

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 85/MP/2014

**Coram:
Shri Gireesh B Pradhan, Chairperson
Shri A. K. Singhal, Member
Shri A. S Bakshi, Member**

Date of Order: 18th of December, 2017

In the matter of

Petition under Section 79 (1) (c) and (f) of the Electricity Act, 2003 read with appropriate provisions of the CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 and CERC (Sharing of Inter-state Transmission Charges and losses) Regulations, 2010.

And

In the matter of

Power Grid Corporation of India Limited
Soudamini, Plot No 2, Sector 29
Gurgaon – 122001

Petitioner

Vs

1. Damodar Valley Corporation
DVC Towers, Maniktala
Civic Tower, VIP Road
Kolkata-700054
2. BSES Yamuna Power Limited,
BSES Bhawan, Nehru Place, New Delhi
3. Power System Operation Corporation Ltd
B-9, Qutab Institutional Area
Katwaria Sarai,
New Delhi - 1100016

Respondents

Parties Present:

Ms. Suparna Srivastava, Advocate, PGCIL
Shri A.M.Pavgi, PGCIL
Shri Aryman Saxena, PGCIL
Shri S.K. Venkatesan, PGCIL

Shri R.P.Padhi, PGCIL
Shri Vikas Singh, Sr. Advocate, DVC
Shri Ajay Sharma, Advocate, DVC
Ms. Deepika Kalia, Advocate, DVC
Shri Subrata Ghosal, DVC
Shri Arijit Maitra, Advocate, BYPL
Shri Sameer Singh, BYPL
Shri Abilia Zaidi, POSOCO
Ms. Jyoti Prasad, POSOCO
Shri S.S. Barpanda, NLDC

ORDER

The Petitioner, Power Grid Corporation of India Limited (PGCIL), has filed the present petition under clauses (c) and (f) of sub-section (1) of Section 79 of the Electricity Act, 2003 (the Act) read with appropriate provisions of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium Term Open Access in inter-State Transmission and related matters) Regulations, 2009 (hereinafter referred to as the 'Connectivity Regulations') and Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 (hereinafter referred to as 'Sharing Regulations') seeking directions to Damodar Valley Corporation (Respondent No.1) to make payment of the transmission charges for Long-Term Access corresponding to 119.19 MW for the transmission assets created for transfer of power from Mejia B TPS Unit 8 from October 2012 along with Surcharge for delayed payment.

Background of the Case

2. A Power Purchase Agreement (PPA) dated 24.8.2006 was entered into between Damodar Valley Corporation (DVC) and Delhi Transco Limited (DTL) for supply of power from the generating stations of DVC as per the following details:

Table A

Period of sale of scheduled energy	Quantum of power (MW)	Rate at DVC Bus at DVC periphery (Paise/kWh)
From December 2006 to September 2007	100	Negotiable

Table B

Period of sale of scheduled energy	Quantum of power (Gross MW from capacity addition)	Rate at DVC Bus at DVC periphery (Paise/kWh)	Duration of power supply	Remarks (Capacity addition of DVC units)
From Oct'2007 to Nov '07	230	As determined by CERC	25 years from COD	CTPS#7
From December 2007 to March 2010	400	As determined by CERC	25 years from COD	CTPS#8
From April 2010 to August 2010	800	As determined by CERC	25 years from COD	MTPS # B-U#I
From September 2010 to October 2010	1000	As determined by CERC	25 years from COD	MTPS # B-U# II
From November 2010 to March 2011	1975	As determined by CERC	25 years from COD	Koderma –U#I & Durgapur – U#I
April 2011 onwards	2500	As determined by CERC	25 years from COD	Koderma –U#II & Durgapur – U#II

3. The PPA defines the Delivery Point as the “Commercial Metering Point at DVC Bus at DVC periphery”. As per clause 2.2 of the PPA, DVC shall make all reasonable efforts to ensure supply of scheduled power as per the clause 4 (table mentioned above) to DTL at the delivery point. Clause 4.3 of the PPA provides that the transmission charges and transmission losses for sale of power upto the Delivery Point shall be borne by DVC. Clause 4.4 of the PPA says that all applications for availing intra-regional and inter-regional transmission system of CTU to transfer power from DVC periphery to DTL shall be made by DTL to respective RLDCs/RPCs and all the charges as per the CERC norms are to be paid by DTL. Clause 4.5 states that DTL shall be responsible to coordinate with CTU or any transmission licensee or other

agencies for implementation of transmission system for evacuation of power from the DVC power stations with the commissioning schedule.

4. Subsequent to unbundling of distribution business in Delhi, the Delhi Electricity Regulatory Commission (DERC) in its order dated 31.3.2007 reassigned the PPAs signed by DTL among the distribution companies. In case of DVC, capacity was allocated among the distribution companies of Delhi as under:

Ser No.	Name of the Station	Basic capacity allocated to Delhi	Proposed allocation based on energy consumption pattern of distribution licensees from July 2002 to February 2007		
			NDPL	BRPL	BYPL
			29.18%	43.58%	27.24%
B	DVC (Thermal)				
1	Damodar Valley Corporation*	100	29	44	27

*The additional capacity which may be available from DVC, would be considered accordingly.

Thus as per the order of the DERC, the additional capacity of 2500 MW which would be available from DVC would be allocated to NDPL, BRPL and BYPL in the ratio of 29.18%, 43.58% and 27.24% respectively. Consequently, NDPL, BRPL and BYPL shall be liable for transmission charges from the DVC periphery till their respective drawal points.

5. Member (PS), Central Electricity Authority (CEA) convened a meeting on 17.11.2007 with the representatives of CEA, DVC and PGCIL to discuss about the evacuation of power from Mejia B TPS (2x500 MW), Durgapur Steel TPS (2x500 MW), Koderma TPS (2x500 MW), Raghunathpur TPS (2x660 MW) and Bokaro A TPS (1x500

MW). In the said meeting, it was discussed that DVC had undertaken a generation addition program of 4700 MW out of which 3600 MW would be exported to Northern Region and Western Region beneficiaries respectively. In order to evolve a comprehensive inter-regional and intra-regional transmission system for evacuation of the said power, CEA had carried out system studies and evolved transmission system with two options. First option was to pool the power from the above mentioned generating stations at Koderma Pooling station and thereafter connected to Sasaram 400 kV and Biharsariff 400 kV Sub-station for further transfer to Northern Region. The second option was direct evacuation utilizing the existing transmission network in the area with necessary additional transmission system. In the meeting, it was decided that second option was preferable considering the relative cost, RoW issues and phased implementation and would be taken up for ratification in the Standing Committee. A meeting was also taken by Secretary, Ministry of Power, Government of India (MoP) on 18.12.2006 in which Secretary MoP emphasized the need to give special attention to Mejia TPS Extn and Koderma TPS as these projects would be supplying power to Delhi for Commonwealth Games.

6. The matter was discussed in the 22nd Meeting of the Standing Committee on Power System Planning of Northern Region on 12.3.2007. In the said meeting, it was noted that DVC had signed long term PPAs with Delhi, Punjab and Haryana for 2500 MW, 700 MW and 200 MW respectively. After taking into account the other generation project in the region, revised studies were presented and revised transmission schemes were discussed and approved. As regards the sharing of the transmission charges, the Committee noted that transmission system from the generating station upto the pooling

station was proposed to be shared by the beneficiaries of the generation projects and transmission system beyond the pooling points of Northern Region and Western Region was proposed to be shared by the beneficiaries of the respective region. It was decided to refer the proposal to RPC for approval.

7. The transmission systems for evacuation of power from the generation addition of DVC was discussed in the Standing Committee meeting on Power System Planning in Eastern Region held on 5.5.2007. Based on the discussion, the common and specific transmission schemes as evolved by CEA were agreed to. The 22nd Meeting of the Standing Committee Meeting on Power System Planning in Western Region was held on 30.7.2007. The revised transmission schemes evolved by CEA after system studies were discussed and approved. In the meeting of the Standing Committee on Power System Planning of Eastern Region held on 5.11.2007, Chief Engineer (SP&PA), CEA informed that the transmission system for the new generation capacity planned by DVC was identified for implementation by private sector through Empowered Committee. Since, various generation projects of DVC were scheduled for commissioning between December 2009 and November 2010 and as the transmission system was getting critical, DVC had suggested that this scheme be taken up by PGCIL. The implementation of the scheme was therefore reviewed by MoP and based on CEA's recommendation, MoP had directed PGCIL to take up the scheme and match the same with the generation project.

8. Special (6th) Meeting of the Technical Coordination Committee of Eastern Regional Power Committee was held on 11.6.2008 to discuss the proposal of

transmission projects earlier finalized in the meeting of the Standing Committee on Transmission Planning in Eastern Region. At the said meeting, the Petitioner furnished the details of proposed tie-up/allocation from DVC projects to the beneficiaries as per the details given hereunder:

Project	Capacity	Delhi	Punjab	Madhya Pradesh	Haryana	DVC	West Bengal
Koderma TPS	1000	775			100	125	
Bokaro-A TPS	500		200			300	
Mejia B TPS	1000	875			100	25	
Durgapur TPS	1000	450	200	100		50	200
Raghnathpur TPS	1200		300		100	500	300
Total	4700	2100	700	100	300	1000	500

PGCIL requested the members of ERPC to consider transmission systems for evacuation of power from these generation projects as part of main BPTA which was not agreed to. It was decided that separate BPTA would be signed by the beneficiaries of the generation projects.

9. A meeting was held at ERLDC on 22.11.2011 to discuss and resolve the issues related to transfer of power to the long term beneficiaries of new generation schemes of DVC. At the meeting, DVC was asked to apply for connectivity for its projects. PGCIL informed that DVC had applied for connectivity for Mejia B. The Petitioner also informed that power system studies related to adequacy of transmission systems were conducted and no constraints were faced for transfer of power from the proposed generating units of DVC to long term beneficiaries. The transmission systems required to facilitate the transfer of power to long term beneficiaries from Mejia were as under:

Generati on Unit	Generation Schedule	Allocation	Transmission System Requirement	Expected Transmission System Schedule
Mejia B Unit 1 (unit 7)	Existing	DTL 437.50 MW Haryana 50.00 MW DVC 12.50 MW Total 500.00 MW	LILO of one Ckt of 400 kV Maithon-Jamshedpur D/C transmission line at Mejia	In service
Mejia B Unit 2 (Unit 8)	September 2011	DTL 437.50 MW Haryana 50.00 MW DVC 12.50 MW Total 500.00 MW	400 kV Mejia-Maithon D/C transmission line	September 2011

In the said meeting, it was decided that long term power transfer would be applicable depending on the readiness of the transmission system or the date of PPA applicability, whichever was later.

10. A meeting was held by Member (PS), CEA on 30.11.2011 to discuss the issues about connectivity agreements of upcoming DVC projects and other issues. Member (PS) advised DVC to sign connection agreements with PGCIL to which DVC agreed. The representative of DVC gave the following information with regard to the long term beneficiaries, allocation and CoDs of the Mejia B as under:

Sr No.	Project	Firm beneficiaries to whom PPA signed	Remarks
1	Mejia (2x500 MW) CoD: to be furnished	Haryana-100 MW	<ul style="list-style-type: none"> • DVC stated that earlier 875 MW was allocated to DTL and accordingly, PPA was signed. Of late, DTL has proposed that they would not draw this power. DVC further stated that they would consume balance 900 MW in their system. • Member (PS) stated that the DVC is to pay the ISTS charges for 900 MW and it will have commercial implications on the part of DVC. • Powergrid stated that adequacy of ISTS system is to be reviewed due to change in the beneficiaries.

In the said meeting, the following was clarified to DVC with regard to grant of access and liability for payment of transmission charges:

“3. Director, CEA requested DVC to immediately furnish unit-wise CODs and the prospective long term beneficiaries to whom the unallocated power would be allocated from the above projects. DVC assured that they would furnish the requisite details on urgent basis. Member (PS) pointed out that according to the beneficiaries, PGCIL would grant access for ISTS to DVC and the day PGCIL would grant access, DVC has to bear the transmission charges as per POC regime.”

11. DVC held a meeting with the distribution companies, namely, BRPL, BYPL and NDPL on 6.2.2012 to discuss various commercial issues including reallocation of power among the three distribution companies as per the PPA entered into by erstwhile DTL.

The following re-allocations were agreed in respect of Mejia Units 7 and 8:

Gen Stn/Units	Delhi Discom's share (MW) as per agreement	Share of individual Discoms		
		NDPL (MW)	BRPL (MW)	BYPL (MW)
MTPS Unit# 7 (500 MW) CoD: 31.8.2011	473.5	127.66	190.66	119.18
MTPS Unit#8 (500 MW)	473.5	127.66	190.66	119.18

In the said meeting, BRPL confirmed its intention of surrendering total allocation from MTPS Units 7 & 8 for which formal communication would be given after approval by the Board of BRPL and DERC. NDPL stated that they had already confirmed for surrendering its total share from MTPS Units 7 & 8 and the matter was pending with DVC for supplementary agreement. BYPL confirmed that it would not surrender any power out of its shares in MTPS Units 7 & 8. After considering the finalization of surrender of power, the expected shares of NDPL and BRPL in MPTS Units 7 & 8 were nil and BYPL had share of 119.18 MW each in Units 7 & 8 of MTPS. In the said meeting, it was further agreed as under:

“3) Delhi Discoms have made only LTOA formalities with CTU for 230 MW. They agreed to take necessary action for making LTA formalities for further 170 MW i.e. total 400 MW for taking power from MTPS U-6 (100 MW) and CTPS 7&8 (300). However, they also agreed to take scheduled power from DVC beyond 230 MW (LTOA) through STOA made for which all the necessary payments towards STOA charges will be borne by them.

4) It is also principally agreed upon by BRPL & BYPL that they will bear the fixed charges from the date of COD as per the declared capacity scheduled by DVC-SLDC as per CERC Regulations and IEGC for scheduling till finalizations of surrender of Power by them after getting clearance from their Board/State Commission and also the acceptance of the same by DVC.

xxx

8) DVC requested all the Discoms to make payment of power supply bills and any other disputed amount thereof immediately in terms of provision of subsisting PPA executed on 24.8.2006 with DTL which is still in force.”

12. BYPL vide its application dated 28.3.2012 made an application to PGCIL for grant of long term access (LTA) for 119 MW from MTPS Unit 7. However, PGCIL vide its letter dated 19.4.2012 granted LTA of 238.38 MW to BYPL based on the modified power purchase in terms of the minutes of the meeting of DVC with distribution companies of Delhi held on 6.2.2012. The long-term access for transfer of power from Mejia BTPS as intimated by PGCIL is as under:

S. No.	Generation Unit	Date of commencement of power to long term beneficiaries	Share of power to respective beneficiaries		
			BYPL	Haryana	DVC
1.	Unit 7	With immediate effect	119.19 MW	50 MW	12.5 MW
2.	Unit 8	To match with date of commercial operation of	119.19 MW	50 MW	12.5 MW

In this letter, the Petitioner pointed out that the transmission system for evacuation of power from DVC generation projects was evolved as ISTS in line with Central Sector Generating Stations and therefore, no separate long-term agreement was envisaged and hence was not signed. The Petitioner, however, requested DVC

and BYPL to sign the Transmission Service Agreement in view of the Commission's order dated 25.1.2012 in Petition No 213/MP/2011. The Petitioner stated that till such time, the Transmission Service Agreement was signed, they were deemed signatories of the Model Transmission Service Agreement and would be bound by it. The Transmission Service Agreement dated 8.11.2013 was signed between the Petitioner and BYPL, a copy of which has been placed on record by the Petitioner under affidavit dated 18.7.2014. The Petitioner, vide affidavit dated 15.12.2014, has also placed on record TSA dated 14.8.2014 signed with DVC.

13. The second unit of Mejia B TPS (Unit 8) was commissioned on 16.8.2012. The LTA for Mejia B TPS Unit 8 was included in the Regional Transmission Accounts with effect from October 2012 and accordingly, the Petitioner started billing BYPL with effect from October 2012. BYPL under its letter dated 3.12.2012 informed the Petitioner that it had already surrendered the power from Mejia Unit 8 and intimated DVC about the same. BYPL stated that in March 2012 it had applied for long term access for 119 MW allocated to it from Mejia B TPS Unit 7. BYPL refuted its liability to pay the transmission charges since no power was being scheduled from Unit 8. The Petitioner, however, continued to bill BYPL till August 2013.

14. The Petitioner, vide its letter dated 31.12.2013, citing BYPL's letter dated 3.12.2012, sought a confirmation from DVC regarding surrender of 119.19 MW power from Mejia Unit 8 by BYPL so that billing of transmission charges for the same to BYPL could be discontinued and the same could be billed to DVC till PPA was signed by DVC with other beneficiaries. DVC, vide letter dated 7.1.2013, informed the Petitioner that BYPL suddenly surrendered the power which was not accepted by DVC. BYPL, vide its

letter dated 10.1.2013, wrote to the Chief Operating Officer that transmission charges for supply of power from MTPS Unit 8 was not payable since BYPL had not applied for LTOA from MTPS Unit 8. PGCIL, vide its letter dated 23.1.2013, advised BYPL to take up the matter with DVC to settle the issue of billing of transmission charges.

15. The Petitioner, vide its letter dated 11.7.2013, wrote to DVC stating that the LTA of 119.19 MW was granted to DVC and according to the Connectivity Regulations, DVC is liable to pay the transmission charges. In case, long term beneficiaries agree to pay the applicable transmission charges, the same is recoverable from them. The Petitioner further stated in the said letter that based on the information provided by DVC that BYPL was the beneficiary of the above power, the bill for transmission charges was raised to BYPL. Since, BYPL was not paying the transmission charges and disputing the LTA for the said power, DVC was under obligation to pay the transmission charges for the same.

16. DVC, vide its letter dated 23.7.2013, intimated PGCIL that DVC was not liable to pay the transmission charges for 119.19 MW. The letter of DVC is extracted as under:

“It may please be noted that in terms of the bilateral Agreement executed between DTL and DVC on 24.8.2006 and subsequent DERC order dated 31.3.2017, 119.19 MW power was allocated to BYPL from each unit of MTPS U# 7&8. Further to above, BYPL also confirmed to retain full quantum of share of 119.19 MW from each unit of MTPS U# 7&8 for vide MOM dated 6.2.2012.

It is relevant to mention here that all the LTA formalities and necessary transmission charges to CTU beyond DVC periphery shall be borne by DTL/BYPL in terms of Cl. 4.3, 4.4 & 4.5 of above bilateral agreement.

Meanwhile, BYPL has requested to surrender the power from MTPS U# 8 which was not accepted by DVC till the re-allocation of power to other beneficiary is arranged by DVC.

Under the above back drop, if there-allocation of above quantum of power is not settled, BYPL has to make payment of necessary transmission charges for evacuation of power from MTPS U# 7&8 of DVC. As such, DVC is in no way obligated to make good of

default in payment by applicant BYPL and necessary bill has to be raised to BYPL by PGCIL for expeditious disposal of the issue between BYPL and PGCIL.”

17. From September, 2013 onwards, the Petitioner started billing DVC for 119.19

MW. Thereafter, the Petitioner filed the present petition seeking the following reliefs:

“(a) Direct DVC to make payment of transmission charges of CTU for the LTA of 119.19 MW power from Mejia Unit 8 (DVC) since October 2012, along with surcharge for the delayed payment; and

(b) Pass such orders as this Hon`ble Commission may deem fit and just and proper in the circumstances mentioned above.”

Submissions of the Petitioner

18. The Petitioner has submitted that the designated transmission system was developed by the Petitioner for evacuation of power from the generating units of DVC. According to the Petitioner, the said transmission system is a regulatory asset for which transmission charges are required to be paid by the concerned beneficiaries. The Petitioner has referred to Regulation 8 (6) of the Sharing Regulations and has stated that for long term customers availing supply from inter-State generating stations, the charges payable by such generating stations for the long term supply shall be billed directly to the respective Long Term Customer based on their share of capacity in the generating station. The Petitioner has also referred to fourth proviso to Regulation 11(9) of the Sharing Regulations and has contended that a generator being granted long term access to a target region without identified beneficiaries is liable to pay PoC injection charges plus the lowest of the PoC demand charges among all DICs in the target region. The Petitioner has submitted that keeping in view the agreement reached between DVC and BYPL vide minutes of meeting dated 6.2.2012 and in the light of Regulation 8(6) of the Sharing Regulations, the LTA of 119.19 MW from Mejia Unit 8

has been transferred from DVC to BYPL vide Petitioner's letter dated 19.4.2012 and billing of transmission charges was done to BYPL with effect from 19.4.2012. The Petitioner has submitted that BYPL did not honour the LTA transfer and has taken the position that the power itself has been surrendered and hence it was not liable to pay the transmission charges.

19. The Petitioner has further submitted that the transmission system was developed by the Petitioner for evacuation of power from DVC generating stations and, therefore, it becomes the primary responsibility of DVC to bear the transmission charges. The same was made clear to DVC by Member (PS) CEA during the meeting held on 29.11.2011. The Petitioner has submitted that it is the responsibility of DVC, as a generator, to take up the matter with BYPL to make payment for the transmission charges, or else the LTA is to be treated in favour of the generator without identified beneficiary and the transmission charges are payable by the generator as per the fourth proviso to clause (9) of Regulation 11 of the Sharing Regulations. The Petitioner has submitted that even though the Petitioner started billing DVC from September 2013, DVC is not making the payment of transmission charges. Accordingly, the Petitioner has sought directions to DVC to make payment of transmission charges to CTU for LTA of 119.19 MW from MTPS Unit 8 since October 2012 alongwith surcharge for the delayed payment.

Reply of DVC

20. DVC in its reply has submitted that in terms of clauses 4.3 and 4.4 of the PPA dated 24.8.2006 between DVC and DTL, DVC is to sell power at the delivery point (periphery of DVC) and all charges beyond the periphery are to be borne by DTL. DVC

has further submitted that in terms of Connectivity Regulations, an applicant seeking long term access must apply through affidavit before PGCIL whereas in the present case, DVC never applied for LTA to PGCIL. DVC has submitted that any verbal discussion, order or minutes of the meeting cannot make any generator or beneficiaries entitled for availing LTA unless and until the application for LTA is made before the Petitioner. DVC has submitted that BYPL had, vide minutes of the meeting dated 6.2.2012 between the Petitioner and distribution companies of Delhi, confirmed to retain the full quantum of share of allocation of power from MTPS Unit 7 & 8 and accordingly, LTA was allowed by PGCIL to BYPL for 238.38 MW vide letter dated 19.4.2012 which has been admitted by the Petitioner vide letter dated 19.4.2012. DVC has further submitted that in terms of the order dated 7.6.2013 in Petition No.7/RP/2011 (NTPC Ltd Vs PGCIL) whereby the Commission approved deletion of a provision regarding liability of the generator to pay the transmission charges where the generators have long term PPA and where sale of power is at the generation bus bar.

21. DVC has submitted that reference by the Petitioner to the proviso to Regulation 11 (9) of the Sharing Regulations is misconceived since the said regulation is applicable in the case where a generator has been granted long term access to a target region without identified beneficiaries whereas in case of DVC, there is a bilateral PPA dated 24.8.2006 between DVC and DTL for 2500 MW power from different generating stations of DVC. The said PPA has subsequently been re-assigned to distribution companies of Delhi vide DERC order dated 31.3.2007 and as per clause 4.3 of the PPA, transmission charges and losses for sale of power beyond the delivery point shall have to be borne by the beneficiaries including BYPL.

22. DVC has submitted that the surrender of power of 119.19 MW power from MTPS Unit 8 by BYPL is not correct because BYPL had unilaterally stopped drawing power from MTPS Unit 8 in blatant violation of the relevant provisions of the PPA and the said action of BYPL has never been accepted by DVC. It has been submitted that in terms of clause 5.10 of the PPA, BYPL is obligated to pay the fixed charges for the power it intended to surrender till the same is re-allocated to some other beneficiary(s). DVC is raising the bills on BYPL for fixed charges for 119.19 MW of MTPS Unit 8, though BYPL has stopped making the payments towards fixed charges.

23. DVC has sought dismissal of the petition qua DVC; directions to the Petitioner to stop raising the bills on DVC; and directions to BYPL to pay the fixed charges towards 119.19 MW MTPS Unit 8 till the same is re-allocated by DVC.

Reply of BYPL

24. The Commission directed the Petitioner to implead BYPL and POSOCO as parties to the petition. Both POSOCO and BYPL have filed their replies.

25. BYPL in its reply has submitted that the only prayer that has been made in the petition is to direct DVC to make payment of transmission charges for LTA in relation to 119.19 MW power from Mejia Unit 8 since October 2012 alongwith surcharge for delayed payment. BYPL has submitted that since the Petitioner has not made any submission qua BYPL, the present petition qua BYPL is not maintainable.

26. BYPL has submitted that it applied for LTOA for DVC's Mejia Unit 7 by its application dated 28.3.2012 for 119.19 MW with approval of STU, namely, DTL in accordance with the Connectivity Regulations. Further, in terms of Para 23.5 of the Detailed Procedure under Connectivity Regulations, BYPL submitted bank guarantee of Rs.11,90,000/- at the rate of Rs.10,000/MW to PGCIL for the total power to be transmitted clearly signifying that the bank guarantee amount was with reference to 119.19 MW from Mejia Unit 7 and not from both Units 7&8. BYPL has submitted that the Petitioner granted LTOA for both Mejia Unit 7 & 8 vide its letter dated 19.4.2012 despite the fact that its application, STU clearance and bank guarantee were for 119.19 MW only. BYPL has submitted that the Petitioner erroneously started billing to BYPL since October 2012 for Unit 8 on the basis of the LTOA erroneously granted. BYPL deducted the amount from the bill with due intimation to the Petitioner. In a meeting held on 10.4.2013, it was decided that BYPL would pay the transmission charges for Mejia 8 and the Petitioner would resolve the matter within one month. BYPL paid an amount of Rs.13.58 crore to the Petitioner for the period from October 2012 to March 2013. The matter was not resolved by the Petitioner who continued to bill till August 2013.

27. BYPL has submitted that in the 6th TCC Meeting of ERPC dated 11.6.2008 and in the meeting at ERLDC, the requirement of transmission system to evacuate power from Mejia Units 7 & 8 were discussed and specified transmission lines were identified to be built up for these units. BYPL has submitted that if the transmission system was built considering the allocation to whole Delhi, the Petitioner should have to forcefully grant LTA also to BRPL and TPDDL (NDPL) as has been done in case of BYPL. BYPL has submitted that in the Record Note of Discussion dated 6.2.2012, BYPL had

confirmed that they would not surrender any power out of their share. BYPL has submitted that Record Note of Discussion has no legal significance for considering the issue whether BYPL should make payment of transmission charges even though no LTA had been sought.

28. BYPL has submitted that in the said Record of Discussion dated 6.2.2012, BRPL and NDPL confirmed their intention of surrendering total allocation from Mejia Unit 7 and 8 and hence, no transmission charges have been levied on BRPL and NDPL even though transmission lines for evacuation from DVC's Mejia stations were for supply of power to Delhi which includes NDPL, BRPL and BYPL. Hence, BYPL should be treated at par with NDPL and BRPL especially when surrender of power from these distribution licensees have been acceded to and accepted and no transmission charges have been claimed from them. BYPL has further submitted that if the Record Note of Discussion dated 6.2.2012 carry any weight, then the record of minutes of the meeting held on 29.11.2011 before the CEA should carry weightage in which in response to the proposal of DTL not to draw any power from Mejia units 7 & 8, DVC had stated that it would consume balance 900 MW in its system.

29. BYPL has submitted that as per DVC letter dated 23.7.2013, surrender of power by BYPL has not been accepted by DVC. Therefore, the matter needs to be decided by the Appropriate Commission between DVC and BYPL. In the absence of a petition by DVC claiming the charges from BYPL, the issues arising in the present petition cannot be effectively adjudicated. BYPL has further submitted that the disputed issue i.e. the payment of transmission charges for 119 MW from Mejia Unit 8 is pending before the

CEA which is holding meetings and discussion between the Petitioner, DVC and BYPL. BYPL has submitted that if the Commission decides to entertain this petition, then CEA would be a necessary party as it has considered various submissions made by PGCIL, DVC and BYPL. The Petitioner has submitted that it is the understanding of PGCIL that DVC is liable to pay the transmission charges and hence, the Petitioner has filed the present petition claiming transmission charges from DVC and not BYPL. BYPL has submitted that for the aforesaid reason, this petition is not maintainable.

Reply of POSOCO

30. POSOCO in its reply has submitted that historically, transmission system evolved through a coordinated planning process and transmission plan was discussed and approved in the Standing Committee on Transmission Planning. Earlier, most of the ISGS were in the central sector with identified beneficiaries for the entire capacity of the plants. Even the unallocated capacity is also allocated and the transmission charges are paid by the beneficiaries for the full capacity of the generating station. In case of changes in allocation, the new beneficiary shared the charges. As per Regulation 2(m) of the Connectivity Regulations, long term customer means a person who has been granted long term access and includes a person who has been allocated central sector generation that is, electricity supply from a generating station owned or controlled by the Central Government. POSOCO has submitted that though DVC is controlled by the Central Government, full output of the generating stations of DVC is not allocated by Government of India, unlike the generating stations of NTPC, NHPC or other PSUs under Ministry of Power. POSOCO has submitted that the issue of development of transmission system for evacuation of power from the generating stations of the DVC

was discussed in the Standing Committee Meeting of Eastern Region held on 5.11.2007 and it was informed that based on CEA's recommendation, MoP had directed PGCIL to take up the scheme and match the same with the generation projects. Accordingly, the designated transmission system was developed by PGCIL for evacuation of power from the generating stations of DVC.

31. POSOCO has submitted that the transmission system was planned for evacuation of power from the generating stations developed by DVC. POSOCO has further submitted that Mejia Units 7 and 8 (500 MW each), Koderma Units 1 and 2 (500 MW each) and DSTPS Units 1 and 2 (500 MW each) are already commissioned. POSOCO has submitted that DVC in its letter dated 14.8.2013 has confirmed that it has never applied for LTA for evacuation of power from Mejia Unit 7&8. Thus, out of 3000 MW capacity from these generating stations, only 913.38 MW LTA is operational. Since DVC has not applied for LTA for the entire output, transmission charges for the balance quantum of 2086.62 MW are being borne by all the DICs in the country. POSOCO has submitted that the transmission system for Maithon Power Ltd (MPL) was also evolved through coordinated planning process as in the instant case of DVC and transmission charges are being paid by the beneficiaries as well as MPL. According to POSOCO, if DVC identifies BYPL as its beneficiary, it would be the responsibility of DVC to take up with BYPL to make payment towards the subject transmission charges or else the subject LTA shall have to be treated as LTA of the generator without identified beneficiaries and the injection charges as well as lowest of the Demand PoC Charges among all the DICs in the target region are payable by the generator. POSOCO has

requested to issue direction to DVC to avail LTA for full quantum of generating capacity installed or to be installed for purpose other than consumption within DVC.

32. POSOCO has submitted that the transmission system for Mundra and Sasan UMPP were also developed under the coordinated planning process and neither the UMPPs nor the beneficiaries have availed LTA. However, the transmission charges are being shared in proportion to the contracted quantum of power as per the PPAs. POSOCO has submitted that in case of termination of PPAs, the UMPPs concerned and beneficiaries may claim that they have not availed LTA and the corresponding transmission charges would have to be shared by other DICs. POSOCO has suggested that UMPPs may also be directed to avail LTA for full generation capacity.

Rejoinder of the Petitioner

33. The Petitioner in its rejoinder to the reply of DVC has submitted that DVC is liable to pay the transmission charges on the principle laid down in the Connectivity Regulations and Sharing Regulations on the ground that once ISTS has been developed, the same has to be serviced through tariff. Even if the beneficiaries of power have not been identified, it becomes the liability of the generating company to pay the transmission charges for the same. The Petitioner has submitted that the contractual dispute between DVC and BYPL with reference to the surrender of 119.19 MW of power and non-payment of fixed charges by BYPL to DVC cannot be brought in to deny the transmission charges as the dispute regarding surrender of 119.19 MW power by BYPL and non-payment of fixed charges are matters between DVC and BYPL and are not relevant for adjudication of dispute in the present case. The Petitioner has submitted

that the Commission's order dated 29.6.2011 relied upon by DVC is not relevant in the present context as the said order was issued in the context of the approval of the Transmission Service Agreement, Revenue Sharing Agreement and Billing Collection and Disbursement Procedure under the Sharing Regulations and was applied in matter where PPA entered into between the Central Generating Company and the beneficiaries was valid and binding. The Petitioner has submitted that in the present case, the commercial arrangement for sale of 119.19 MW of power between the DVC and BYPL is itself not clear and therefore, the Commission's order dated 29.6.2011 cannot be relied upon.

34. The Petitioner in its rejoinder to the reply of BYPL has submitted that the objections of BYPL with regard to the maintainability of the petition is not correct as the Petitioner has moulded the prayers in the petition in accordance with the contrary stand taken by DVC and BYPL. The Petitioner has submitted that the only issue raised in the petition is with regard to the payment of transmission charges for the capacity of 119.19 MW pertaining to transfer of power from Mejia unit of DVC to BYPL. The Petitioner has submitted that the contention of BYPL that it had never applied for open access with regard to 119.19 MW from Mejia Unit 8 is patently false as it has been clearly mentioned in the minutes of the meeting dated 6.2.2012 between DVC and Delhi Distribution Companies including BYPL that BYPL has a share of 119.19 MW each in Unit 7 and Unit 8 of Mejia TPS. The Petitioner has further submitted that in its letter dated 19.4.2012, the Petitioner has categorically stated that the transmission system for evacuation of power from DVC generating project was evolved as ISTS in line with the Central Sector Generating Stations and no separate LTA was envisaged and hence not

signed. As regard BYPL's contention that it had applied for long term access only for 119.19 MW from Mejia Unit 7 vide its application dated 28.3.2012, the Petitioner has submitted that considering the PPA dated 24.8.2006 and the MOM dated 6.2.2012, the Petitioner in its letter dated 19.4.2012 had considered the allocation of 238.38 MW (119.19 MW each from Units 7 & 8 of Mejia) and billing was done accordingly. The Petitioner has submitted that both DVC and BYPL are signatories to the Transmission Service Agreement and, therefore, are liable to comply with the statutory regulations notified by the Commission.

35. DVC has filed an additional affidavit dated 12.9.2014 in reply to the replies of BYPL and POSOCO and the Petitioner's rejoinder, wherein it has submitted as under:

- (i) As per Regulation 5 of the Connectivity Regulations, the person availing LTA is required to make an application to the CTU. However, DVC did not apply for LTA to the Petitioner. Therefore, the question of collecting the transmission charges from DVC did not apply at all. Had it been otherwise, the Petitioner would have raised the bill for transmission charges from the beginning. The Petitioner unjustifiably and erroneously raised the LTA bill for the 119.19 MW from Mejia Unit 8 for which nobody applied for LTA.
- (ii) For evacuation of Mejia TPS Units 7 and 8, the Petitioner developed two transmission lines, namely LILO of Ckt-I of 400 kV D/C Maithon- Jamshedpur transmission line at Mejia-B TPS and 400 kV Mejia-Maithon D/C transmission line. The Commission while determining the tariff of these two lines directed

that billing, collection and disbursement of the transmission charges would be governed by the provisions of the Sharing Regulations.

- (iii) The transmission system has been developed by the Petitioner not only for evacuation of power from DVC but also from other generating companies of West Bengal, Sikkim, Bihar, Jharkhand, etc. Once any transmission asset is pooled in the regional system, it cannot be stated that the particular transmission line is solely used for the evacuation of power from a particular generating station.
- (iv) The Petitioner intended to divert the issue by bringing out the dispute between DVC and BYPL regarding the surrender of power from Mejia Unit 8 to cover up its own fault of granting LTA over enthusiastically without having valid LTA application. Without invoking payment security mechanism for default in payment by BYPL or asking BYPL for relinquishing of access right under Regulation 18 of the Connectivity Regulations, the Petitioner started raising bills against DVC unjustifiably for non-payment by BYPL.
- (v) The Commission, vide order dated 29.6.2011, approved deletion of provision in the BCD Procedure for the generators who have a long term PPA and where sale of power is at the generator bus bar. The Petitioner misrepresented the said direction by stating that the above findings of the Commission applied in matters where PPA was entered into between the Central Generating Company and the beneficiaries. The direction of the Commission is valid and binding.

- (vi) POSOCO did not differentiate the pre-POC regime and post-POC regime for calculation of transmission charges. Thus, the reference to the minutes of the meeting in pre-POC regime has not been rightly done for fixation of liability of bearing transmission charges for the transmission lines which are already declared as regional assets.

36. During the hearing of the petition, learned counsel for the Petitioner submitted that the Petitioner vide letter dated 11.7.2013 wrote to DVC regarding the dispute regarding LTA of 119.19 MW from Mejia Unit 8 and non-payment of transmission charges for such LTA and advised that under such situation, DVC should pay the transmission charges. In response, DVC informed that in terms of bilateral agreement executed between DTL and DVC on 24.8.2006 and subsequent DERC order dated 31.3.2007 and MoM dated 6.2.2012 between DVC and distribution licensees of Delhi, BYPL is liable to pay the transmission charges. Learned counsel submitted that in case, DVC identifies BYPL as a beneficiary, it would be the responsibility of DVC as a generator, to take up with its LTA customer, BYPL, to make payment towards the subject transmission charges. Otherwise the LTA for such capacity shall have to be treated as the LTA of the generator without identified beneficiary and the transmission charges shall be payable by the generator as per the Regulation 11 (9) of the Sharing Regulations. Learned Counsel submitted that the Petitioner accordingly informed DVC vide its letter dated 11.7.2013 that the transmission charges are payable by DVC and started billing DVC with effect from September, 2013. However, DVC is not making payment for the transmission charges. Learned counsel for DVC submitted that as per the PPA dated 24.8.2006 executed between DVC and DTL, DVC is liable to pay the

charges only up to its periphery and beyond the DVC periphery, all charges including the transmission charges are to be borne by the beneficiaries. Learned counsel further submitted that as per Article 5 of the PPA dated 24.8.2006, the person availing LTA is required to make an application for grant of LTA before PGCIL. Since, DVC did not apply for LTA to the Petitioner, the question of collecting the transmission charges from DVC did not arise at all. The representative of POSOCO submitted that BYPL is a beneficiary in the context of PPA dated 24.8.2006, but mere existence of PPA does not *ipso facto* make BYPL a LTA customer. Learned counsel for BYPL submitted that BYPL sought long-term open access after obtaining the clearance from STU for transmission of power from DVC Mejia Stage-II Unit 7 only, and not for Unit-8. Since, in the present petition, the petitioner has claimed payment of transmission charges from DVC and not from BYPL, the petition is not maintainable qua BYPL.

Analysis and Decision:

37. We have examined the documents on record and heard the learned counsels for the Petitioner, DVC and BYPL as also the representative of POSOCO. The Petitioner has filed the present petition seeking a direction to DVC to pay the transmission charges for LTA quantum of 119.19 MW from Unit 8 of MTPS as BYPL refused to pay the transmission charges for the said LTA. As per the directions of the Commission, both BYPL and POSOCO were impleaded as parties to the Petition. Both DVC and BYPL have disowned their liability to pay the transmission charges for the LTA of 119.19 MW from Unit 8 of MTPS. Additionally, BYPL has raised the issue of maintainability of the petition qua BYPL. POSOCO has made its submission on a generic issue that all generators should be made liable to take LTA for their entire

capacity and wherever, beneficiaries have been identified, the liability shall pass on to the beneficiaries to the extent of capacity contracted with such beneficiaries and the generator shall be liable to pay the transmission charges for LTA for the balance capacity.

38. In the light of the submission of the parties to the petition, the following issues for our consideration:

- (a) Whether the Petition is maintainable qua BYPL?
- (b) Whether CTU has correctly granted LTA to BYPL for 238.38 MW including LTA of 119.19 MW from MTPS Unit 8 of DVC?
- (c) Who shall be liable for payment of transmission charges for 119.19 MW capacity of Unit 8 of MTPS?
- (d) Whether the generators shall be liable for the transmission charges for the capacity of DVC for which LTAs do not exist?

Issue No.1: Whether the Petition is maintainable qua BYPL?

39. BYPL has submitted that the petition is not maintainable for the following reasons:

- (a) The Petitioner has not prayed any relief against BYPL and therefore, the petition qua BYPL is not maintainable.
- (b) The surrender of power by BYPL has purportedly not been accepted by DVC and, therefore, the matter needs to be decided by the Appropriate Commission. In the absence of a petition by DVC claiming charges from BYPL, the issue arising in the present petition cannot be effectively adjudicated.
- (c) The disputed issue is pending before the Central Electricity Authority (CEA) and during the pendency of the issue before CEA, the present petition is not

maintainable before the Commission. In case the Commission decides to entertain the present petition, the Central Electricity Authority should be made a necessary party to the petition.

40. The Petitioner filed the petition with DVC as the sole respondent and has tried to make out a case that since BYPL refused to pay the transmission charges for 119.19 MW of Unit 8 of MTPS, DVC should be considered as a generator without identified beneficiary and transmission charges shall be payable by DVC in terms of proviso to Regulation 11(9) of the Sharing Regulations. The Commission directed the Petitioner to implead BYPL as respondent as it was considered a necessary party for adjudication of the dispute. BYPL has submitted that since, no relief has been prayed by the Petitioner, the petition is not maintainable qua BYPL. Rule 10 (2) of the Code of Civil Procedure, 1908 vests powers in a court to delete or add any party as plaintiff or respondent. Rule 10(2) of Order 1 of the CPC provides as under:

“(2) Court may strike out or add parties- The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court to effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

Therefore, it is the discretion of the Court to add any party as the respondent if in the view of the court it is necessary to effectually and completely adjudicate upon and settle all questions involved in the suit. The Commission has considered BYPL as the necessary party for adjudication of the dispute raised in the Petition and accordingly, directed BYPL to be impleaded as respondent. The Petitioner had granted LTA for

119.19 MW from MTPS Unit 8 in favour of BYPL and had initially billed BYPL. BYPL has admittedly made payment of the transmission charges from October 2012 till March 2013 to the Petitioner, though BYPL has claimed that the charges for these months were paid on the assurance of the Petitioner that the matter would be resolved within one month. Since the LTA was issued in favour of BYPL and it paid the transmission charges for about six months and subsequently refused to pay the transmission charges, BYPL is a necessary party for adjudication of dispute between the Petitioner and DVC where the issue involved is whether it is DVC or BYPL that has the liability to pay the transmission charges for LTA of 119.19 MW from MTPS Unit 8. Therefore, we reject the submission of BYPL that the petition qua BYPL is not maintainable on the plea that no prayer has been made by the Petitioner against BYPL.

41. BYPL has submitted that since the surrender of power of 119.19 MW by BYPL has purportedly not been accepted by DVC and DVC in turn is putting obligations for transmission charges on BYPL, the matter needs to be necessarily decided by the Appropriate Commission between DVC and BYPL. BYPL has submitted that in the absence of a petition for claiming the charges from BYPL, the issues arising in the present petition cannot be effectively adjudicated by the Commission and for this reason, the petition is not maintainable. DVC in its written submission has submitted that BYPL vide its letter dated 11.10.2012 wanted to surrender 119.19 MW of power from Mejia Unit 8 and DVC vide its letter dated 15.10.2012 did not accept the proposal of BYPL to surrender power and accordingly, BYPL was bound to honour its obligations under the PPA dated 24.8.2006 as well as the confirmation through the MoM dated 6.2.2012 till such time DVC could reallocate the surrendered power to some other long

term customer. The Petitioner has submitted that in view of the dispute between DVC and BYPL regarding the surrender of power of 119.19 MW from MTPS Unit 8, the Petitioner is being made to suffer even though it had put in place the ISTS for transfer of 119.19 MW from Mejia Unit 8 to BYPL. We have considered the submissions of the BYPL, DVC and the Petitioner. We find that BYPL has surrendered the power of 119.19 MW from MTPS Unit 8 despite categorically stating in the MoM dated 6.2.2012 to retain the said power from MTPS Unit 8. DVC has not accepted the unilateral surrender and has conveyed to BYPL its decision not to accept the unilateral surrender of power till it finds other customer to reallocate the power. BYPL is an aggrieved party after rejection of its unilateral surrender of power by DVC and despite being an aggrieved party, it was equally open for BYPL to approach the Commission for resolution of dispute with regard to surrender of power. Therefore, BYPL cannot take the stand that unless DVC files a petition for resolution of the dispute regarding its claim of payment of charges BYPL, the present petition for payment of transmission charges for LTA to the Petitioner cannot be maintained. In any case, BYPL has been made a party in the petition and the submissions of DVC, BYPL and the Petitioner would be taken into account while deciding the liability for transmission charges. Accordingly, we reject this objection of BYPL with regard to maintainability of the petition.

42. BYPL has further submitted that the disputed issue is pending before the Central Electricity Authority (CEA) and during the pendency of the issue before CEA, the present petition is not maintainable before the Commission. BYPL has further submitted that in case, the Commission decides to entertain the present petition, the CEA should be made a necessary party to the petition as it has considered various submissions of

PGCIL, DVC and BYPL. BYPL has placed on record a copy of the Minutes of the meeting held on 7.10.2013 held at CEA to resolve the issue. Para 7 of the Minutes is extracted as under:

“7. Member (E&C), CEA stated that all three parties should formally give their submissions in support of their claim/stand in writing within a week, giving adequate justification there against. The same will be considered by CEA for rendering suitable advice to the parties concerned.”

As per the above, CEA was considering the dispute between the parties for rendering suitable advice to the parties concerned and not for adjudication of dispute. The present petition has been filed under section 79(1)(c) and (f) of the Electricity Act, 2003 (the Act). Section 79(1)(c) deals with regulation of inter-State transmission of electricity. Section 79(1)(d) deals with determination of tariff of inter-State transmission system. The transmission systems developed by the Petitioner for evacuation of power from the generating stations of DVC to Northern Region and Western Region are inter-State transmission systems. The Commission has also determined the tariff of these inter-State transmission systems and the Petitioner is entitled to recover the transmission charges for the same. Since, a dispute has arisen with regard to the liability for payment of transmission charges in respect of LTA for 119.19 MW from MTPS 8, the dispute with regard to the same can be adjudicated by this Commission in terms of Section 79(1)(f) of the Act. As is evident from the minutes of CEA as extracted above, CEA has taken up the case to render suitable advice to the parties. The fact that matter is under consideration of CEA does not fetter exercise of power of adjudication of dispute by the Commission under section 79(1)(f) of the Act. Further, CEA is not a party to the dispute involving the Petitioner, DVC and BYPL neither CEA's presence is required to effectually and completely adjudicate and settle the present dispute. Therefore, CEA is

not a necessary party as contended by BYPL. The Commission can adjudicate the disputes among the parties based on the pleadings and submission of the parties in exercise of its power under section 79(1)(f) of the Act. Accordingly, BYPL's objection as regards the maintainability of the petition is rejected.

Issue No.2: Whether CTU has correctly granted LTA to BYPL for 238.38 MW including LTA of 119.19 MW from MTPS Unit 8 of DVC?

43. The crux of the dispute between the parties is that while BYPL applied for LTA of 119.19 MW from MTPS Unit 7, PGCIL has granted LTA of 238.38 MW to BYPL based on the Minutes of the Meeting dated 6.2.2012 submitted by DVC. BYPL is disputing its liability to pay for 119.19 MW LTA from MTPS Unit 8 for which it had not applied for LTA. Consequently, PGCIL has raised bills on DVC for the said capacity on the ground that consequent to refusal of BYPL to pay the bills, the said capacity shall be considered as LTA to target region and in terms of Proviso to Regulation 11(9) of the Sharing Regulations, DVC is liable to pay the LTA charges for 119.19 MW. Since, DVC is also disputing its liability to pay the transmission charges, the present petition has been filed seeking a direction to DVC for payment of transmission charges.

44. In order to appreciate the dispute in correct perspective, it is necessary to capitulate the background of transmission planning of ISTS, with particular reference to the transmission planning for evacuation of power from the generation station of DVC. DVC is a Central Generating Company governed in terms of the DVC Act, 1948 and for the purpose of tariff, it is subject to the regulatory jurisdiction of the Commission under Section 79(1)(a) of the Act. DVC planned a generation addition program for 4700 MW for Koderma TPS (1000 MW), Bokaro A TPS (500 MW), Mejia B TPS (1000 MW),

Durgapur TPS (1000 MW), Raghunathpur TPS (1200 MW). Its proposed tie-up/allocations to the beneficiaries were with Delhi, Punjab, Madhya Pradesh, Haryana, West Bengal and DVC (Distribution). DVC entered into a PPA dated 24.8.2006 with DTL for supply of power upto 2500 MW progressively from its generating stations as and when they achieved COD from the dates of COD for a period of 25 years. DVC also signed PPAs with Punjab and Haryana for 700 MW and 200 MW respectively. Subsequently, the transmission systems for evacuation from the generation additions of DVC were planned by CEA in consultation with CTU and DVC. The first such meeting was held on 17.11.2006 under the aegis of Member (PS), CEA wherein the options for development of the transmission systems based on the system studies carried out by CEA was discussed and decided. The scheme was placed before Standing Committee on Power System Planning of Northern Region in its 22nd meeting held on 12.3.2007, Standing Committee on Power System Planning of Eastern Region held on 5.5.2007 and 30.7.2007 and 22nd Meeting of the Standing Committee on Power System Planning of Northern Region held on 3.7.2007. In these meetings, the revised power systems planned by the CEA were discussed and approved. Though originally the transmission systems for evacuation of power from DVC generation were identified for implementation by private sector, DVC requested for execution of the transmission systems by PGCIL in view of the critical timelines of commissioning of the generation projects. The implementation of the transmission projects was entrusted to PGCIL by MoP based on recommendations of CEA. From the above narration of facts, it remains beyond doubt that the transmission systems for evacuation power from the expansion projects of DVC were taken up by PGCIL on the basis of the coordinated transmission planning by CEA.

45. In the 6th Meeting of the Technical Coordination Committee of Eastern Region Power Committee held on 11.6.2008, the Petitioner furnished the details of proposed tie-up/allocation from DVC projects to the beneficiaries. As per the details (quoted in para 8 of this order), Delhi's share was indicated as 2100 MW including 875 MW from Mejia B TPS. PGCIL's suggestion for considering the transmission systems as part of main BPTA (signed by PGCIL with all constituents of each region) was not agreed to and it was decided that separate BPTAs would be signed by the beneficiaries of the generation project. Therefore, DTL or its successors are required to sign BPTA for evacuation of their shares in the DVC generation projects. The PPA between DVC and DTL provides as under:-

“4.3 The transmission charges and transmission losses for sale of above power up to the delivery point shall only be borne by DVC. No other charges beyond the delivery point (DVC Periphery) will be borne by DVC.

4.4 All applications for availing intra-regional and inter-regional transmission system of CTU to transfer power from DVC periphery to DTL shall be made by DTL to respective RLDCs/RPCs and all the charges as per CERC norms is to be paid by DTL.

4.5 DTL shall be responsible to coordinate with CTU or any transmission licensee or other agencies for implementation of transmission system for evacuation of power from the DVC power stations with the commissioning schedules.”

It is apparent from the provisions of the PPA between DVC and DTL that it is the responsibility of the DTL to make applications for availing access to intra-regional and inter-regional transmission systems of CTU for transfer of power from the periphery of DVC and pay the transmission charges. Further, DTL has the responsibility to coordinate with CTU or any other transmission licensee for implementation of the transmission system. DERC vide its letter dated 31.7.2017 has reassigned the PPA between DVC and DTL among the distribution licensees in Delhi. As per the said order,

the additional capacity which may be available from DVC would be allocated to NDPL, BRPL and BYPL in the ratio of 29.18%, 43.58% and 27.24% respectively. Therefore, in terms of the PPA dated 24.8.2006 read with the DERC's order dated 31.3.2007, it is the responsibility of NDPL, BRPL and BYPL to make arrangement for evacuation of power from the DVC periphery and pay the transmission charges.

46. It is pertinent to mention that DTL vide its application dated 28.8.2006 applied for LTOA to CTU for supply of 100 MW upto September 2007 and 230 MW from October 2007 for a period of 25 years. As per the PPA dated 24.8.2006, 230 MW was to be supplied from October 2007 for a period of 25 years from the COD of CTPS Unit 7. In the meeting of long term open access held on 3.11.2006, it was decided to grant LTOA to DTL as applied for. Subsequently, LTOA was granted subject to signing of the requisite BPTA for sharing of regional transmission charges. In terms of the DERC order dated 31.3.2007, DTL requested PGCIL to sign the BPTAs with the distribution companies of Delhi, namely, NDPL, BRPL and BYPL for 67 MW, 100 MW and 63 MW with effect from 1.10.2007 onwards. Accordingly, PGCIL granted LTOA to NDPL, BRPL and BYPL vide its letter dated 25.9.2007. We have brought in this fact to show that despite the PPA dated 24.8.2006 being in existence, PGCIL has granted LTOA to the distribution companies of Delhi based on the applications of DTL/applications of NDPL, BRPL and BYPL.

47. DVC and the Petitioner executed a BPTA dated 26.7.2008 in which DTL, Haryana and DVC were recognized as beneficiaries in respect of their respective shares in Mejia Unit 7 & 8 (2x500 MW) i.e. DTL: 850 MW, Haryana: 100 MW and

DVC:25 MW. What is noteworthy is that despite DTL being shown as the beneficiary of Mejia Units 7 & 8, DVC had agreed to bear full transmission charges till such time proper mechanism for sharing of these charges by long-term beneficiaries was evolved.

The relevant para of the BPTA is reproduced below:

“9.1 The total monthly fixed charges determined for the entire transmission system (detailed at Annexure-B) shall be proportionately shared and paid by the Bulk Power Beneficiaries individually to POWERGRID, every month, in accordance with sharing mechanism indicated at Annexure-B or as per notification issued by CERC from time to time.

9.2 DVC shall bear full transmission charges and other charges of the entire transmission system for DVC generation projects (Koderma TPS, Mejia B, Maithon-RB JV projects, Bokara Extn) till finality regarding sharing/sharing mechanism of the Bulk Power Beneficiaries.”

Though clause 9.1 states that it would be the responsibility of the bulk power beneficiaries to proportionately share and pay the transmission charges in accordance with the sharing mechanism indicated in Annexure B of the said BPTA or as decided by the Commission from time to time, clause 9.2 indicates that full transmission charges shall be borne by DVC till the finality of the sharing or sharing mechanism by the bulk power beneficiaries. In other words, by entering into this BPTA, both DVC and the Petitioner recognized that there is no firm arrangement for sharing of the transmission charges despite the PPA dated 24.8.2006 between DVC and DTL being in existence, and DVC accepted the liability to bear the full transmission charges till the sharing/sharing mechanism of the beneficiaries are finalized.

48. In the meeting taken by Member (PS) CEA on 30.11.2011 to discuss the issues regarding connectivity agreement for the upcoming DVC generation projects and related issues, the representative of DVC gave the information as quoted in para 10 of

this order. Briefly, it has been stated that out of 2x500 MW of Mejia Units 7 & 8, there is firm beneficiary only for 100 MW for which PPA has been signed with Haryana. As regards the balance 900 MW, the position of DVC and the decision of Member (PS) CEA were recorded as under:

- DVC stated that earlier 875 MW was allocated to DTL and accordingly, PPA was signed. Of late, DTL has proposed that they would not draw this power. DVC further stated that they would consume balance 900 MW in their system.
- Member (PS) stated that the DVC is to pay the ISTS charges for 900 MW and it will have commercial implications on the part of DVC.
- Powergrid stated that adequacy of ISTS system is to be reviewed due to change in the beneficiaries.

As per the above statement, DVC has accepted that despite the PPA dated 24.8.2006 being in existence which included supply of 875 MW from Mejia 7 & 8 to DTL, DVC would consume 900 MW (including 25 MW for its own consumption) in its system on account of proposal of DTL not to draw this power. Member (PS) indicated that in that event, DVC would be required to pay the ISTS charges for 900 MW. In the said meeting, DVC assured to furnish the requisite details with regard to unit-wise CoDs and the prospective long term beneficiaries of unallocated power. Member (PS) clarified that PGCIL would grant access for ISTS to DVC and DVC would be required to pay the transmission charges as per PoC regime. Therefore, DVC accepted the liability to pay the transmission charges for the entire quantum of 875 MW from Mejia 7 & 8 which was earlier included in the PPA dated 24.8.2006 except to the extent DVC is able to firm up the beneficiaries.

49. Pursuant to the above decision, DVC convened a meeting with the representatives of NDPL, BRPL and BYPL on 6.2.2012 for discussing the matter regarding re-visiting the original agreement entered with DTL by DVC on 24.8.2006 and various other commercial issues. The minutes of the said meeting dated 6.2.2012 is

extracted as under: "The matters regarding revisiting of original agreement entered with DTL by DVC on 24.8.2006 and other various commercial issues have been discussed and agreed to as follows:

- 1) The reallocation of power from the following generating station/ units has been principally agreed between both DVC and all three DISCOMS erstwhile DTL as per PPA.

Gen Str/ Units	Delhi Discom's Share (MW) as per agreement	Share at individual Discom		
		NDPL (MW)	BRPL (MW)	BYPL (MW)
MTPS U#6 (250 MW), COD-24.9.2008	100	29.18	43.58	27.24
CTPS U#8 (250 MW), COD-15.7.2011	150	43.77	65.37	40.86
CTPS U#7 (250 MW), COD-2.11.2011	150	43.77	65.37	40.86
MTPS U#7 (500 MW), COD-31.8.2011	437.5	127.66	190.66	119.18
MTPS U#8 (500 MW)	437.5	127.66	190.66	119.18
DSTPS U#1 (500 MW)	225	66.56	98.05	61.29
DSTPS U#2 (500 MW)	225	66.56	98.05	61.29
KTPS U#1 (500 MW)	387.5	113.07	168.87	105.56
KTPS U#2 (500 MW)	387.5	113.07	168.87	105.56
Total	2500	729.50	1089.50	681.02

Note: Anticipated COD of DSTPS U# 1 & MTPS U# 8- March, 2012, Anticipated COD of KTPS U# 1&2 will be intimated shortly.

- 2) M/s BRPL have confirmed their intention of surrendering total allocation from MTPS U# 7 & 8 and from DSTPS U# 1 & 2. Formal confirmation will be given after approval by the Board of Directors of BRPL and DERC.

M/s NDPL reiterated that they have already confirmed for surrendering their total share from MTPS U# 7 & 8 and from DSTPS U# 1 & 2 and it is pending with DVC for supplementary agreement.

Both of them have expressed that decision about surrender of KTPS U# 1 & 2 will be taken on receipt of communication regarding anticipated COD of Units from DVC.

BYPL have confirmed that they will not surrender any power out of their share as indicated above.

Expected share after considering the finalization of surrender of power is given as hereunder:-

Gen Str/ Units	Delhi Discom's Share (MW) as per agreement	Share at individual Discom		
		NDPL (MW)	BRPL (MW)	BYPL (MW)

MTPS U#6 (250 MW), COD-24.9.2008	100	29.18	43.58	27.24
CTPS U#8 (250 MW), COD-15.7.2011	150	43.77	65.37	40.86
CTPS U#7 (250 MW), COD-2.11.2011	150	43.77	65.37	40.86
MTPS U#7 (500 MW), COD-31.8.2011	437.5	NIL	NIL	119.18
MTPS U#8 (500 MW)	437.5	NIL	NIL	119.18
DSTPS U#1 (500 MW)	225	NIL	NIL	61.29
DSTPS U#2 (500 MW)	225	NIL	NIL	61.29
KTPS U#1 (500 MW)	387.5	NIL*	NIL*	105.56
KTPS U#2 (500 MW)	387.5	NIL*	NIL*	105.56
Total	2500	116.72	174.32	681.02

* anticipated and verbally intimated by BRPL & NDPL

- 3) Delhi Discoms have made only LTOA formalities with CTU for 230 MW. They agreed to take necessary action for making LTA formalities for further 170 MW i.e. total 400 MW for taking power from MTPS U-6 (100 MW) and CTPS 7 & 8 (300). However, they also agreed to take scheduled power from DVC beyond 230 MW (LTOA) through STOA mode for which all the necessary payments towards STOA charges will be borne by them.
- 4) It is also principally agreed upon by BRPL and BYPL that they will bear the fixed charges from the date of COD as per the declared capacity scheduled by DVC-SLDC as per CERC regulations and IEGC for scheduling till finalizations of surrender of power by them after getting clearance from their Board/State Commission and also the acceptance of the same by DVC.

In case of surrender by NDPL, it is also agreed that NDPL will bear the fixed charges till the surrender of power accepted by DVC immediately.
- 5) NDPL also agreed to enhance LC commensurate with their allocated share of power as per the revised agreement/ as per the declared capacity ensured by DVC from MTPS-6 and CTPS Unit # 7 & 8.
- 6) BRPL and BYPL agreed to start the process of liquidation of dues and establishing the requisite LC once the disbursement of loan by IDBI to them is firmed up.
- 7) BYPL asked to clarify the consideration of the sinking funding the tariff petition for MTPS 7 & 8 while the same has not been considered for the tariff petition in respect of CTPS U# 7 & 8 and DSTPS Unit 1 & 2. DVC indicated that the tariff petition of the said generating stations already submitted before CERC based on certified audited accounts of DVC. However, any further clarification is needed on the issue, the same will be complied by DVC on receipt of written queries from BYPL.
- 8) DVC requested all the Discoms to make payment of power supply bills and any other disputed amount thereof immediately in terms of provision of subsisting PPA executed on 24.8.2012 with DTL which is still in force.

- 9) The three Discoms of Delhi requested the following to DVC for scheduling by them:
- (a) DVC, SLDC should come out with declared capacity (DC) on day-ahead basis to each of three Discoms in proportion to their share out of these three generating stations.
 - (b) Though as on date, Delhi Discoms has obtained LTA grant for 230 MW from CTU, it is their responsibility to make necessary arrangement i.e. either STOA mode/ LTA mode for remaining Power from DVC.
 - (c) The issue of scheduling of power will be addressed separately by CE (CLD) in terms of CERC Regulation and IEGC Code.
 - (d) DVC agreed to issue monthly bills/ any commercial calculations or commercial related issues/ letter to the following Address as requested by them:
 - (i) BSES Yamuna Power Ltd., 2nd Floor, B-Block, Shakti Kiran Building, Karkardooma, New Delhi-110032. Kind attn.. Shri Sunil Kumar Kakkar, (As VP, PMG), Contact No. 01-39992035/2002, Fax No. 011-39992076.
 - (ii) Tata Power Delhi Distribution Ltd., (Formerly NDPL), NDPL House, 3rd Floor, Hudson Lines, Kingsway Camp, Delhi-110009- Kind Attn. Ashish Kumar Dutta, AGM (PMG).
 - (iii) BSES Rajdhani Power Ltd., BSES Bhawan, 2nd Floor, B-Block, Nehru Place, New Delhi-110019- Kind Attn. Sanjay Srivastav, Assistant Vice President (PMG), Fax No. 011-39999454, 39999037.

- 10) BRPL requested DVC for information regarding coal linkage/allocation for the various upcoming plants and DVC will revert back on receipt of inputs from concerned sections. All Discoms were of the view that use of imported coal needs to be avoided except with the specific concurrence of the Discoms.

All the three Discoms stated that any communication pertaining to the contract of supply of power to the Discoms or related issues need to be made with the individual Discoms.

The meeting ended with thanks.”

Perusal of the above minutes of meeting dated 6.2.2012 shows that the parties to the PPA dated 24.8.2006, namely, DVC and the three distribution licensees of Delhi (being the successors of the PPA dated 24.8.2006 as per the order dated 31.3.2007 issued by DERC) discussed about revisiting the provisions of the PPA dated 24.8.2006

and agreed about reallocation of capacities among the distribution companies of Delhi. As per the PPA dated 24.8.2006, Delhi's allocation was for 2500 MW (NDPL: 729.50 MW, BRPL: 1089.50 MW and BYPL: 681.02 MW). After the discussion, the allocation was agreed as NDPL: 116.72 MW, BRPL: 174.32 MW and BYPL: 681.02 MW. While NDPL and BRPL expressed their intention to surrender their shares from MTPS Units 7&8 and DSTPS Units 1 & 2, BYPL confirmed that "they will not surrender any power out of their share as indicated above". Therefore, the PPA dated 24.8.2006 stood modified to the extent of reallocation of power agreed by both DVC and the distribution licensees of Delhi in the meeting dated 6.2.2012. There is nothing on record to show that any of the parties has repudiated the minutes of the meeting or challenged the said decision in the meeting. However, BYPL has approached DVC for surrender of 119.19 MW from Mejia Unit 8.

50. As per the para 3 of the Minutes of the Meeting dated 6.2.2012, Delhi Discoms had taken LTA for 230 MW and were required to take necessary action for LTA formalities for another 170 MW for taking total power of 400 MW from MTPS Unit 6 (100 MW) and CTPS Units 7 & 8 (300 MW). But the Delhi Discoms agreed to take scheduled power from DVC beyond 230 MW by paying STOA charges. Further, as per Para 9(b) of the said minutes, it was the responsibility of Delhi Discoms to make necessary arrangement i.e. either STOA mode/LTA mode for the remaining power from DVC (beyond 230 MW for which LTA had been granted vide letter dated 25.9.2007 and 170 MW for which Delhi Discoms were to complete the LTA formalities). Therefore, if the Delhi Discoms do not avail the LTA beyond 400 MW and intend to evacuate the power

through STOA arrangement, then LTA charges becomes the liability of DVC in terms of the BPTA dated 26.7.2008 between PGCIL and DVC and BPTA dated 26.7.2008.

51. Based on the decision as recorded in the minutes of meeting dated 6.2.2012, BYPL made an application for LTA for 119.19 MW from Mejia Unit 7 but no application was made for LTA of 119.19 MW from Mejia Unit 8. However, PGCIL after considering the application of BYPL and minutes of the Meeting dated 6.2.2012 has granted the LTA of 238.38 MW to BYPL vide its letter dated 19.4.2012. Relevant portion of the said letter is reproduced below:

“The transmission system required for evacuation of power from both units of Mejia TPS is already commissioned. We are in receipt of an application from BYPL, a discom of Delhi for seeking power from the DVC projects on long term basis. As a part of discussion with BYPL, we are also forwarded a minutes of meeting held by DVC on Feb 06, 2012 (copy enclosed) for the share of power from DVC projects. It is noted therein regarding Mejia TPS that share of power to be availed by beneficiaries of DVC from the generation projects has changed as follows:

Agency and Generation Project	Previous PPA	Modified Power Purchase
DVC (Mejia TPS: 2X500 MW)	Delhi- 875 MW Haryana-100 MW DVC-25 MW Total- 1000 MW	BYPL (Delhi Discoms)- 238.38 MW Haryana-100 MW DVC-25 MW Total- 363.38 MW

As the first unit of Mejia TPS is already commissioned and the commissioning date of 2nd unit of Mejia TPS is not yet finalized, the power may be scheduled to its long term beneficiaries as under:

Ser No.	Generation Unit	Date of commencement of power to long term beneficiaries	Share of power to respective beneficiaries		
			BYPL	Haryana	DVC
1	Unit-I : 500 MW	With immediate effect	119.19 MW	50 MW	12.5 MW
2.	Unit-II: 500 MW	To match with date of its commercial	119.19 MW	50 MW	12.5 MW

		operation			
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The date of commercial operation of 2nd unit shall be indicated by DVC, at least one month in advance to us and also to ERLDC. A connection agreement with DVC (for Mejia TPS) has already been signed on 22 Dec 2011.

It may be recalled that the transmission system for evacuation of power from DVC generation projects (including Maithon RB TPS-JV with Tata Power) was evolved as ISTS in line with the central sector generating stations, and therefore no separate long term agreement was envisaged and therefore not signed. However, DVC and BYPL need to sign the Transmission Service Agreement (TSA). In this connection reference is invited to para 16 of the CERC order dated 25.01.2013 in Petition No.213/MP/2011 which states as follows:

Quote

We also take this opportunity to clarify that the TSA has been issued as a model agreement under the provisions of the Sharing Regulations for ensuring uniformity. While the genuine grievances of the DICs will be looked into, there is no reason why signing of the TSAs should be delayed. In any case, as per clause (5) of Regulation 13 of the Sharing Regulations, the notified model Transmission Service Agreement shall be the default transmission agreement and shall be mandatorily apply to all DICs. In other words, till the TSAs are signed by the DICs, they will be bound by the model TSA.”

Unquote

In view of the above order of CERC, DVC and BYPL both are deemed signatory of model TSA. Notwithstanding the above, DVC and BYPL are however requested to sign the TSA by 30.4.2013.....It is hereby also clarified that the applicable PoC charges, ULDC charges etc. shall be payable by beneficiaries/generating agency as per prevailing CERC regulations.”

52. It is apparent from the above that while BYPL had applied for LTA of 119.19 MW, PGCIL has granted LTA for 238.38 MW, apparently based on the minutes of the Meeting dated 6.2.2012 furnished by DVC. DVC in its additional affidavit dated 12.9.2014 has submitted that the Petitioner intended to divert the issue by bringing out the dispute between DVC and BYPL regarding surrender of power from Mejia Unit 8 to cover up its fault of granting LTA over-enthusiastically without having the valid LTA application. In other words, DVC admits that the Petitioner should not have granted LTA to BYPL for 119.19 MW from Mejia Unit 8 without a proper application by BYPL, despite the fact that BYPL did not surrender its share in Unit 8 of the Mejia Unit 8 as recorded in the minutes dated 6.2.2012.

53. From the foregoing discussion, it emerges that though DVC is a central generating company, its power is not entirely allocated by the Ministry of Power, Government of India. DVC entered into PPA dated 24.8.2006 with DTL and PPAs with other States like Punjab, Haryana and West Bengal. Under the PPA, it is the responsibility of Delhi Discoms to make arrangement for evacuation of power from the DVC periphery. The transmission systems for evacuation of power from the generating stations of DVC covered under the expansion program were planned through the coordinated planning by CEA in consultation with CTU and DVC and with the approval of the Ministry of Power. However, inclusion of the transmission systems of DVC in the main BPTA entered into by PGCIL with each of the regions in respect of central generating companies like NTPC, NHPC, etc. was not agreed to by ERPC and it was decided that separate BPTAs would be signed by PGCIL with the beneficiaries of the generating stations of DVC. In other words, the mechanism of sharing of transmission charges in case of the beneficiaries of the generating stations of DVC was treated differently from the case of the central generating stations like NTPC or NHPC. DTL applied for LTA of 230 MW from October 2007 for a period of 25 years. The Petitioner granted LTA of 230 MW to DTL and in the light of the order of DERC dated 31.3.2007 reassigning the PPAS entered into by DTL to the distribution licensees, the Petitioner issued revised LTAs in favour of NDPL, BRPL and BYPL. Therefore, from the beginning, the liability of the Delhi Discoms to pay the transmission charges has been based on the LTA granted. DVC and the Petitioner executed a BPTA dated 26.7.2008 in respect of the power from Mejia Unit 7 & 8 (2x500 MW) under which DVC agreed to bear the full transmission charges till such time proper mechanism for sharing of these

charges by long-term beneficiaries was evolved. DVC has recognized that the PPA dated 24.8.2006 is not conclusive about the arrangement for sharing of transmission charges by the signatories to the said PPA in so far as Mejia unit 7 and 8 are concerned. In the meeting taken by Member (PS) CEA on 30.11.2011, DVC has admitted that the distribution companies of Delhi did not want to take power from Mejia Unit 7 & 8 and DVC accepted the liability to bear the transmission charges for 900 MW from these units. Subsequently, DVC in the meeting dated 6.2.2012 with the distribution companies of Delhi decided the re-allocation of power in deviation from the PPA dated 24.8.2006. In the said meeting, BYPL categorically submitted that it did not intend to surrender any part of its share in the generating stations of DVC which included 238.8 MW from units 7 & 8 of Mejia TPS. However, it was also decided in the said meeting that Delhi Discoms had taken LTA for 230 MW and were required to take necessary action for LTA formalities for another 170 MW for taking total power of 400 MW {MTPS Unit 6 (100 MW) and CTPS Units 7 & 8 (300 MW)}. As per Para 9(b) of the said minutes, it was decided that for the remaining power, Delhi Discoms would make necessary arrangement either through LTA or through STOA. In other words, as per the decision in the meeting dated 6.2.2012, it was not mandatory for the Delhi Discoms to apply for LTA for evacuation of power from DVC beyond 400 MW. BYPL applied for LTA for only 119.19 MW from Unit 7 of Mejia TPS and surrendered the power from Mejia Unit 8. However, the Petitioner after considering the Minutes of the meeting dated 6.2.2012 and BYPL's application for 119 MW granted LTA for 238.38 MW from Mejia Unit 7 & 8.

54. Therefore, the question arises as to what should be the basis of grant of LTA i.e. whether the PPA dated 24.8.2006 read with the minutes of the meeting dated 6.2.2012 or the application for LTA by a distribution company. As per the definition of LTA Customer in the Connectivity Regulation, a Long Term Customer is a person who has been granted long term access to inter-State transmission system including a person who has been allocated power from the Central Generating Stations by Government of India (Ministry of Power). In case of DVC, it is a mixed case of allocation by Ministry of Power and contractual arrangements between DVC and its beneficiaries. Allocation of power by Ministry of Power is mainly confined to sale on short term basis and all long term sale of power is based on contractual arrangement. In case of PPAs based on Ministry of Power allocation, the beneficiaries are deemed LTA customers and, therefore, it is immaterial whether they sign the LTA Agreement or not and they shall be liable for LTA charges based on their allocation till the time their allocation is rescinded or transferred by Ministry of Power. In case of sale of power based on contractual arrangement by a central generating company like DVC, it is necessary for the beneficiaries to apply for LTA. In fact, right from the beginning, Delhi Discoms have been granted LTA by PGCIL vide its letter dated 25.9.2007 based on the LTA applications by DTL/Delhi Discoms. It is pertinent to note that DVC in its additional affidavit dated 12.9.2014 has submitted that the Petitioner over-enthusiastically granted LTA to BYPL without having a valid LTA application. In other words, DVC seemed to indicate that despite the decision in the meeting dated 6.2.2012 that BYPL would not surrender its power from the DVC generation including 119.19 MW from Unit 8 Mejia TPS, the Petitioner should have insisted on a valid LTA application from BYPL for the

119.19 MW from Mejia Unit 8 before granting the LTA. In our view, PGCIL should not have granted LTA for 119.19 MW to BYPL without an LTA application for the same.

Issue No. 3: Who shall be liable for payment of transmission charges for 119.19 MW capacity of Unit 8 of MTPS?

55. The next question that arises is who shall be liable for payment of transmission charges for 119.19 MW from Mejia Unit 8 of DVC. This issue needs to be considered in the context of overall planning of the evacuation system for evacuation of power from the generation addition of DVC. We have already noted that as per the PPA dated 24.8.2006, Delhi's allocation was for 2500 MW (NDPL: 729.50 MW, BRPL: 1089.50 MW and BYPL: 681.02 MW). After the discussion, the allocations were revised as NDPL: 116.72 MW, BRPL: 174.32 MW and BYPL: 681.02 MW and recorded in the minutes dated 6.2.2012. Though BYPL did not surrender its share from DVC generation, subsequently, it has surrendered 119.19 MW from Mejia Unit 8. DVC has not accepted the surrender of the share of BYPL. BYPL has submitted that in the said Minutes of the Meeting dated 6.2.2012, BRPL and NDPL confirmed their intention of surrendering total allocation from Mejia Unit 7 and 8 and hence no transmission charges have been levied on BRPL and NDPL even though transmission lines for evacuation from DVC's Mejia stations were for supply of power to Delhi which includes NDPL, BRPL and BYPL. BYPL has submitted that it should be treated at par with NDPL and BRPL especially when surrender of power from these distribution licensees have been acceded to and accepted and no transmission charges have been claimed from them.

56. We have considered the submissions of the parties. When the transmission system for evacuation of power from DVC generation was built through coordinated

planning for 2500 MW, it is the responsibility of DVC to ensure that the transmission systems are fully serviced by its beneficiaries. Since, the transmission systems were being built for evacuation of power to Delhi for which the PPA dated 24.8.2006 was in existence, DVC should have ensured that DTL or its successors apply for LTA to CTU before the implementation of transmission projects are taken up. It is pertinent to mention that in terms of clauses 4.3 and 4.4 of the PPA dated 24.8.2006, it is the responsibility of DTL to pay transmission charges and losses for sale of power beyond the delivery point (DVC periphery) and all applications for availing intra-regional and inter-regional transmission systems shall be made by DTL. In fact, DTL applied for LTOA vide its application dated 28.8.2006 for 100 MW upto September 2007 and for 230 MW from 1.10.2007 onwards for a period of 25 years. For the balance capacity also, it is the responsibility of DVC to ensure that DTL or its successors apply for LTA for their proportionate shares. It is, however, noticed that there were no LTA applications except for 70 MW by the three Discoms from CTPS Unit 8 and application for 119.19 MW by BYPL from Mejia Unit 7. Moreover, in the meeting dated 30.11.2011 taken by Member (PS), DVC had brought out the issue of surrender of power by DTL Mejia Unit 7 & 8 and consumption of 900 MW capacity in its system. Member (PS) clarified about the liability of DVC to bear the transmission charges for the corresponding capacity. The Petitioner has stated in the said meeting that adequacy of ISTS system is required to be reviewed due to change in the beneficiaries. There is nothing on record whether the transmission systems were reviewed in the light of the above discussion. DVC in the meeting dated 6.2.2012 has decided re-allocation of power including accepting surrender of 612.78 by NDPL and 915.18 MW by BRPL. In our view, by agreeing to surrender of power by NDPL and BRPL without any decision

with regard to liability of these Discoms for transmission charges, DVC has assumed the liability for LTA charges. Moreover, as per the minutes dated 6.2.2012, the surrender of the capacity would be effective from their acceptance by the Board of DVC. BYPL has surrendered 119.19 MW which DVC has not accepted till alternative arrangements are made. We do not find much difference between the surrender of power by NDPL and BRPL and that of BYPL except that BYPL has surrendered the power after agreeing in the meeting dated 6.2.2012. Moreover, the LTA for Unit 8 of Mejia was included in the Regional Transmission Account with effect from October 2012 which means that the transmission system associated with the Mejia Unit 8 was either in the advance stage or ready for commissioning as on the date of decision in the minutes dated 6.2.2012. Since, the transmission systems were already built for evacuation of all Discoms of Delhi, same treatment should be accorded for surrender of power by NDPL, BRPL and BYPL. If DVC has accepted the liability for LTA charges corresponding to the surrendered capacity of BRPL and NDPL in Mejia and other generating stations of DVC, there is no reason as to why DVC should not bear the charges in respect of the surrendered capacity of BYPL. If the Petitioner has not raised the bills for LTA in respect of surrendered capacity of BRPL and NDPL, it cannot raise the bill regarding surrendered capacity of BYPL as in both cases, transmission capacity would remain unutilized. In our view, a consistent approach has to be adopted by the Petitioner in respect of all Discoms of Delhi and DVC shall be liable to pay the LTA charges for the surrendered capacity by all Discoms of Delhi.

57. In support of its claim against DVC, the Petitioner has placed further reliance on fourth proviso to clause (9) of Regulation 11 of the Sharing Regulations, which is extracted below:

"Provided also that a generator who has been granted Long-term Access to a target region without identified beneficiaries, shall be required to pay PoC injection charge plus the lowest of the PoC demand charge among all the DICs in the target region for the remaining quantum after offsetting the quantum of Medium-term Open Access and Short-term open access:

DVC has urged that the proviso to clause (9) of Regulation 11 is attracted when there is no identified beneficiary. According to DVC, BYPL is the identified beneficiary, who had expressly consented at the meeting held on 6.2.2012 that it would draw its shares of allocation from Mejia B TPS Units 7 and 8. Further, since the capacity surrendered by BYPL has not been accepted by DVC, it is BYPL and not DVC who is liable to pay the transmission charges. We have considered the submissions of DVC. As per the Minutes of 6.2.2012, the Discoms shall be liable to pay the capacity charges till the surrendered capacity is accepted by DVC. Till that time, the transmission charges shall also be liable to be paid by the Discoms of Delhi. However, it is a dispute inter se between DVC and the Discoms of Delhi, and in the absence of LTA for the surrendered capacity, cannot be a ground for direct billing by the Petitioner to BYPL. Since, the generation capacity has been surrendered by the beneficiaries, it is akin to a situation of grant of long term access to a generator without identified beneficiaries, and therefore, DVC shall be liable to either pay the transmission charges for the identified systems for these beneficiaries. In our view, DVC shall be liable to pay the LTA charges for not only 119.19 MW of Mejia Unit 8 which has been surrendered by BYPL but also for surrendered capacities by other beneficiaries.

Issue No.4: Whether DVC shall be liable for the transmission charges for the capacity of DVC for which LTAs do not exist?

58. DVC has disputed its liability to pay the transmission charges on the ground that it did not apply for LTA as required under the regulations specified by the Commission. The Petitioner has clarified that as per the established practice applications for LTA are not considered necessary for conveyance of electricity from the Central Sector Generating Stations. POSOCO has submitted that though DVC is controlled by Gol, full output of the generating station of DVC is not allocated by the Govt. of India unlike other central sector generating stations of NHPC, NTPC or other PSUs under MoP. The transmission system for evacuation of power from generators of DVC was discussed in the Standing Committee of ER held on 5.11.2007. The relevant extract of the meeting is as under:

“ The various generation projects are scheduled for commissioning between December, 2009 and November, 2010. As the transmission system was getting critical, DVC had suggested this scheme be taken up by PGCIL. The implementation of the scheme was therefore reviewed by MoP and based on CEA recommendation MoP had directed PGCIL to take up the scheme and match the same with the generation projects.”

Accordingly, the designated transmission system was developed by the Petitioner for evacuation of power from the generating stations of DVC. While, transmission system was planned for evacuation of power from the generating stations of DVC, transmission charges for the same are not being paid as there is no beneficiary at present. This is leading to higher transmission charges for other DICs of the country under the present mechanism for sharing of transmission charges. POSOCO has also submitted the present status of LTA form DVC generating stations of Mejia TPS Unit- 7 & 8, Koderma Unit-1 & 2 (500 MW each) and DSTPS Unit-1 & 2 (500 MW each) which have already been commissioned.

59. On perusal of the status of LTA from DVC generating stations, it is noted that out of 3,000 MW capacity from these generating stations, only 913.38 MW LTA is operational. Since, there is absence of LTA for the entire output, transmission charges for the balance quantum of 2,086.62 MW are being borne by all the DICs in the country under the present sharing mechanism. We are of the view that there is a need for the Petitioner to examine the transmission capacity built for evacuation of power from the generating stations of DVC, the quantum of LTA availed and the quantum of capacity for which LTA has not been availed and decide the liability for the transmission charges for which LTA has not been availed.

Summary of our Decision

60. Summary of our discussion in this order is as under:

(a) Though DVC is a central generating station, but unlike the case of NHPC or NTPC, the entire capacity of DVC has not been allocated by the Ministry of Power. DVC has entered into PPA dated 24.8.2006 with DTL for supply of 2500 MW power. In terms of the Connectivity Regulations, the beneficiaries of DVC are not deemed LTA customers as power has not been allocated by the Ministry of Power and therefore, the beneficiaries are required to be granted LTA for being considered as LTA Customers based on the LTA applications.

(b) DTL had initially applied for and was granted LTA of 230 MW. Subsequently, LTA was granted in favour of NDPL, BRPL and BYPL for 70 MW based on the

applications of these Discoms. The Discoms of Delhi also applied for and were granted LTA for 70 MW. BYPL had applied for LTA for 119.19 MW from Mejia TPS, but was granted LTA for 238.38 MW from Mejia Unit 7 & 8. In the absence of application from BYPL for LTA from Unit 8, grant of LTA for the corresponding capacity to BYPL was not in order as PPA or minutes of the meetings regarding allocation of power from the generating stations of DVC never formed the basis of grant of LTA.

(c) Disputes with regard to the surrender of power between DVC and Discoms of Delhi are disputes *inter se* between the parties and the Petitioner cannot decide the liability of the concerned Discom for payment of LTA charges for the surrender of the corresponding power.

(d) If the power is surrendered by the beneficiaries, then the generator shall be treated as a generating company without identified beneficiaries and shall be liable to pay the charges for the corresponding capacity in terms of Regulation 11 (9) of the Sharing Regulations.

(e) The Petitioner is directed to examine the transmission capacity built for evacuation of power from the generating stations of DVC, the quantum of LTA availed and the quantum of capacity for which LTA has not been availed and decide the liability of the generator for the transmission charges for which LTA has not been granted/availed.

(f) DVC is directed to pay the arrears of the transmission charges to the Petitioner within a period of two months from the date of this order, without Late Payment Surcharge and pay the charges regularly in future.

61. The Petition is disposed of in terms of the above.

Sd/-
(A. S. Bakshi)
Member

Sd/-
(A.K. Singhal)
Member

Sd/-
(Gireesh B Pradhan)
Chairperson