹22.51 crore, though PGCIL has not operationalized the LTA despite repeated requests as a result of which the Petitioner was selling power on short term basis. Learned Counsel for PGCIL submitted that since the petitioner had not opened LC in terms of the provisions of clause 2 of the BPTA and clause 3.6.3 of the Billing, Collection and Disbursement (BCD) Procedure approved under Sharing Regulations, LTA was not operationalized, though PGCIL has completed the transmission system for operationalization of LTA of the petitioner. Learned counsel submitted that LTA of the petitioner can be operationalized subject to opening of LC of approximately of Rs.22.50 crore by the Petitioner.

Pleadings in Petition No. 41/MP/2016

17. The Petitioner has submitted that after it was decided to dedicate one unit of the generating station to GRIDCO to be evacuated through State network, there remained only 700 MW which are connected to CTU network. The Petitioner has submitted that after accounting for auxiliary consumption, the exportable capacity is 647 MW. The Petitioner has submitted the details of the quantum of power which can be evacuated from the Petitioner's generating station for which PPAs were executed by it with GRIDCO, Haryana Discoms (through PTC) and Bihar as under:



Net exportable quantum of Power from the Project (3 x 350 MW)		
	Units connected to CTU Network	Unit connected with Odisha STU
Installed capacity	700 MW	350 MW
Auxiliary (7.5%)	53 MW	26 MW
Exportable Capacity	647 MW (A)	324 MW
Haryana PPA (including Losses)	312 MW	-
Bihar PPA	260 MW	-
GRIDCO PPA	-	243
Balance capacity	75 MW	81 MW
LTOA Granted (B)	800 MW	-
Surplus LTOA capacity available (C= B-A)	153 MW	-

Accordingly, the Petitioner has sought LTA of 387 MW to Northern Region (312 MW to Haryana + 75 MW not tied up) and 260 MW to Eastern Region (Bihar DISCOMS). According to the Petitioner, since PGCIL was a party to the meeting dated 5.1.2013 in which the decision to dedicate one unit to Odisha was taken, PGCIL should have reflected such decision in its planning and construction of the transmission system and allowed necessary modification in the BPTA dated 24.2.2010. The Petitioner has submitted that PGCIL vide its letter dated 15.1.2016 refused to modify the LTA quantum from 800 MW to 647 MW on the plea that LTA is not linked to generation unit and it is based upon the quantum of the LTA sought and informed the Petitioner that till a formal request for relinquishment of LTA quantum is received, the grant of 800 MW of LTA shall stand and the Petitioner is liable to bear the transmission charges and all other liabilities of the said quantum of LTA. In the above context, the Petitioner has sought modification of the BPTA/LTA from 800 MW to 647 MW for evacuation of power from its generating station and for grant of LTA of 260 MW in ER for supply of power to Bihar Discoms as per its PPA dated 9.11.2011 with BSEB.



18. PGCIL in its reply has rejected the contention of the Petitioner and has made the following submissions:

(a) As per the PPA with GRIDCO on 28.9.2006, the Petitioner was obliged to supply 25% of the power generated from its Project to Odisha. Out of its installed capacity of 1050 MW, the LTA application was made for 800 MW i.e. 1050 MW (installed capacity) minus 250 MW (approximate Odisha's share) and therefore, the Petitioner had duly taken into consideration its obligation to supply 25% from its generating station to Odisha. Even as per the Minutes of Meetings of Eastern Region Constituents held on 17.4.2009 and 15.9.2009, GRIDCO maintained that it would make its own arrangements for drawal of its share and therefore, evolution of ISTS should be based on the LTOA quantum, implying that Odisha's 25% share did not in any way correspond to the Petitioner's 800MW LTA.

(b) The Petitioner vide its letter dated 1.9.2014 requested CTU to reallocate its 800 MW LTA inter-se different regions (original NR-600 MW and SR- 200 MW to be modified to: NR-340 MW, ER-260 MW and SR-200 MW). Therefore, the Petitioner clearly and unequivocally represented to PGCIL that the LTA of 800 MW was uncontested and undisputed and the drawl of GRIDCO's share was a bilateral issue to be settled mutually between the Petitioner and GRIDCO.

(c) The fourth unit of 350 MW of the Petitioner was planned for implementation in Phase II for which the Petitioner made an application dated 10.8.2010 to PGCIL for grant of 220 MW connectivity and long term access. In the meeting dated 5.1.2013 held with the constituents of Eastern Region with regard to



connectivity and LTA, the applications for phase-II generation projects in Odisha were considered. In the said meeting, it was agreed that there was no change in the transmission system planned for Phase-I generation projects i.e. the implementation of HTPTC I corridor relating to the LTA of 800 MW granted to the Petitioner for its Phase-I generation project was to continue.

(d) The petitioner vide letter dated 7.1.2013 informed PGCIL about its signing PPA dated 9.11.2011 with BSEB and requested PGCIL for change in LTA allocation against the earlier allocation done on target region basis while retaining overall quantum as 800MW. The request for change in allocation was as under:-

Sr. No.	Buyer/Target Region	LTA Quantum (MW)	Quantum to be revised (Region wise MW)
1.	Northern Region	600	340
2.	Southern Region	200	200 (No change)
3	BSEB (Eastern Region)	Nil	260

(e) The Petitioner vide letter dated 5.9.2013 informed PGCIL that it would abide by its commitments with the GRIDCO as per the PPA and the terms of the PPA would not in any way affect the BPTA signed with CTU and sought amendment in the current allocated quantum for NR from 600 MW to 340 MW and reassign 260 MW to ER and while seeking modification of the LTA, the quantum of LTA continued to remain as 800 MW. Thereafter, pursuant to a meeting of ER constituents held on 27.8.2013, the petitioner vide its letter dated 23.8.2014 informed PGCIL that GRIDCO had given its no objection to the quantum of power allocation and the LTA for supply of power by the



petitioner to BSEB, Haryana, Northern Region and Southern Region. Again the aggregate quantum of LTA remained at 800 MW and no objection from GRIDCO clearly showed that the issue as regards 255 MW was independent of the LTA quantum of 800 MW to be transferred by the Petitioner to various beneficiaries through LTA.

(f) The petitioner filed an online application on 30.9.2015 for grant of LTA of 260 MW for Bihar requesting for change of region with proposed reduction of 200 MW from Southern Region and 60 MW from Northern Region, while continuing to maintain 800 MW as overall LTA to ISTS. However, the Petitioner vide letter dated 30.9.2015 informed PGCIL that one unit is connected to the STU network and two units are connected to the CTU network. The petitioner stated that only 647 MW could be evacuated from Units I and II of the generating station. In other words, since the 800 MW LTA granted to the petitioner could not be fully utilized, the Petitioner has sought reduction of LTA granted by 153 MW.

(g) The petitioner sought 800 MW LTA against the installed capacity of 1050 MW in Phase-I. However, the petitioner is now considering the installed capacity as 700 MW from 2 units and is claiming connectivity of the third unit to Odisha network which was never discussed or agreed. GRIDCO had categorically informed in the meeting of the ER constituents that the CTU could proceed with the LTA quantum of 800 MW as GRIDCO and the petitioner have resolved the issue of 25% share of power to Odisha.

(h) The Petitioner did not take into account the quantum of power for auxiliary consumption while applying for LTA but is now claiming for reduction of power



for auxiliary consumption from LTA which cannot be entertained, more so when the LTA applied for has been less than the installed capacity of the generating project. The petitioner is seeking to revise the LTA to adjust the artificial underutilized LTA capacity of 153 MW i.e. 100 MW towards reduction in installed capacity and 53 MW towards auxiliary consumption in order to avoid payment of transmission charges and/or the relinquishment charges for the LTA quantum which the Petitioner no longer intended to use.

- (i) PGCIL vide its letter dated 15.1.2016 informed the Petitioner that till a formal request for relinquishment of LTA quantum is received, the grant of 800 MW LTA is valid and the Petitioner is liable to bear the transmission charges and all other liabilities of a long term customer and that there is no question of the said LTA being rendered infructuous. The petitioner, vide letter dated 22.4.2016, admitted that it was no longer having beneficiaries with respect to the entire 800 MW LTA granted to it by PGCIL. The Petitioner, agreeing and accepting that the LTA quantum was 800 MW, vide its letter dated 21.6.2016 informed PGCIL to retain 387 MW out of 540 MW in NR (312 MW-Haryana, 75 MW-target region basis) and surrendered the remaining 153 MW. Owing to the surrender of 153 MW, the LTA granted in favour of the Petitioner stands at 647 MW for which the necessary LC has been opened by the Petitioner in terms of directions given in theRoPs dated 12.4.2016 and 26.5.2016. CTU vide its letter dated 24.6.2016 granted 260 MW LTA to ER to the Petitioner with change in regions subject to payment of applicable relinquishment charges.



19. The Petitioner in its rejoinder has submitted that LTA was applied keeping in mind the three units of 1050 MW (3X350) and the units were connected to the CTU. It was decided in the meeting of the ER constituents held on 5.1.2013 to segregate one unit of Phase I of the Petitioner and connect it to the State grid of OPTCL. Accordingly, PGCIL should have modified the 800 MW LTA granted to the Petitioner taking into consideration the decision taken in the meeting of the ER constituents on 5.1.2013. However, the CTU failed to perform its statutory obligations as provided under Section 38 of the Electricity Act, 2003, leading to the present anomalous situation. The petitioner has submitted that in order to fulfill its obligation to supply power to BSEB, it relinquished 413 MW (200 MW from SR and 213 MW from NR) subject to the proceedings in Petition No. 92/MP/2015. The Petitioner has submitted that in the event of modification of the BPTA dated 24.2.2010, the petitioner is not required to make payment of any relinquishment charges for 153 MW as it stands modified from the date of change in the connectivity, i.e. 1.5.2013. The Petitioner has further submitted that for the remaining 260 MW of the 413 MW of relinquished quantum, the Petitioner is not required to pay any relinquishment charges as there is no stranded capacity that could be attributable for the petitioner. The Petitioner has submitted that its prayer for grant of 260 MW of LTA to ER has been fulfilled and its other prayer for modification of the BPTA from 800 MW to 647 MW requires to be adjudicated based on the facts that existed as on the date of filing of the instant petition.

20. During the hearing, learned Senior Counsel for the Petitioner submitted that the Petitioner vide its letter dated 30.9.2015 requested PGCIL for revision of 800 MW LTA to 647 MW LTA under the BPTA pursuant to the decision made vide minutes of



Meeting dated 5.1.2013 and 27.8.2013. Learned Senior Counsel further submitted that in terms of the decisions in the said meeting and GRIDCO's letter dated 23.8.2014, PGCIL ought to have modified the original BPTA dated 24.2.2010 in order to make the same in line with the net exportable quantum of power from the Petitioner's two units, which remain connected to the CTU network. Learned Senior Counsel submitted that for the purposes of securing its rights qua fulfillment of the obligations of the Petitioner for supply of power to BSEB, the Petitioner vide its letter dated 22.4.2016 proceeded to relinquish 413 MW out of the original BPTA quantum of 800 MW subject to the outcome of decision in Petition No. 92/MP/2015. Learned counsel submitted that for the remaining 260 MW out of the 413 MW of the relinquished quantum, the Petitioner is not liable to make payment of any relinquishment charges as there is no stranded capacity in the system which is attributable to the said relinquishment. Learned counsel for PGCIL submitted that as per the Commission's directions in RoPs dated 12.4.2016 and 26.5.2016, the Petitioner opened letters of credit for 647 MW and thereafter, the Petitioner vide its letter dated 21.6.2016 accepted and agreed that the LTA quantum was 647 MW and informed to retain 387 MW out of 540 MW in Northern Region and surrendered the remaining 153 MW. Owing to the said surrender, the LTA granted in favour of the petitioner stands at 647 MW for which the necessary letter of credit has been opened by the Petitioner. PGCIL has submitted that the LTA for 647 MW has been operationalized.

Analysis and Decision:

21. The Petitioner has filed the Petition No. 203/MP/2015 for adjudication of dispute between the Petitioner and PGCIL regarding illegal threat of encashment of the Bank Guarantee (BG) furnished by the Petitioner for Long Term Open Access (LTA)



granted to it. In Petition No.41/MP/2016, the Petitioner is seeking a declaration that 800 MW LTA granted to the Petitioner by PGCIL under the BPTA dated 24.2.2010 stands modified to 647 MW (387 MW in NR and 260 MW in ER) and Letter of Credit to be opened by the Petitioner as payment security mechanism towards LTA is liable to be reduced accordingly. The following issues arise for our consideration:

- (a) Issue No.1: Whether Construction BG has to be maintained by the Petitioner till the Letters of Credit as per Clause 2 and Clause 3.6.3 of the BCD Procedure are opened?
- (b) Issue No.2: Whether with the dedication of one Unit of its generating station to GRIDCO, PGCIL is under an obligation to modify the BPTA dated 24.2.2010 for revision of the LTA to 647 MW?
- (c) Issue No.3: Whether the Petitioner is required to make fresh application for grant of LTA for ER?
- (d) Issue No.4: Whether the Petitioner is required to relinquish the LTA for reduction of quantum of LTA and change of region for grant of LTA for supply of power to BSEBL?
- (e) Issue No.5: Whether the Petitioner is liable to pay the relinquishment charges for the LTA relinquished?

Issue No.1: Whether Construction BG has to be maintained by the Petitioner till the Letters of Credit as per Clause 2 and Clause 3.6.3 of the BCD Procedure are opened?

22. The Petitioner has argued that in terms of clause 6 of the BPTA, it was required to submit Construction Bank Guarantee which would only continue to remain valid till 6 months after the indicative date of CoD of the generating units and the dedicated transmission system as mentioned in the BPTA. After the Petitioner has achieved



the commercial operation of its generating units and dedicated transmission line, it is entitled for refund of Construction Bank Guarantee and without any apparent reasons, PGCIL has asked the Petitioner to extend the Bank Guarantee and had also instructed the Bank to encash the same if the Bank Guarantee is not renewed.

23. According to PGCIL, under clause 2 of the BPTA and clause 3.6.3 of the BCD Procedure, the petitioner has the liability to put in place payment security mechanism in the form of LC and BG to ensure timely payment of transmission charges. PGCIL in its written submission dated 3.9.2015 has given the following justification for extension of the BGs:

“8.....The scheme therefore was that the bank guarantee furnished under clause 6.0 was to continue initially for six months after the expected date of commissioning schedule of generating station within which period the letter of credit and the bank guarantee envisaged under clause 2.0 was to be put in place. Had the bank guarantee under clause 6.0 been contemplated to subsist only through the construction period, then the words “transmission charges” would not have been inserted in clause 6.0(a) of the BPTA as also in the format of the bank guarantee thereunder. Suffice it to say, the contractual obligation imposed under the BPTA required a firm commitment towards payment of transmission charges under the long-term access granted and till that firm commitment was not put in place by opening the letter of credit and bank guarantee under clause 2.0, the eventuality of “exiting the project” contemplated under clause 6.0(a) continued to exist entitling the Respondent to take recourse to encashment of bank guarantee furnished under the said clause 6.0(a) in case of non-extension thereof. It follows as a natural corollary that in case the Petitioner failed to extend the validity of the construction phase bank guarantee, the Respondent was within its right to encash the same. This modus has also been recognized in clause 23.5(iv) of the Detailed Procedure notified under the Connectivity Regulations of this Hon’ble Commission. The Respondent submit that this scheme of furnishing of bank guarantees under the BPTA has been completely lost sight of by the Petitioner while filing the present Petition before this Hon’ble Commission.”

24. Clauses 2 and 6 of the BPTA dated 24.2.2010, Clause 3.6.3 of the BCD Procedure and clause 23.5(iv) of the Detailed Procedure are extracted as under:

Clause 2 of BPTA:

“2.0 (a) Long Term transmission customer shall share and pay the transmission charges in accordance with the regulation/tariff order issued by



Central Electricity Regulatory Commission from time to time of POWERGRID transmission system of concerned applicable Region i.e. Northern Region/Western Region/Eastern Region and Southern Region including charges for inter-regional links/ULDC/NLDC charges and any additions thereof. These charges would be applicable corresponding to the capacity of power contracted from the said generation project through open access from the scheduled date of commissioning of generating projects as indicated at **Annexure-I** irrespective of their actual date of commissioning.

(b) Long term transmission customer shall share and pay the transmission charges of the transmission system detailed in **Annexure-3** in accordance with the sharing mechanism detailed in **Annexure-4**. In case, in future, any other long-term transmission customer(s) is/are granted open access through the transmission system detailed at **Annexure-3** (subject to technical feasibility), he/they would also share the applicable transmission charges.

(c) Each Long Term transmission customer (including its successor/assignee) shall pay the applicable transmission charges from the date of commissioning of the respective transmission system which would not be prior to the scheduled commissioning date of generating units as indicated by the respective developer as per **Annexure-1**. The commissioning of transmission system would be pre-poned only if the same is agreed mutually by concerned parties.

(d) In addition to opening of LC for 105% of estimated average monthly billing for charges mentioned at 2 (a) and 2 (b) above, Long-Term Transmission customer would provide security in the form of irrevocable Bank Guarantee (BG), in favor of POWERGRID, equivalent to two months estimated average monthly billing, three months prior to the scheduled date of commissioning of generating units as indicated at **Annexure-1**. Initially the security mechanism shall be valid for a minimum period of three (3) years and shall be renewed from time to time till the expiry of the open access.

(e) The estimated average transmission charges would be reviewed every six months and accordingly the amount of security would be enhanced/reduced by long term transmission customers.

(f) In case the long term transmission customer defaults in payment of the monthly charges of POWERGRID bills then, POWERGRID shall be entitled to encash/adjust the BG immediately.

(g) In case of encashment/adjustment of BG by POWERGRID against non-payment of monthly charges by long-term transmission customer, the same should be immediately replenished/recouped by long-term transmission customers before the next billing cycle.

Clause 6 of BPTA:

6.0 (a) In case any of the developers fail to construct the generating station/dedicated transmission system or makes an exit or abandon its project. POWERGRID shall have the light to collect the transmission charges



and/or damages as the case may be in accordance with the notification/regulation issued by CERC from time to time. The developer shall furnish a Bank guarantee from a nationalized bank for an amount which shall be equivalent to Rs. 5 (five) lakhs/MW to compensate such damages. The bank guarantee format is enclosed as **Annexure-Y**. The details and categories of bank would be in accordance with clause 2 (h) above. The Bank guarantee would be furnished in favour of POWERGRID in accordance with the time frame agreed during the meeting held at CEA on 1.2.2010.

(b) This Bank guarantee would be initially valid for a period upto six months after the expected date of commissioning schedule of generating unit(s) mentioned at **Annexure-1** (however, for existing commissioned units, the validity shall be the same as applicable to the earliest validity applicable to the generator in the group mentioned at **Annexure1**). The bank guarantee would be encashed by POWERGRID in case of adverse progress of individual generating unit(s) assessed during coordination meeting as per para 7 below. However, the validity should be extended by concerned Long Term transmission customer (s) as per the requirement to be indicated during co-ordination meeting.

(d) In the event of delay in commissioning of concerned transmission system from its schedule, as indicated at **Annexure-4** POWERGRID shall pay proportionate transmission charges to concerned Long Term Access Customer(s) proportionate to its commissioned capacity (which otherwise would have been paid by the concerned Long Term Access Customer(s) of POWERGRID) provided generation is ready and POWERGRID fails to make alternate arrangement for dispatch of power.”

Clause 3.6.3 of BCD Procedure:

“3.6.3 The Letter of Credit shall have a term of twelve (12) Months and shall be for an amount equal to one point zero five (1.05) times the average of the First Bill Amount for different months of the Application Period, as computed by the Implementing Agency (IA) for the DIC, where tripartite agreement for securitization on account of arrears against the transmission charges with the Government of India exist.

Provided that where such tripartite agreement does not exist, the DIC shall open the Letter of Credit for an amount equal to two point one times (2.10) the average First Bill amount for different months of the Application Period, as computed by the Implementing Agency for that DIC:

Provided that the CTU shall not make any drawl before the 30th day after Due Date:

Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in this Clause 3.6.3, the concerned DIC shall restore such shortfall within seven (7) days.



Provided the amount of Letter of Credit shall be revised in case of revision of PoC charges by the IA.”

23.5(iv) of Detailed Procedure:

.... The aforesaid bank guarantee will stand discharged with operationalization of long-term open access, when augmentation of transmission system is not required or the submission of appropriate bank guarantee required to be given by the applicant to the CTU during construction phase when augmentation of transmission system is required as the case may be. The bank guarantee may be encashed by the nodal agency; ... (iv) If the applicant fails to revalidate the earlier furnished BG at least 30 days prior to its expiry.

25. As per clause 6 of the BPTA, PGCIL can collect the transmission charges and/or BG in accordance with regulations or notification issued by the Commission in three circumstances, namely, (a) if the developer fails to construct the generating station/dedicated transmission system; (b) if the developer is making an exit from the project; (c) if the developer abandons the project. The developer is required to furnish the BG as security to compensate for the damages. The BG would be initially valid for a period of six months after the expected date of commissioning schedules of the generating units. Beyond this period, the project developer would be required to extend the validity as per the requirement to be indicated in the Joint Co-ordination Committee Meetings. The BG would be encashed if adverse progress is noticed during the Joint Coordination Committee Meetings.

26. Clause 2 of the BPTA provides that the Long Term customer (in this case the Project Developer) shall be required to open LC for 105% of estimated average monthly billing charges for inter-regional and regional transmission system and the transmission systems mentioned in the BPTA in addition to BG equivalent to two months estimated average monthly billing, three months prior to the scheduled date of commissioning of generating units. Thus in terms of Clause 2 of BPTA, LC and BG are required to be given three months prior to the commercial operation of the



units of the generating station. As per clause 3.6.3 of the BCD Procedure, LC shall be open by a DIC for an amount equal to one point zero five (1.05) times the average of the First Bill Amount for different months of the Application Period where tripartite agreement for securitization on account of arrears against the transmission charges with the Government of India exist and for an amount equal to two point one times (2.10) the average First Bill amount for different months of the Application Period where such tripartite agreement does not exist. There is no disagreement between the parties that after coming into effect of the Sharing Regulation, LC is now required to be maintained in accordance with the BCD Procedure. The BG/LC shall be encashed if there is default in payment of the transmission charges to PGCIL. As per clause 23.5(iv) of the Detailed Procedure, the earlier furnished BG can be encashed at least 30 days prior to the expiry of the BG in case of failure to revalidate the earlier furnished BG.

27. A close examination of the above provisions reveals that the BG under clause 6 and BG/LC under clause 2 of the BPTA are independent provisions. The BG under clause 6.0 is for the construction period which needs to be kept alive for a period of 6 months after the expected date of commissioning schedule of the generating units or such period as per the requirement indicated in the Joint Co-ordination Committee Meeting. This BG shall be encashed only for recovering the damages or transmission charges in case of failure to construct the generating station/dedicated transmission system or in case of exit or abandonment of the project by the project developer. The BG cannot be used for any other purpose including for ensuring opening of LC/BG under clause 2.0 of BPTA and clause 3.6.3 of the BCD Procedure. Had it been the case, the BPTA would have clearly allowed in clause 6 that the BG shall be kept alive till the LC/BG is opened under clause 2 of the BPTA. Occurrence



of words “recovery of transmission charges” in clause 6.0 of the BPTA is in the context where the transmission systems have been commissioned but the generating units have not been commissioned on account of failure to construct the generating station/exit from the project or abandonment of the projects by the generation project developer. In that event, there is no scope for opening of LC/BG by the generation project developer as it would not use the transmission systems built on the basis of BPTA executed by it. Therefore, the BPTA provides that either lumpsum damages or the transmission charges shall be recovered from the construction BG furnished by the Project Developer. Once the project developer achieves the COD of the units of the generating stations, the purpose for which BG was furnished under clause 6 of the BPTA stands fulfilled and BG should be returned after the expiry of the stipulated period. The project developer is liable to open LC and BG in accordance with clause 2 of the BPTA.

28. In the present case, Units I, II and III of the generating station were required under BPTA to achieve their respective COD in the month of November 2011, January 2012 and March 2012. The Petitioner was also required to develop GMR-Angul 400 kV D/c line and 2 Nos 400 kV line bays for connecting for connecting 400 kV lines from GMR to Angul switchyard. PGCIL was required under BPTA to develop two LILOs (LILO of Jeypore- Meramundali 400 kV S/c at Angul and LILO of one ckt of Talcher-Meramundali 400 kV D/c at Angul) within 30 months from the date of regulatory approval and certain common transmission systems within 42 months of the date of regulatory approval. Units I, II and III of the generation of the Petitioner achieved their respective CoD in the months of April, 2013, November, 2013 and March, 2014 respectively. The dedicated transmission line, namely, the GMR-Angul 400 kV D/c lines with associated bays achieved CoDon 21.12.2014. The Petitioner



vide its letter dated 23.12.2014 apprised PGCIL that the transmission system for evacuation of power from its generating station as per Annexure 2 (IB 2) of the BPTA has been commissioned and power was being evacuated since 22.12.2014. The Petitioner in the said letter requested PGCIL to allow it to evacuate full capacity through LTA at the earliest. Therefore, as on 21.12.2014, the Petitioner had complied with the requirements of the BPTA and the circumstances enumerated in clause 6 for invocation of the BG were not applicable in the case of the Petitioner. Despite the same, PGCIL in its letter dated 17.7.2015 informed the Petitioner that the transmission systems associated with the generation project of the Petitioner developed by PGCIL were to be operationalized in August 2015 and in that connection asked the Petitioner to open LC of Rs.22.51 crore. It is therefore apparent that even though the Petitioner's generating station and dedicated transmission lines were put into commercial operation by 21.12.2014, PGCIL systems were not ready and were proposed to be operationalized in August 2015. In other words, delay in operationalization of the LTA as per the BPTA dated 24.2.2010 was on account of non-readiness of PGCIL, and not that of the Petitioner. Therefore, as per the clause 6 of the PPA, the BGs were required to be released after six months of the commercial operation of the units of the generating station. In the present case, considering the commercial operation of the dedicated transmission system as 21.12.2014, PGCIL could have retained or sought extension of the BGs only upto 21.6.2015 only.

29. As per clause 6 of BPTA, the BGs were to be kept valid upto a period of six months after the expected commercial operation of the units as per Schedule 1 to the BPTA and the validity can be extended as decided in the coordination Committee meetings. Though the expected dates of CoD as per BPTA were November 2011,



January 2012 and March 2012, the actual commercial operations took place in of April, 2013, November, 2013 and March, 2014 respectively. On perusal of the letter dated 17.2.2015, it is noticed that BGs were valid till 31.3.2015. Despite the fact that the Petitioner has achieved the CoDs of its generating station and dedicated transmission line, PGCIL instructed through its letter dated 17.2.2015 to extend the BGs by one more year. Relevant extract of the letter dated 17.2.2015 written to the IDBI Bank with copy to the Petitioner is extracted as under:

“The validity period of the following bank guarantees executed by you in favour of Power Grid Corporation of India Limited are expiring on 31.3.2015 and to be extended by another one year before the expiry of the validity. In case the extension of BG is not provided to us before the expiry date, this may be treated as a clam against these bank guarantees and the proceeds of the saebe remitted to us by way of Demand Draft favouring “Power Grid Corporation of India Limited.”

The Petitioner extended the BGs by three months i.e. upto 30.6.2015 and the IDBI has informed about the extension of BG to PGCIL vide its letter dated 9.3.2015. Similar instructions have been issued by PGCIL to IDBI Bank vide letters dated 19.5.2015 and 5.8.2015 and the Petitioner/IDBI Bank have extended the validity of the BGs till 30.6.2015 and 30.9.2015. It is further noticed that the Petitioner has written a number of letters to PGCIL requesting for return of the BGs, but no action appears to have been taken by PGCIL on the letters of the Petitioner. Further, there is nothing on record to substantiate the claims of PGCIL that extension of BGs from time to time were on account of the decisions taken in the JCC meetings.

26. Considered the above, the Commission is of the view that linking the release of construction BG with the opening of LC in accordance with clause 2 of BPTA read with clause 3.6.3 of BCD Procedure is not in accordance with the BPTA or the Detailed Procedure. The Petitioner has leveled various allegations against PGCIL



such as fraudulent claims by PGCIL, public authority not acting fairly and unjust enrichment by causing loss to the Petitioner. In our view, PGCIL has proceeded on the basis of its interpretation and understanding of the BPTA, Detailed Procedure and BCD Procedure. PGCIL has not encashed the BGs and moreover, even where PGCIL encashes the BGs in relation to the LTA, the same is passed on to the beneficiaries. Therefore, the questions of fraud and unjust enrichment do not arise. We do not find any merit in the allegations.

27. In the present case, the Petitioner approached the Commission after PGCIL raised a demand for opening of LC for an amount Rs.22.51 crore vide its letter dated 17.7.2015. The Commission during the hearing dated 3.9.2015 directed the Petitioner to open LC for the required amount and directed PGCIL to operationalize LTA and release the BG for an amount of Rs.17.50 crore. During the hearing of the petition on 15.9.2016, learned counsel submitted that the Petitioner has opened the LC for 647 MW. PGCIL has submitted that the BG of the Petitioner for Rs.17.50 crore has been returned to the Petitioner. However, the Petitioner has relinquished certain capacity. This has been dealt with in later part of this order that states that the treatment of balance BG shall be decided in the light of liability of the Petitioner for relinquishment charges to be determined in accordance with the decision in Petition No. 92/MP/2015.

Issue No.2: Whether with the dedication of one Unit of its generating station to GRIDCO, PGCIL is under an obligation to modify the BPTA dated 24.2.2010 for revision of the LTA to 647 MW?

28. The Petitioner has submitted that it applied to PGCIL for grant of 800 MW LTA keeping in mind its three units of 1050 MW (3X350 MW). These units were to be connected to the CTU network and accordingly, LTA of 800 MW was sought.



However, for the supply of power to GRIDCO qua the State of Odisha's share of power, the Petitioner, on the insistence of OPTCL and consent of PGCIL, as recorded in the minutes of the meeting dated 5.1.2013, had to isolate and connect one of its units with the State Grid (Odisha STU), thereby reducing the Petitioner's connectivity qua the quantum of LTA allocated to it by PGCIL. The issue was further discussed in the meeting convened by PGCIL on 27.8.2013 in which it was decided that the Petitioner should resolve the issue with the State of Odisha. Subsequently, GRIDCO vide its letter dated 23.8.2014 submitted that it has no objection to the quantum of power allocation made by the Petitioner to the State of Bihar. However, GRIDCO wanted the State share to be ensured. Accordingly, PGCIL was required to reduce the quantum of LTA pursuant to the decision arrived during the meetings held on 5.1.2013 and 27.8.2013. The Petitioner has submitted that keeping in mind the intent of Section 38 of the Act, PGCIL ought to have proceeded to modify the original BPTA dated 24.2.2010 and should not have proceeded with the construction and development of transmission capacity beyond the maximum possible generation of power from remaining 2 units which were connected with CTU (647 MW, after the deducting the auxiliary consumption of 53 MW out of 700 MW).

29. PGCIL has submitted that the Petitioner in its letter dated 30.8.2015 has set out the computational methodology for arriving at the claim of 647 MW LTA wherein the Petitioner has shown connectivity of units 1 and 2 of its generating plant with the ISTS (cumulative installed capacity of 700 MW) and has deducted the auxiliary consumption (at 7.5%) equaling to 53 MW, for the balance power from unit 3 'dedicated to Odisha STU network for supply of 25% of its share. PGCIL has submitted that after signing of the PPA dated 28.9.2006 with GRIDCO, the Petitioner on 8.12.2007, made an application for grant of 800 MW LTA i.e. 1050 MW (installed



capacity minus 250 MW (approximate Odisha share). In other words, the Petitioner has duly taken into account its obligation to supply 25% of power generated from the project and had therefore, sought 800 MW LTA against the installed capacity of 1050 MW. Therefore, the Petitioner cannot contend at a later stage that the LTA quantum of 800 MW is liable to be reduced on account of its obligation to supply 25% of power generated from the project to Odisha. PGCIL has submitted that detailed deliberations have taken place in 2012-13 as well with regard to power evacuation/transmission through LTA either directly or via STU system and it has been agreed that the transmission system already placed for generating projects in Odisha is to be implemented. PGCIL has submitted that it has been left to OPTCL to discuss with the generators and plan the intra-State transmission system for evacuation of its share of power. With regard to drawal of power by Odisha, it was suggested that 300 MW power from the Petitioner's plant may be availed by Odisha by isolation of one unit of its project (3x350 MW +1X350 MW). However, the inter-connection of generation units to the OPTCL grid is to be decided by OPTCL in consultation with the Petitioner. PGCIL has submitted that there has never been any ambiguity or an issue as between the Eastern Region constituents including generators as regards the LTA granted to the generators and Odisha share in power produced by such generators, the system for power evacuation for these generators has also been discussed and agreed where ISTS may be used directly or in conjunction with STU network for transmitting power under LTA. Therefore, the entire basis for the Petitioner's claim for seeking modification in LTA grant is not sustainable.

30. We have considered the submissions of both the Petitioner and PGCIL. The Petitioner has set up a 1050 MW (3x350 MW) project in accordance with the terms



of a Memorandum of Understanding (MOU) dated 9.6.2006 entered into between the Petitioner's holding company and Government of Odisha wherein the Petitioner agreed inter alia that a nominated agency of the Government of Odisha will have a right to purchase 25% of the power generated from the generating station and the Petitioner would be free to sell the balance 75% power to third parties on contractual arrangement basis. The Petitioner made an application to PGCIL on 8.12.2007 for grant of LTA for evacuation of 800 MW power. PGCIL vide its letter dated 14.5.2009 communicated about the grant of LTA to the Petitioner as under:

Name of Applicant	Expected date of commissioning	Installed capacity	Unit-wise schedule	LTOA Required (MW)				Total
				NR	WR	ER	SR	
GMR Energy Kamalanga Ltd.	September, 2011	1050 MW	Unit 1: 350 MW: Sept 2011 Unit 2: 350 MW: Nov, 2011 Unit 3: 350 MW: Jan, 2012	600	-	-	200	800

On 24.2.2010, the Petitioner along with other generators signed a BPTA with PGCIL wherein PGCIL granted the LTA to the Petitioner as under:

Name of Applicant	Capacity (MW)	LTOA	Unit-wise schedule	LTA granted				Period of LTA
				WR	SR	NR	ER	
GMR Energy Kamalanga Ltd.	1050 (3X350)	800 MW	Unit 1: Nov 2011 Unit 2: January, 2012 Unit 3: March, 2012	-	200	600	-	25 years

31. In the meeting for finalization of evacuation system from advanced projects in Odisha held on 17.4.2009 at CEA, the Director (commercial) of GRIDCO clarified that GRIDCO would make its own arrangements for drawing its share from the project. Considering this, it was agreed that while evolving the requirement of transmission system for evacuation of power from these projects, the quantum of



power proposed to be available for LTA only should be considered. In the next meeting with Developers of IPPs in Odisha held on 15.9.2009 at Bhubaneswar, the matter regarding evacuation of power in respect of the share of State of Odisha was discussed and the following was recorded in the minutes of the meeting:

“4. OPTCL officer expressed that the share of GRIDCO may be drawn by them from the pooling sub-station at Jharsuguda and Angul. Accordingly, OPTCL has proposed to construct their own pooling station near Jharsuguda where the dedicated line from the Sterlite and Ind-Barath generation projects would be terminated. From OPTCL sub-station, 400 kV lines would be constructed to POWERGRID’s pooling sub-station at Jharsuguda for onward transfer of power to NR/WR. It was also mentioned by OPTCL that they have similar plan for other pooling sub-stations like Angul and Dhenkanal. After lot of deliberation, Member (PS) clarified that the long term open access to the generation projects would be given at POWERGRID pooling stations like Jharsuguda/Angul and the transmission arrangement between the generation projects and these pooling sub-station would be the internal arrangement between OPTCL and generation developers...”

Perusal of the above meetings reveals that OPTCL confirms that it would make its own arrangements for drawing of its share from the project and it has no reservation with respect to the 800 MW grant of LTA from out of 1050 MW. In the meeting held on 15.9.2009, the use of the State grid for any onward transmission line into ISTS from generation projects in Odisha was also discussed and agreed.

32. Subsequently, the Petitioner with the intention of increasing its installed capacity initiated the process of setting up another unit of 350 MW (Phase-II). The Petitioner made an application for grant of connectivity and LTA for 220 MW. The Petitioner entered into BPTA with PGCIL on 5.1.2011 for availing LTA of 220 MW which was amended on 11.9.2013. According to PGCIL, when the said application was in process, a meeting with regard to Connectivity/MTOA/LTA with constituents of Eastern Region was held on 5.1.2013 in which the evacuation of power from generation projects in Odisha was discussed and recorded as under:



“10.1 Previous Meetings/deliberations

POWERGRID informed that discussions regarding evacuation of power from phase-II generation projects in Odisha have been held in various meetings. POWERGRID briefed about the earlier deliberations held in this regard and the summary of the same is as given below:

- Transmission system for evacuation of power from Phase-II generation projects in Odisha was discussed in Standing Committee/Long Term Access meeting held on 28-10-2010. Based on progress of generation projects, intimation for grant of Connectivity/LTA was issued to Sterlite (Phase-II), GMR (Phase-II), Tata & CESC on 03-01-2011. Subsequently, Odisha raised objections regarding arrangement for drawl of state share from IPPs.
- The scheme was discussed in various meetings including ERPC forum and Standing Committee/LTA meetings but the transmission system for the State could not be finalized.
- In the standing committee meeting held on 8-Feb-2012 at NRPC, New Delhi, it was decided that there would be no change in the transmission system planned for Phase-I generation projects in Odisha, which is already under implementation. In this meeting, Darlipalli of NTPC was granted connectivity.
- In the above meetings, it was clarified that CTU is mandated to provide non-discriminatory open access to any generation project for use of ISTS in accordance with CERC Regulation. The grant of LTA for transfer of power through ISTS system for a generation project, either directly or via STU system, is considered based on the power injected from the project to the ISTS substation. It was indicated that OPTCL may plan intra-state transmission system for drawl of required quantum of power out of their total share. For transfer of the remaining power to other states/region through ISTS system, OPTCL may apply LTA to CTU.
- It was decided in the meetings that OPTCL shall discuss with the developers of generation project for their willingness to get connected to STU system. Based on this, OPTCL shall come out with their plan of intra-State transmission system for drawl of their required quantum of share of power, which could be finalized after discussion with CEA, CTU and generation developers.
- POWERGRID vide its letter dated 27-06-2012 to all the applicants with a copy to OPTCL and CEA explained the present position of the proposed transmission system and requested the applicants to intimate the detailed progress report of their generation projects and their plan for transfer of share of Odisha.
- OPTCL vide letter 13.7.2012 informed that they have filed a case in OERC on the evacuation of State's share of power from IPPs. After disposal of the case, STU and CTU will have a coordinated plan without burdening the state consumers with unnecessary ISTS Charges. Until such time, OPTCL requested to withhold the connectivity permission to Phase-II IPPs.
- Subsequently a meeting was held among CEA, OPTCL, GRIDCO and POWERGRID on 10th Dec., 2012 and further between POWERGRID and OPTCL/GRIDCO on 24th



Dec., 2012, wherein the evacuation scheme for phase-II projects and delivery of share of power to the state of Orissa was discussed.

11.0 Drawl of power by Odisha

As per the discussion in the meeting, the above system has been agreed to. However, OPTCL expressed their concern regarding the share of power to be received by them. Regarding drawal of Orissa's share of power from the generation projects, the following was discussed and agreed:

During 2014-15 time frame

Power to the extent of 950 MW (600MW from Sterlite and 350MW from GMR) could be availed by Orissa. One Unit (600 MW) of Sterlite generation project has already been connected to Orissa grid."

The 350 MW power from GMR could be availed by Orissa by isolation of one unit of GMR project (3X350MW+1X350) and connecting it through LILO of one circuit of Talcher-Meramundali D/c line or through GMR-Meramundali 400 kV D/c line. OPTCL has requested for connection of one unit of GMR phase-I (3X350MW) to their grid."

It is clear from the minutes of the above meeting that 350 MW of power would be availed by Odisha by isolation of one unit of the GMR project which was considered as (3x350 + 1x 350). In other words, while taking the decision for isolating one unit for Odisha, four units consisting of the capacity of 1400 MW were considered. In the said meeting, it was left to OPTCL to discuss with the generators and plan the intra-State transmission system for evacuation of its share of power.

33. The Petitioner vide its letters dated 7.1.2013 and 10.6.2013 informed PGCIL that the Petitioner has been successful in a Case I bidding with BSEB in the Eastern Region for a quantum of 260 MW and has signed a BPTA on 9.11.2011 for the same. The Petitioner requested PGCIL to change the LTA allocations against the earlier allocation done on target region basis. Subsequently, in the meeting regarding Connectivity/MTOA/LTA with constituents of Eastern Region held on 27.8.2013 at NRPC office, the following was recorded:



“BSPTCL confirmed that they have signed the PPA and are ready to sign requisite commercial agreements with POWERGRID for payment of transmission charges for the above mentioned quantum of power.

Further, POWERGRID informed that Bihar has also signed Power Purchase Agreements with GMR Kamalanga Energy Ltd. for drawal of 260 MW from the generation project in Angul district of Odisha. Accordingly, the revised beneficiaries for GMR Kamalanga power would be as given below:

GMR Kamalanga Energy Ltd. : IC – 1050 MW, LTOA Quantum – 800 MW
Beneficiaries : BSEB-260 MW, Haryana-300 MW, NR-40 MW, SR-200 MW

BSPTCL confirmed that they have signed the PPA and are ready to sign requisite commercial agreements with POWERGRID for payment of transmission charges for the above mentioned quantum of power.

However, OPTCL/GRIDCO expressed reservations regarding the quantum of power that GMR had allocated to their beneficiaries without considering the total share of power of Odisha. After detailed discussions, it was decided that GMR should resolve the issue with Odisha and revert back.”

From the above minutes, it emerges that the LTA of the Petitioner for 800 MW was discussed with reference to the installed capacity of three units of the project of the Petitioner. With regard to revised beneficiaries for 800 MW LTA, the allocations were BSEB: 260 MW, Haryana: 300 MW, NR without beneficiaries: 40 MW and SR: 200 MW. Considering the quantum of 800 MW LTA to CTU as against the installed capacity of 1050 MW, GRIDCO expressed its reservation with regard to its share of 25% in the generation project. It is pertinent to mention that in the meeting dated 5.1.2013, it was decided to isolate one unit of 350 MW for GRIDCO out of the installed capacity of 1400 MW. The Petitioner vide its letter dated 1.9.2014 informed PGCIL that in compliance of para 2 of the minutes of meeting regarding connectivity/MTOA/LTA with constituents of Eastern Region held on 27.8.2013, GRIDCO has no objection to the quantum of power allocation and LTA for supply of power by the Petitioner to BSEB, Haryana, NR and SR vide its letter dated 23.8.2014. The Petitioner requested PGCIL to make the required amendment to the BPTA dated 24.2.2010, for supply of power to Bihar as under:



Original BPTA		Proposed Revision in BPTA		Details of buyers
Target Region	Capacity (MW)	Target Region	Capacity (MW)	
NR	600 MW	NR	340 MW	PPA with PTC for supply of 300 MW power to Haryana at STU and CTU interconnection point
		ER	260 MW	PPA with BSEB for supply of 260 MW power to Bihar at CTU inter-connection point.
SR	200 MW	SR	200 MW	Buyer is not yet finalized
Total	800 MW	Total	800 MW	

It is therefore apparent from the above that the Petitioner has maintained the LTA quantum as 800 MW even subsequent to the meeting dated 5.1.2013 in which one unit of 350 MW was decided to be isolated for GRIDCO for which the power shall be evacuated through STU system.

34. PGCIL vide its letter dated 20.10.2014 informed the Petitioner that revision of the beneficiaries/quantum of power for the subject project has resulted in introduction of a new region (Eastern Region: Bihar 260 MW) and a change (reduction) by 260 MW in Northern Region which requires a fresh application as per Regulation 12 (1) of the Connectivity Regulations. Relevant portion of the said letter dated 20.10.2014 is extracted as under:

“ In this regard, your kind attention is drawn towards clause 12 (1) of the CERC ‘Grant of Connectivity, Long Term Access and Medium Term Open Access in Inter-State Transmission and related matters’ Regulations, 2009 which is reproduced as under;

“Provided also that in cases where there is any material change in location of the applicant or change by more than 100 MW in the quantum of power to be interchanged using the inter-State transmission system or change in the regional from which electricity is to be procured or to which supplied a fresh application shall be made, which shall be considered in accordance with these regulations.”

In view of the above, it may be appreciated that revision of beneficiaries/quantum of power for the subject project result in following variations:

- Introduction of a new region (Eastern Region: Bihar-260 MW)



- Change (Reduction by 260 MW in Northern Region)

Both these variations qualify for a fresh application

Further, reduction by 260 MW in Northern Region would result in relinquishment of LTA of 260 MW along with applicable relinquishment/exit charges. The issue of computation of relinquishment charges is under consideration of CERC.

We have, the above clarifies the issue. Accordingly, you may submit a fresh application along with application fee for Grant of Long Term Access indicating revised break-up of the firm and target beneficiaries and quantum of power. Further course of action shall be initiated after receipt of the fresh application at our end.”

Thus, PGCIL advised the Petitioner to submit a fresh application for grant of LTA indicating the revised breakup of the firm and target beneficiaries and quantum of power. On 31.10.2014, the Petitioner made an application for grant of 260 MW LTA for supply of power to Bihar in which out of the 600 MW earlier granted for NR, 323 MW was shown in the NR (Haryana), 260 MW in ER (Bihar) and 200 MW for SR continued to remain unaltered. PGCIL vide its letter dated 14.5.2015 communicated the Petitioner about the grant of 260 MW LTA for ER subject to signing of LTA Agreement and fulfillment of all other conditions pertaining to the grant. The Petitioner vide its letter dated 7.5.2015 requested PGCIL to defer the implementation of LTA to Bihar for six months as it has hoped that by that time there would be ample clarity on the issue of implementation of LTA on account of change in region. In the meeting of Eastern Region constituents held on 25.5.2016, the issue of deferment of the Petitioner’s 260 MW LTA was discussed and LTA was decided to be cancelled the same and the Petitioner was advised to apply afresh as and when required. Accordingly, PGCIL vide its letter dated 3.6.2015 cancelled the LTA of 260 MW granted to the Petitioner. The Petitioner vide its letter dated 30.9.2015 informed PGCIL that it has submitted online application for grant of 260 MW LTA against Bihar PPA as under:

Original LTA		Proposed Revision in LTA		Remarks
Target Region	Capacity (MW)	Target Region	Capacity (MW)	



NR	600 MW	NR	540 MW	PPA with BSEB for supply of 260 MW power to Bihar at CTU inter-connection point.
		ER (Bihar)	260 MW	
SR	200 MW	SR	0 MW	
Total	800 MW	Total	800 MW	

35. The Petitioner vide its further letter dated 30.9.2015 requested PGCIL to revise the LTA of 800 MW by reducing the total LTA grant by 153 MW. The said letter is extracted as under:

“Sub: Regarding Revision of LTA of 800 MW executed with GKEL.

Ref: 1. GKEL letter GKEL/BBSR/LTA/PGCIL/2015/001 dated 30th Sep 2015
2. Bulk Power Transmission Agreement dated 24.2.2010
3. GKEL PPA with GRIDCO dated 28th Sep 2006 revised on 4th Nov 2011
4. GKEL PPA with PTC dated 12th March 2009
5. GKEL PPA with Bihar dated 9th Nov 2011
6. Minutes of meeting in regard to Connectivity/MTOA/LTA with constituents of Eastern Region dated 5th Jan 2013

This is with reference to our letter cited at 1 above wherein certain quantum of LTA granted was requested for change of region from NR and SR to Bihar in ER. In further continuation to this request, we also require to reduce the total LTA grant by 153 MW as per the case explained below:

1. GMR Kamalanga Energy Limited (GKEL) has developed 1050 MW (3*350MW) of power plant in the State of Odisha and achieved COD of its Units 1, 2 and 3 in Apr'13, Nov'13 and Mar'14 respectively.
2. GKEL was granted Long Term Access for 800 MW and BPTA was executed with PGCIL on 24th February 2010. As the entire plant capacity was yet to be fully tied up, only the regions of the targeted beneficiaries (including the beneficiaries with whom PPAs were executed as on the date of the BPTA) were identified and included in the BPTA at the time of its execution.
3. GKEL entered into Power Purchase Agreement (PPA) with GRIDCO Limited for supply of Odisha State share of Power (25% of the sent out Power) on 28th Sep 2006 amended on 4th November, 2011.
4. As per the Minutes of Meeting in regard to Connectivity/MTOA/LTA with constituents of Eastern Region held on 5th Jan 2013 at POWERGRID Office, Gurgaon, it was decided that 350 MW power from GMR could be availed by Orissa for its share of 25% of power by isolation of one unit of GMR project and connecting it through LILO of one circuit of Talcher-Meramundali D/C line or through GMR – Meramundali 400 kV D/C line.



5. GKEL constructed a 400 kV S/C transmission line from Plant to Meramundali substation of OPTCL to supply of 25% of power to the state of Odisha through the STU network which was charged on 18th March 2015.
6. Post charging of GMR-Meramundali 400 kV S/C Transmission line, GKEL is operating with two units connected to CTU network and one unit connected to STU network.
7. GKEL also entered into PPAs with Power Trading Corporation for supply of power to Haryana Discoms on 12th March 2009 and Bihar on 9th Nov 2011 for a quantum of 300 MW and 260 MW respectively.
8. As GKEL executed PPAs for Haryana (with PTC), Bihar and GRIDCO, the ultimate quantum of Power that can be evacuated through the CTU system based on the segregation of the Units with Unit 1 & 2 having connectivity with ISTS and Unit 3 having connectivity with STU and executed PPAs is produced below:

	Units 1 & 2 with connectivity to ISTS network	Unit 3 with connectivity to Odisha Network
Installed capacity	700 MW	350 MW
Auxiliary (7.5%)	53 MW	25 MW
Exportable capacity	647 MW (A)	324 MW
Haryana PPA (with PTC) (incl. Losses)	312	
Bihar PPA	260	
GRIDCO PPA	-	243
Balance capacity	75 MW	81 MW (B)
Net relief of the plant for sale (C = A + B)	728 MW	
LTA Grant (D)	800 MW	
Surplus capacity available (E=D-C)	72 MW	

9. The quantum of power which can be evacuated from Unit 1 & 2 of Plant having connectivity with ISTS, is 647 MW only as per the above table. Thus, it is evident that grant of 800 MW of LTA to the plant is infructuous and cannot be utilized fully.
10. Further, since Unit 3 is dedicated to Odisha STU network, for supply of 25% of its share, balance capacity of 81 MW (Table 1) cannot continue to have LTA granted on ISTS from point of connectivity at Angul pooling station.
11. We thus request for revision of LTA with reduction of 153 MW (72+81) as below:

Proposed Revision in LTA vide letter dated 28.9.2015		Revision in view of the above case		Remarks
Target Region	Capacity (MW)	Target Region	Capacity (MW)	
NR	540 MW	NR (Total)	387	153 MW to be reduced as explained above



		NR (Haryana)	312	PPA with PTC for Haryana
		NR (Balance)	75	To be tied up
ER (Bihar)	260 MW	ER Bihar	260	PPA with BSEB
SR	0 MW			
Total	800 MW	Total	647 MW	

In view of the above, kindly consider our request for revision of LTA and confirm. We would be ready to issue any further clarifications in this regard and request you to suggest a suitable time for discussion in case any clarifications are required.”

36. From the above discussion, it emerges that the Petitioner in its letter dated 30.9.2015 for the first time has raised the issue that its LTA capacity is 700 MW out of the installed capacity of 1050 MW and after reducing the auxiliary consumption, the LTA should be reduced to 647 MW. It is an undisputed fact that the share of GRIDCO as per the MOU with Government of Odisha and PPA with GRIDCO is 25% of the installed capacity. Initially, the Petitioner planned and executed 1050 MW consisting of three units of 350 MW each. Out of 1050 MW, the Petitioner applied for and obtained LTA for 800 MW (600 MW for NR and 200 MW for SR). The balance capacity of 250 MW roughly corresponds to 25% share in 1050 MW. PGCIL has submitted that from the beginning, GRIDCO was making its arrangement to take its share of power from the generating station of the Petitioner and the said capacity has not been considered while planning and executing the transmission system under LTA of 800 MW. In the meeting dated 5.1.2013, the capacity of 1400 MW consisting of 4 units of 350 MW was discussed. Out of the 4 units, the Petitioner decided to isolate one unit for Odisha to be evacuated through OPTCL system. Therefore, there was a balance capacity of 1050 MW as against which there was a subsisting LTA of 800 MW. In the subsequent discussions and correspondences, there was reference to only 1050 MW. After isolating one unit of 350 MW, the resultant capacity available for LTA is only 700 MW. Therefore, it is on account of the



Petitioner first considering the installed capacity of 1400 MW and thereafter considering the installed capacity of 1050 MW while deciding the isolation of one unit of 350 MW to GRIDCO which has given rise to the incongruities and the same cannot be passed on as failure on the part of CTU to discharge its responsibility under Section 38 of the Act. It is pertinent to mention that the Petitioner has filed Petition No.137/MP/2016 for relinquishment of LTA of 220 MW on account of non-materialisation of Unit 4 of the generating station. Consequently, the Petitioner has earmarked one unit out of existing three units of 1050 MW for GRIDCO. The Petitioner has therefore taken a conscious call by isolating one unit of 350 MW for GRIDCO from the now available installed capacity of 1050 MW which has necessitated reduction of LTA from 800 MW to 647 MW. The Petitioner while applying for LTA originally should have taken into consideration the auxiliary power consumption stated to be 7.5% in this case i.e. 53 MU. There is no provision in the Connectivity Regulations to reduce the auxiliary consumption from the LTA quantum. It is for the Petitioner to take a call before applying for LTA for net exportable capacity after adjusting the auxiliary consumption. In view of the above, we do not find any merit in contention of the Petitioner that PGCIL has not carried out its responsibilities as envisaged in Section 38 of the Act.

Issue No.3: Whether the Petitioner is required to make fresh application for grant of LTA for ER?

Issue No.4: Whether the Petitioner is required to relinquish the LTA for reduction of quantum of LTA and change of region for grant of LTA for supply of power to BSEBL?

Issue No.5: Whether the Petitioner is liable to pay the relinquishment charges for the LTA relinquished?

Issues No. 3, 4 and 5 are being discussed together.



37. The Petitioner has submitted that it is neither required to make any fresh application for modification of LTA nor has to relinquish any part of the LTA as PGCIL is expected to revise the BPTA in the light of the decision in the meeting dated 5.1.2013. We have already clarified in the decision under Issue No. 2 that the LTA of 800 MW did not include the capacity for evacuation of GRIDCO's share of power. Further, since the LTA capacity required now is less than 800 MW and involves change in region, the Petitioner is required to make fresh application for LTA in new region and relinquish the capacity equivalent to the difference between the capacity covered under the BPTA dated 24.2.2010 and the revised capacity of LTA now required by the Petitioner. The Commission in order dated 16.2.2015 in Petition No.92/MP/2014 has decided that change in region or change in quantum of power more than 100 MW shall require fresh application. The directions in the said order are extracted as under:

"116. In the light of the above discussion, the Fourth proviso (fifth proviso after the amendment) shall be implemented by CTU as under:

(a) An LTA customer i.e. a person who has been granted LTA shall be considered as an LTA applicant when he is seeking change of location or change in the injection of quantum of power or change in target region(s).

(b) In case of change in location or change in the region involving change in drawal or injection point (other than the target region specified in the LTA already granted), fresh application as per the procedure is required to be made.

(c) In case of change in quantum of power by more than 100 MW to the region to which LTA has been granted, fresh applications will be required.

(d) In cases of change in quantum of power to the same region (for which LTA has been granted) by less than 100 MW, written requests shall be considered by CTU. If a subsequent request is made for the same region and the quantum of change of power in the first and second requests taken together exceeds 100 MW, then CTU shall ask for fresh application when the second request is made."

In the light of the above decision, the Petitioner who is seeking LTA to Eastern Region in place of LTA to Southern Region and part of the LTA to Northern Region is



required to make fresh application to CTU. Whenever a LTA customer seeks change of region, there is a corresponding reduction in the LTA in the region from which change is sought. Therefore, the LTA customer is liable to pay the relinquishment charges to the extent of reduction in the LTA in the region from which change is sought.

38. It is noticed that in response to the Petitioner's request for grant of LTA of 260 MW to Eastern Region and reduction of LTA from 800 MW to 647 MW, PGCIL has advised the Petitioner vide letter dated 15.1.2016 as under:

"Sub: Application for grant of 260 MW LTA (Bihar PPA) and request for reduction in LTA Quantum from 800 MW to 647 MW

Ref:

- (i) GKEL Letter GkEL/BBSR/LTA/PGCIL/2015/001 dated 30.09.2015
- (ii) GKEL Letter GkEL/BBSR/LTA/PGCIL/2015/002 dated 30.09.2015
- (iii) GKEL Letter GkEL/BBSR/LTA/PGCIL/2015/002 –Err dated 30.09.2015
- (iv) Grant of LTOA vide CTU letter C/ENG/E/00//SEF/OA dated 29.04.2009
- (v) GKEL Letter Ref No. GkEL/BBSR/LTA/PGCIL/2014-15/4339 dated 01.09.2014

Dear Sir,

This is with reference to your letters cited above at SI No. : (i), (ii) & (iii) vide which you've requested for reduction in LTA granted quantum from 800 to 647 MW owing to isolation of one unit of 350 MW for catering to the requirement of Odisha.

In this regard, it may be informed that grant of LTA is not generation-unit-linked, rather based upon the quantum sought in the LTA application. As per the application dated 8.12.2007, GKEL had sought LTOA for 800 MW which was granted vide CTU intimation dated 29.4.2009.

Further, with reference to the Minutes of 7th LTA/Connectivity Meeting of Constituents as cited by you, it was agreed that the projected/upcoming fourth unit of 350 MW may be isolated for catering to Odisha. However, in the subsequent 8th LTA/Connectivity Meeting of ER Constituents dated 27.8.2013, there was an objection from OPTCL/GRIDCO with respect to your allocation of power under the 800 MW LTA, as it did not provide for Odisha's share. Therefore, GKEL was asked to resolve the same with Odisha. In this regard, GKEL had responded vide letter dated 1.9.2014, that Odisha had provided no objection to the quantum of power allocation from GKEL to the following beneficiaries.

Target Region	Allocation as per LTA application (MW)	Details of PPA/Buyers
Northern Region	600 MW	PTC (Haryana) – 300 MW
Eastern Region	-	BSES (Bihar) – 260* MW



Southern region	200 MW	Buyers not yet finalized
Total	800 MW	

- GKEL was asked to submit a fresh application for change in Region from NR to ER. Fresh application in this regard was submitted on 30.9.2015 and is under process.

However, in your present communications, you are seeking reduction of granted LTOA from 800 MW to 647 MW on the basis of an alleged requirement to cater to Odisha by isolation of one unit of 350 MW of your (3X350 MW) generation plant. For the reasons and facts stated above, this plea cannot be accepted.

Further, for effecting any reduction to the LTA quantum already granted, you are required to make an unequivocal communication for relinquishment of LTA quantum as per Clause 18 of CERC Regulations, 2009 and also provide your consent for bearing the transmission charges as may be applicable as per CERC Regulations/Orders.

As you may be aware, a committee has been constituted by CERC in Petition No. 92/MP/2016 for determination of relinquishment charges. Accordingly, at the time of making a formal request for relinquishment of LTA quantum, you are requested to accord your consent for payment of relinquishment charges as may be decided by CERC based on the recommendations of the Committee referred above. Such a communication shall be treated as your application for relinquishment under Regulation 18 of the CERC Regulations, 2009.

For these reasons, the present communications cannot be acted upon by CTU unless formal request as per the CERC Regulations is made to CTU.

Till a formal request for relinquishment of LTA quantum is received, the grant of 800 MW of LTA shall stand and you shall be liable to bear the transmission charges and all other liabilities of a Long Term Customer (LTC). As such, there is no question of the said LTA being rendered infructuous.

Further, pursuant to the proceedings before the Hon'ble Commission on 7.1.2016 in Petition No. 249/MP/2015 (where you are Respondent No. 10 *qua* the subject 800 MW LTA), the Hon'ble Commission desired that an Affidavit clearly indicating the quantum of LTA, required to be relinquished be filed. A copy of the Affidavit may be served to CTU."

39. Subsequently, the Petitioner vide its letter dated 22.4.2016 addressed to PGCIL while confirming that it has no arrangement for supply of power to the beneficiaries in the Southern Region, has acknowledged that it has 213 MW surplus power in the Northern Region after taking into account the quantum being supplied to Haryana Discoms i.e. 312 MW and the quantum of 75 MW which the Petitioner intends to retain for commercial reasons. Relevant portion of the said letter is extracted as under:



“As on date, GKEL does not have any arrangement for supply of power to beneficiaries in the SR. Additionally, GKEL has a surplus LTA to the tune of 213 MW in the NR (which is after taking into account the quantum being supplied to Haryana Discoms i.e. 312 MW and the quantum of 75 MW which GKEL wishes to retain for commercial reasons).

Therefore, in light of having no firm beneficiary in SR and on account of the surplus LTA quantum in NR, GKEL, in terms herein stated, hereby relinquishes 413 MW (200 MW in SR + 213 MW in NR) in terms of Regulation 18 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-Term Access and Medium-term Open Access in inter-State Transmission and related matter) Regulations, 2009. As a result of the said relinquishment, GKEL is effectively left with an LTA quantum of 387 MW in NR. Accordingly, PGCIL is free to allocate the relinquished quantum to any third party.

However, PGCIL is well aware that GKEL has filed a petition being Petition No. 41/MP/2016 before the Hon'ble CERC for inter alia modification of LTA/BPTA dated 24.2.2016. Hence, the above relinquishment is without prejudice to the rights and interest of GKEL qua the said petition, and the outcome of Petition No. 92/MP/2015”.

Perusal of the above letter reveals that the Petitioner intended to relinquish 413 MW (200 MW in SR + 213 MW in NR) in terms of Regulation 18 of the Connectivity Regulations.

40. The Petitioner vide its letter dated 21.6.2016 requested for revision of the 800 MW LTA by retaining 387 MW (312 MW Haryana and 75 MW-Target Region basis) in NR Region and surrender balance quantum 153 MW and payment of relinquishment charges for 153 subject to outcome of the decision in Petition No. 92/MP/2015. Relevant portion of said letter is extracted as under:

“1. GMR Kamalanga Energy Limited (GKEL) has developed 1050 MW (3*350MW) of power plant in the State of Odisha and achieved COD of its Units 1, 2 and 3 in Apr'13, Nov'13 and Mar'14 respectively.

2. GKEL was granted Long Term Access for 800 MW (600 MW-NR, 200 MW-SR) and BPTA was executed with PGCIL on 24th February 2010.

3. GKEL entered into PPAs with Power Trading Corporation for supply of power to Haryana Discoms on 12th March 2009 and Bihar on 9th Nov 2011 for a quantum of 300 MW (net of power) and 260 MW respectively.

4. We submitted an online application No. 1200000204 for grant of long term access to GKEL against Bihar PPA of 260 MW on 30.9.2015.



5. Since GKEL has BPTA for 800 MW (600 MW in NR and 200 MW in SR), the proposed revision in LTA will be as per table given below:

Original LTA		Proposed Revision in LTA		Remarks
Target Region	Capacity (MW)	Target Region	Capacity (MW)	
NR	600 MW	NR	540 MW	
		ER (Bihar)	260 MW	PPA with BSEB for supply of 260 MW power to Bihar at CTU inter-connection point.
SR	200 MW	SR	0 MW	
Total	800 MW	Total	800	

6. As per proposed amendment, the LTA quantum in NR would be 540 MW. However, GKEL has a commitment for supply of 300 MW net of power (amounting to 312 MW at injection point) to Haryana discoms as per PPA dated 12th March 2009.

7. Thus, GKEL would like to retain 387 MW (312 MW – Haryana, 75 MW- Target Region basis) in NR region and surrender balance 153 MW.

8. The payment of the relinquishment charges for 153 MW will be subject to the order by Hon'ble Commission in Petition No. 92/MP/2015”.

41. PGCIL in its letter dated 24.6.2016 granted the LTA to the Petitioner as under:

“This is with reference to your LTA application (1200000204) for transfer of power from GMR Kamalanga Energy Ltd. Generation Project in Odisha to Bihar, submitted online on 30.9.2015 for 260 MW in respect of change in region from NR (60 MW) & SR (200 MW) to ER, and Minutes of 11th Meeting of ER Constituents held on 13.6.2016. In this regard, the LTA intimation for change in region of 260 MW from NR & SR to ER is enclosed.

It is to mention that grant of LTA is subject to the signing of requisite LTA Agreement and fulfillment of other conditions as required under the Regulations and approved Procedure as also those mentioned in the enclosed intimation.

Further, as per your letter dated 22.4.2016 & 21.6.2016, relinquishment of 153 MW from Northern Region has been accepted and you shall be liable for payment of relinquishment charges, as may be decided by the Hon'ble Commission in the Petition No. 92/MP/2015, for change in region of 260 MW from NR (60 MW) & SR (200 MW) to ER and also for relinquishment of 153 MW from NR. The revised LTA quantum after considering above developments is as below:

Regions	Quantum allocated as per intimation dated 29.4.2009	Quantum allocated as per present intimation
Northern Region	600 MW (Target)	387 MW (Firm-312* MW for transfer of power to Haryana DISCOMs)



		through PTC; Target-75 MW)
Southern Region	200 MW (Target)	0 MW
Eastern Region	-	260 MW (Firm-Bihar State Power Holding Co. Ltd)
Total	800 MW	647 MW

* GKEL through PTC has executed PPA for 300 MW (150 MW each with Uttar and Dakshin Haryana BijliVitrان Nigam Ltd). However, has requested for injection of 312 MW so as to deliver 300 MW at drawl point. The transmission charges for injection of quantum in excess to 300 MW shall be payable by GKEL.

In regard to the above grant of LTA, applicant shall abide by all provisions of the CERC (Grant of Connectivity, Long Term Access and Medium Term Open Access in inter-State transmission system and related matters) Regulations, 2009. You are requested to sign LTA Agreement, Transmission Service Agreement for sharing of transmission charges and submit the payment security mechanism as per the provision of CERC, 2009 Regulations & approved Detailed Procedure.....”

42. After the above allocation by PGCIL, the Petitioner has got LTA of 387 MW to Northern Region, 260 MW to Eastern region and 0 MW to Southern Region. The Petitioner has relinquished 200 MW in Southern Region and 213 MW in Northern Region. Therefore, the Petitioner shall be liable for payment of relinquishment charges in accordance with the decision in Petition No.92/MP/2015.

43. In the light of the above discussion, the following directions are issued:

(a) As per the BPTA, PGCIL is under a contractual obligation to release the bank guarantee given under Clause 6.0 of the PPA if the generating units and dedicated transmission lines are completed by the Project Developer. Linking the construction BG under Clause 6 of the BPTA with the opening of LC under Clause 2 of the BPTA read with Clause 3.6.3 of the BCD procedure is not in accordance with the provisions of BPTA. Therefore, BG cannot be withheld on the ground that LC has not been opened by the Project Developer.

(b) The project developer is under statutory and contractual obligations to open the unconditional LC before operationalization of LTA. In the present case, the



Petitioner has opened the LC for 647 MW in terms of the directions of the Commission. Subject to satisfaction of PGCIL with regard to the LC, BG shall be returned to the Petitioner.

(c) The Petitioner was granted LTA of 800 MW in accordance with its application and the applicable regulations for which the Petitioner entered into BPTA dated 24.2.2010 with PGCIL. For change of region and revision of LTA capacity, the Petitioner is required to submit fresh application to CTU in terms of Regulation 12 of the Connectivity Regulations and directions contained in Para 116 of the order dated 16.2.2015 in Petition No. 92/MP/2014.

(d) The Petitioner vide its letter dated 21.6.2016 requested for grant of LTA of 387 MW for Northern Region and 260 MW for Eastern Region and for relinquishment of the capacity of 153 MW. Accordingly, PGCIL has granted LTA of 647 MW to the Petitioner.

(e) Revision of LTA quantum from 800 MW to 647 MW (387 MW to Northern Region and 200 MW to Southern Region) involves relinquishment of 200 MW capacity in Southern Region and 213 MW in Northern region. The Petitioner is liable to pay the relinquishment charges for the relinquished capacities in terms of the decision and order to be issued in Petition No.92/MP/2015.

44. Petition Nos.203/MP/2015 and 41/MP/2016 are disposed of in terms of the above.

Sd/-
(Dr. M.K. Iyer)
Member

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson

