

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No: 12/SM/2017
Alongwith I.A. No. 54/2017**

**Coram:
Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member**

Date of Order: 5th of November, 2018

In the matter of:

Operationalization of LTA of Long Term Transmission Customers (LTTCS) as per Regulations 8(5) of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010.

**And
IN THE MATTER OF**

The Commission on its own motion

Vs

The Central Transmission Utility
Power Grid Corporation of India Limited Saudamini
Plot No.2, Sector-29, Gurgaon
Haryana- 122001

...Respondent

Parties present:

- 1) Shri Swapnil Verma, CTU
- 2) Shri Anil Kumar Meena, CTU
- 3) Ms. Jyoti Prasad, CTU
- 4) Ms. Manju Gupta, CTU
- 5) Shri Abhay Chaudhury, CTU
- 6) Ms. Rajshree Choudhery, Advocate, PTC India
- 7) Ms. Swapna Seshadri, Advocate, Dans Energy
- 8) Ms. Nehanjali, TUL

ORDER

Regulation 8(5) of Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 as amended from time to time (hereinafter referred to as "Sharing Regulations") provides as under:

"8(5) Where the Approved Withdrawal or Approved injection in case of a DIC is not materializing either partly or fully for any reason whatsoever, the concerned DIC shall be obliged to pay the transmission charges allocated under these regulations:

Provided that in case the commissioning of a generating station or unit thereof is delayed, the generator shall be liable to pay Withdrawal Charges corresponding to its Long Term Access from the date the Long Terms Access granted by CTU becomes effective. The Withdrawal Charges shall be at the average withdrawal rate of the target region:

Provided further that where the operationalization of LTA is contingent upon commissioning of several transmission lines or elements and only some of the transmission lines or elements have been declared commercial, the generator shall pay the transmission charges for LTA operationalized corresponding to the transmission system commissioned.”

As per the above regulation, where the operationalization of LTA is contingent upon commissioning of several transmission lines or elements and only some of the transmission lines or elements have been declared commercial, the generator is required to pay the transmission charges for LTA operationalized corresponding to the transmission system declared under commercial operation.

2. CTU has filed the Petition No. 229/RC/2015 seeking direction to the generators to open and maintain a revolving letter of credit in terms of the Sharing Regulations. In the course of the proceedings of the said petition, the Commission had directed the CTU to comply with the following direction given in Record of Proceedings dated 15.10.2015:

“8. The Commission observed that CTU should part operationalize the LTA in full or part as the case may be in terms of Regulation 8 (5) of the Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010. The Commission directed PGCIL to provide on affidavit by 26.10.2015, details of LTA quantum where the generators have been commissioned up to October 2015.”

3. POSOCO (NLDC) had also filed Petition No. 30/MP/2014 *inter alia* seeking direction to CTU to review all connectivity granted to ensure that CEA standard are followed. The Commission vide order dated 28.9.2016 directed as under:

“33. Another related issue that arises for our consideration is whether CTU should operationalize LTA on interim LILO or not. On analysis of the interim LILO arrangements, it is noticed that some of the LILO arrangements are being used for

injection of firm power through STOA for three years or more. The generators have taken LTA to the target regions from certain dates and even after those dates, LTAs have not been operationalized due to non-commissioning of the dedicated lines. Even though some of the system strengthening lines associated with the LTA have been commissioned. On the other hand, the generators are being allowed to interchange firm power through short term open access on interim LILo arrangements as a result of which the generators are able to avoid payment of transmission charges corresponding to their LTA quantum. In our view, non-operationalization of LTA on account of non-commissioning of the dedicated transmission line or some of the system strengthening lines while allowing the generators to inject power under STOA defeats the very purpose of granting LTA to the generators. Therefore, in all such cases, CTU must operationalize the LTA (either partly or fully as the case may be) and raise the bills for transmission charges on the generators with effect from the date of operationalization of the LTA as indicted in the LTA Agreements.

35. In the light of the provisions of the Sharing Regulations and the judgment of the Appellate Tribunal as quoted in Para 34 above, the generators are liable to pay the transmission charges for the transmission lines covered under the BPTA or LTA Agreement which have been commissioned. CTU is directed to review all such cases and take necessary action for operationalization of LTA including part LTA and raising the bills for transmission charges on the generators.”

4. Considering the above progress in operationalization of LTA and inadequacy of response the Commission vide order dated 19.7.2017 in the present Suo-moto Petition initiating the proceeding under Section 142 of the Act on the charges of non-compliance with the direction of the Commission in orders dated 15.10.2015 and 28.9.2016 and the provisions of the Regulation 8 (5) of the Sharing Regulations. In the said order, the Commission also directed CTU to place on record the details of generating stations where LTAs have been granted by CTU subject to commissioning of several transmission systems, and details of the transmission system which have been commissioned, but corresponding LTAs have not been operationalized by CTU.

5. Instead of filing the reply of show cause notice, CTU filed IA No. 54 of 2017 for recall of order dated 19.7.2017 and for the quashing of the show cause notice issued under Section 142 of the Act. CTU mainly has submitted as under:

- (a) The proceedings under Section 142 of the Act can be considered, particularly, in so far as a statutory functionary such as the CTU is concerned, only when there is sufficient material brought to the notice of the Commission, including specific instances, by a truly aggrieved party that in his case, the LTA was not operationalized despite the availability of part capacity. The proceedings cannot be initiated merely on the basis of oral allegation made during the proceedings, which are far from being substantiated with documents on record or evidence to establish that the CTU, in fact, denied part operationalization of capacity against any LTA.
- (b) CTU has operationalized the LTAs with the transmission elements so available in a number of previous instances, where the technical minimum criteria of the generating station has been met or where the transmission capacity has been made available to cater to the LTA requirement of long term customers even with the lesser transmission elements against the original requirement. CTU has also on a number of instances approached the Commission for seeking specific directions for operationalization of LTA in letter and spirit of Regulations 8 (5) of the Sharing Regulations.
- (c) No person to whom a LTA has been granted, in respect of the transmission capacity which has been commissioned, has pointed out any instance where the CTU has denied operationalization of the transmission capacity on the ground that the capacity is not adequate to meet the entire LTA capacity and, therefore, the CTU acted in breach of Regulation 8 (5) i.e. by not operationalizing the capacity available.

- (d) In any event, the issue of quantum of total transmission capacity available in a system is a dynamic matter and need to be decided by the CTU carefully without any adverse effect on the safety and security of the ISTS. These are matters to be independently considered which cannot be clubbed by inference or by implication to a proceeding of Section 142 of the Act, namely, quasi criminal proceedings for penalization.
- (e) The Hon'ble Appellate Tribunal for Electricity vide its judgment dated 31.7.2009 in Appeal No. 53 of 2009 citing the Hon'ble Supreme Court decision in Hindustan Steel Limited. Vs. State of Orissa, has held that "Penalty will not be imposed merely because it is lawful to do so. Whether penalty should be imposed for the failure to perform the statutory obligation, is a matter of discretion of the authority to be exercised judicially and on consideration of the relevant circumstances." Section 142 of the Act mandates the Commission to impose penalty only after giving opportunity to the person concerned to explain his stand would reveal that the Commission has to exercise its authority judicially and judiciously by taking into the consideration all the relevant circumstances explained by the person concerned before deciding the necessity to impose penalty.
- (f) A reading of the Commission's order dated 19.7.2017 appears to suggest that there has been a mix up of consideration of the issues relating to the evacuation of power from Sikkim Hydro Power generations including from the generating project of Teesta Urja Limited vis-à-vis the dispute raised by certain other hydro generators such as DANS Energy Private Limited, Shiga Energy Private Limited and Gati Infrastructure Private Limited. These are

specific disputes on the sharing of the available transmission capacity between the various generators and priority given to some of the generators over evacuation of Teesta Urja Limited's power. The quantum of entitlement of each of the power projects for evacuation of power generated by them through Rangpo-Siliguri Line under short term utilizing Special Protection Scheme (SPS) and without consideration of N-1 criteria, has been decided at the meetings of the Regional Power Committee and the Commission has been considering the merits of the rival claims of the generators on such quantum. CTU is not in any manner deciding on the respective claims of each of the generators for evacuation of power to be given to them under STOA. The CTU has been acting as per the transmission capacity available in the Rangpo-Siliguri Transmission Assets considering N-1 security criteria for grant of LTA.

- (g) The present proceedings have been initiated without a finding in any proceedings of the default on the part of the CTU in the utilisation of the available transmission capacity. The fundamental basis of the initiation of such proceedings under Section 142 of the Act does not exist. The proceedings under Section 142 of the Act cannot be initiated without recording the specific instances where the CTU has not acted in accordance with Regulations 8 (5) of the Sharing Regulations. CTU has been called upon to show cause on a proceeding that may be initiated under Section 142 of the Act without being informed of the specific violation based on which the Commission was satisfied for issue of show cause notice.
- (h) The initiation of proceedings under Section 142 of Act is of a serious nature. CTU exercising the statutory functions ought not to have been proceeded

against mechanically on the basis of un-substantiated allegations made by the generator in another proceedings, particularly, against the statutory functionary and also more so when such allegations have been notified by the desire to get the transmission capacity for evacuation of power having failed to establish their own transmission system.

6. CTU vide Record of Proceeding for the hearing dated 14.9.2017 was directed to submit the details of LTA customers for whom LTAs had not been operationalized in terms of Regulations 8(5) of the Sharing Regulations w.e.f. 1.5.2015 as under:

- (i) LTA Quantum (MW);
- (ii) Details of transmission system required for grant of LTA including dedicated transmission line, if any;
- (iii) Transmission Licensee responsible for implementation of transmission system required for grant of LTA;
- (iv) Status of transmission system required for grant of LTA;
- (v) Scheduled date of LTA Operationalization;
- (vi) Status of LTA Operationalization;and
- (vii) Reason for non-operationalization of LTA.

7. CTU, vide its affidavit dated 7.12.2017,has submitted the information called for and has further submitted as under:

- (a) CTU is complying with the Commission's directions to operationalize the LTA's irrespective of whether the LC is there or not, in respect of all the LTAs, except for the LTAs of IPPs where its generation is yet to be commissioned/abandoned/not in operation/filed Petitions with CERC for

relinquishment of LTAs for the time being, as there is no recourse to recover the dues in case of non-payment.

(b) A harmonious reading of Regulations 8(5) and 12(8) of the Sharing Regulations implies that even in the absence of materialization of approved withdrawal or approved injection fully or partly, the concerned DIC shall be obligated to pay transmission charges. Further, the concerned DICs are also required to provide payment security mechanism to the level of the related approved withdrawal or approved injection.

(c) The Commission`s direction dated 6.7.2017 in Petition No.103/MP/2017 (Simhapuri Energy Limited Vs. Power Grid Corporation of India Limited) regarding operationalization of the LTAs without opening of the LCs as payment security mechanism, specifically in the case of IPPs with its generation yet to be commissioned / abandoned would be detrimental to the commercial interests of all the ISTS Licensees. Certain IPPs, for whom the associated transmission lines were commissioned, have already filed Petitions before the Commission and seeking relinquishment of their LTAs without any relinquishment charges and their Petitions are yet to be disposed of by the Commission. The regular payment of transmission charges by the generators whose generation is yet to be commissioned / abandoned or filed petitions in CERC for relinquishment of LTAs, is also doubtful and in case of non-payment by such an IPPs, CTU cannot resort regulation of power supply. The LTAs of certain generators, namely Himanchal Sorang, Simhapuri Energy, Ind-Bharat Utka were operationalized after establishment of LCs. However, they are unable to generate power due to any reason whatsoever

and are neither making payment of transmission charges nor reinstated the LCs and CTU is unable to take any regulatory action to regulate power supply of respective IPPs as per the provisions of the Central Electricity Regulatory Commission (Regulations of Power Supply) Regulations, 2010.

(d) CTU has proposed the following mechanism for the interim period, until such generators commences their generations and establishes the requisite payment security mechanism:

(i) Case A: Abandoned generation: The construction phase bank guarantee (if available) shall be encashed (if not already encashed) and the proceeds shall be credited to the PoC Pool. Any proceeds recovered from any other regulatory/ liquidation/ court proceedings shall also be credited to the PoC Pool.

(ii) Case B: Generator not generating power: CTU shall raise a separate bill on such generator not under POC pool so as to continue to create liability on the generator. The ISTS Licensee payments shall be recovered under the POC pool from the existing customers. The dues accumulated under such separate bills must be cleared by the long term customer before being allowed to inject power under any mode of access viz. LTA, MTOA or STOA. Once the dues are cleared by concerned generator, the same shall be credited back to PoC pool to give adjustment against the billing of existing LTA Customers.

(iii) Additionally, as a matter of abundant caution and in order to secure the interests of DICs, the construction phase bank guarantee of the

concerned generator, if available with the CTU, shall also not be discharged.

8. During the course of hearing on 15.5.2018, the representative of the CTU submitted as under:

(a) The major hurdle in operationalization of LTA is commissioning of the required transmission elements of the transmission system and readiness of the DIC/generator to make the payment. As per the Regulations, if the PPA is not signed or the generation gets delayed or generation project could not be completed due to various reasons, the liability of payment is shifted on the generator.

(b) There are no immediate consequences on the party relinquishing the LTA as it is easier for them to opt out of the LTA and start injecting power in STOAMTOA. In the absence of materialization of approved withdrawal or approved injection fully or partly, the concerned DIC should be obligated to pay the transmission charges and to provide payment security mechanism to the level of the related approved withdrawal or approved injection. However, immediately after receiving the request from CTU for opening of LC, the generator approached the Commission for seeking permission for relinquishment alongwith the request of non-payment of transmission/relinquishment charges due to force majeure events or other difficulties.

(c) Subsequent to the issuance of proceedings in the present petition, since 1.10.2017, CTU has operationalized 19 nos. of LTAs for 8750 MW without waiting for opening of LC. Previously, 6 nos. of LTA for 1825 MW has been

operationalized from April, 2017 with the commissioning of Phase-I of 1st Bipole of Champa Kurukshetra HVDC (1500 MW) and in some projects, LTA was part-operationalized.

(d) As per Section 10 (3) of the Act, the generating company is required to co-ordinate with the CTU or STU, as the case may be, for transmission of the electricity generated by it. As per Section 38(2) of the Act, CTU is required to provide non-discriminatory open access to its transmission system and to ensure development of an efficient, co-ordinated and economical system of inter-State transmission lines for smooth flow of electricity from generating stations to the load centres. In this case, if the CTU has followed its functions, then it is the corresponding duty of the generator to pay the transmission charges and in case of default of payment by the generator then LTA ought to be cancelled alongwith the deemed relinquishment charges or any charges akin to relinquishment charges being imposed on them.

(e) The representative of CTU requested to recall the proceedings initiated under Section 142 of the Act to issue appropriate direction protecting the interest of the CTU in regard to the payment security mechanism and recovery of transmission charges with regard to operationalization of the LTAs when the system is ready.

9. During the course of hearing dated 15.5.2018, the Commission observed certain discrepancies in the data submitted by CTU vide affidavit dated 7.12.2017 in respect of column "Operational LTA/LTOA" and "Status of LTA Operationalization as on October, 2017". Under the head "Operational LTA/LTOA", the LTA for generators,

namely, Monnet Power Company Ltd., Lanco Babandh Power Pvt. Ltd., etc., is operational whereas under the head “Status of LTA Operationalization as on October, 2017”, the LTA is not operationalized providing reasons thereof. Accordingly, CTU was directed to provide the data clarifying the above discrepancies.

10. CTU vide affidavit dated 8.6.2018 has submitted that the discrepancy observed by the Commission pertains to such cases where the long term customer-cum-generation project developer is either abandoned, under adverse progress, facing long and inordinate delays or part of insolvency proceedings. CTU has further submitted as under:

(a) The remedial measures specified in the Commission’s order dated 18.7.2017 in Petition No. 293/MP/2015 do not address the case of generation projects which are not commissioned and are not transacting power with ISTS. These remedial/deterrent measures are in the nature of denial of MTOA/STOA, regulation of power supply and/or termination of TSA, which can be made effective only in case where the defaulting generation project is commissioned and transacting power under MTOA/STOA but not paying LTA charges.

(b) CTU has submitted the list of LTA customers in whose cases the Commission observed discrepancy and their status of operationalization of LTAs as under:

S. No	Name of the Applicant	Operational quantum	Status of Operationalization
4	Monnet Power Company Ltd. (2*525 MW)	900	900 MW not operationalized as no generation at present, no LC established and no specific regulatory action is possible in case of non-payment
6	Lanco Babandh Power Pvt. Ltd. (2x660 MW)	800	240 MW not operationalized as no generation at present, no LC established and no specific regulatory action is possible

			in case of non-payment.
7	Ind Barath Energy (Utkal) Ltd. (2x350)	616	Underadverseprogress. Asper status submitted on 28.03.2018 in JCC Meeting, "the promoter and EPC Contractor of the project, LITL was admitted to NCLT in August 2017 for CorporateInsolvency Resolution Process (CIRP) initiated by LITL lenders, at present the work is suspended. Project Lenders are taking steps required for restart and completion at the earliest." 858 MW not operationalized as the project is not generating power as no generation at present, no LC established and no specific regulatory action is possible in case of non-payment.
29	Athena Chhattisgarh Power Ltd. (2X600MW)	683	683 MW not operationalized as generation not commissioned, no LC established and no specific regulatory action is possible in case of non-payment. Generation project inordinately delayed and under adverse progress as monitored in Past JCC Meetings.
31	Korba West Power Co. Ltd. (1X600MW)	240	240 MW not operationalized as no generation at present, no LC established and no specific regulatory action is possible in case of non- payment.
36	Lanco Amarkantak Power Pvt. Ltd. (2X660MW)	858	Under adverse progress. As per status submitted on 28.03.2018 in JCC Meeting, "the promoter and EPC Contractor of the project, LITL was admitted to NCLT in August 2017 for Corporate Insolvency Resolution Process (CIRP) initiated by LITL lenders, at present the work is suspended. Project Lenders are taking steps required for restart and completion at the earliest." 858 MW not operationalized as the project is not generating power as no generation at present, no LC established and no specific regulatory action is possible in case of non-payment.
37	Vandana Vidyut Ltd. (2x135 + 1x270)	265	Failure in commissioning of dedicated transmission line (equivalent to generation failure as per Para 6 of BPTA). 265 MW not operationalized as Interim Connectivity with ISTS disconnected as per CERC direction and no generation at present, no LC

(c) In the light of the above, the LTA could not be 'operationalized' in the context of 'billing'. However, CTU did provide intimation of commissioning of relevant

transmission elements with which the LTA could be operationalized and also requested for establishment of payment security mechanism.

Analysis and Decision

11. We have heard the representative of the CTU and perused documents on record. CTU, vide Record of Proceedings for the hearing dated 15.10.2015 in Petition No. 229/RC/2015, was directed to operationalize the LTA of LTTCs in full or part in terms of Regulation 8 (5) of the Sharing Regulations. CTU vide order dated 28.9.2016 in Petition No. 30/MP/2014, was further directed to review the cases and take necessary action for operationalization of LTA including part LTA and raising the bills for transmission charges on the generators. Since, CTU did not comply with the above directions, the Commission vide order dated 19.7.2017 issued show cause to CTU under Section 142 of the Act for non-compliance of Commission's directions dated 15.10.2015 and 28.9.2016 and the provisions of Regulation 8 (5) of the Sharing Regulations.

12. The Commission directed CTU to place on record details of generating stations where LTA has been granted by CTU subject to commissioning of several transmission systems and only some of the transmission systems have been commissioned. However, CTU vide its affidavit dated 7.12.2017 has submitted the details of LTA customers whose LTAs have not been operationalized in terms of Regulation 8(5) of the Sharing Regulations. CTU has submitted that CTU is already complying with the Commission's direction to operationalize the LTA's irrespective of whether the LC is there or not, in respect of all the LTAs, except for the abandoned projects, the projects which are not in operation and LTTC's which have filed petition for the relinquishment of LTAs for the time being as there is no recourse to recover

the dues in case of non- payment of transmission charges. CTU has clarified vide affidavit dated 8.6.2018 that LTA of 4362 MW shown under head 'operational LTA' has actually not been operationalized. The details of LTA customers for whom LTAs have not been operationalized are as under:

Projects Status	LTA (MW)	Relinquished Quantum (MW)	Balance	LTA Operationalized (MW)	LTA yet to be operationalized (MW)
	(L)	(R)	(B=L-R)		
Abandoned	2802	1842	960	0	960
Abeyance	900	0	900	0	900
Commissioned	19127.15	4455.85	14671.3	13536.3	1135
Not Commissioned	9154.3	4618.8	4536	450	4086
Uncertain	987	987	0	0	0
NA	6303	4699	1604	1604	0
Total	39273.45	16602.65	22671.3	15590.3	7081

13. It is noticed that the total 39273.45MW LTA was granted by the CTU, out of which 16602.65 MW LTA was relinquished subsequently. The details of projects for which LTAs have not been operationalized by CTU are as under:

S No.	Description	LTA Quantum (MW)	Reason given by CTU for non-operationalization of LTA
1.	Project abandoned/in abeyance	4317	No generation at present, no LC established and no regulatory action is possible in case of non-payment.
2.	Project Commissioned but no generation at present	505	
3.	Projects for which entire transmission system yet to be commissioned	2259	Entire transmission systems required for operationalization of LTA are not commissioned.

14. It is noticed that CTU has not operationalized 4822 MW LTA on the ground that such generators have either abandoned their projects or have kept their projects in abeyance or are not generating at present and no payment security mechanism has been established by them. In addition, generation capacity of 2259 MW has been granted LTA in HCPTC-III. As per data submitted by CTU, PGCIL has commissioned portion of transmission system under HCPTC-III. However, CTU has not operationalized LTA fully or partly in accordance with Regulation 8 (5) of the

Sharing Regulations. CTU has submitted that it should not operationalize the LTA when the relevant payment security mechanism has not been put in place by the generator.

15. Further, CTU has sought direction with regard to the manner of operationalization of LTA in cases of abandonment, abeyance or not commissioning of projects in time. CTU has also proposed the mechanism for the interim period, namely, (i) the construction phase bank guarantee (if available) should be encashed (if not done already) and the proceeds should be credited to the PoC pool alongwith any proceeds recovered from any other regulatory/ liquidation/court proceedings, (ii) CTU should raise a separate bill on such generator, though not under PoC pool, so as to continue to create liability on the generator and the payments of transmission charges of ISTS licensee should be recovered under the PoC pool from the existing customers, (iii) The dues accumulated under such separate bills must be cleared by the LTA customer before being allowed to inject power under any mode of access viz. LTA, MTOA or STOA. Once the dues are cleared by the concerned generator, the same should be credited back to PoC pool to give adjustment against the billing of existing LTA customers. The Commission is of the view that decision on this issue is outside the purview of the petition. However, CTU is directed to take steps to operationalize the LTAs of long term transmission customers as per provisions of the Regulations.

16. The present suo motu Petition was initiated against CTU for non-compliance of the provisions of the Sharing Regulations and the directions of the Commission. CTU has expressed constraints in fully complying with the direction and has sought directions of the Commission in respect of operationalization of LTA in cases of

abandonment of project by generators, long delays in commissioning of projects or in cases where the project is in abeyance. We have already stated that taking decision on these aspects is not within purview of this petition and that the CTU should take action as per provisions of the Regulations. However, we take note of the fact that CTU is facing difficulty in operationalization of LTA in certain cases. At paragraph 12 of this Order, the CTU has furnished details of LTAs granted, relinquished LTAs and LTAs pending operationalization. In view of details furnished by CTU and the fact that the non-operationalisation of LTAs is not in disregard to Orders of the Commission rather it is due to difficulties being faced by it. Therefore, we do not find merit in continuing with this petition and accept the plea of the CTU to discharge the notice under Section 142 of the Act against it and drop the present proceedings.

17. Petition No. 12/SM/2017 alongwith I.A. No.54/2017 is disposed of in terms of the above.

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

sd/-
(P.K.Pujari)
Chairperson