

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 229/RC/2015

Coram:

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Dr. M.K. Iyer, Member

Date of Order: 8th of March, 2018

In the matter of:

Application under Section 79 (1) (c) of the Electricity Act, 2003 read with Regulation 21 of the Central Electricity Regulatory Commission (Sharing of Transmission Charges and Losses in Inter State Transmission) Regulations, 2010 alongwith Regulation 111 and 115 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 read with Regulation 2 (1) (j) and Regulation 6 (1) (d) of the Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012.

And

In the matter of:

Application seeking compliance with the Sharing Regulations, the BCD Procedure and the Commission's order dated 31.5.2010 by the Independent Power Producers-cum-Long term Customers of the HCPTC Corridors-I and IV for their default in establishing payment security mechanism as provided under the Billing, Collection and Disbursement Procedure under the Central Electricity Regulatory Commission (Sharing of Transmission Charges and Losses in Inter-State Transmission) Regulations, 2010 as agreed under the terms of the LTA Agreement for operationalization of LTA pursuant to the commissioning of the identified transmission network.

And

In the matter of:

Power Grid Corporation of India Limited,
Corporate Office 'Saudamini',
Plot No- 2, Sector-29, Gurgaon, Haryana -1221001

.....Petitioner

Vs

1. Lanco Babandh Power Pvt. Ltd.
Plot No. 397, 2nd Floor, Phase III,
Udgog Vihar, Gurgaon – 122016



2. Jhabua Power Limited
Avantha Power & Infrastructure Ltd.
6th & 7th Floor, Vatika City,
MG Road, Gurgaon – 122002
3. MP Power Management Company Ltd.,
Block No. 11, Floor No. -3
Shakti Bhawan, Vidyut Nagar
Rampur, Jabalpur – 482008
4. Bina Power Supply Co. Ltd.
Sector-128, Dist. Gautam Budh Nagar,
NOIDA – 201304
5. Essar Power MP Ltd.
A-5, Sector-3, NOIDA – 201301
6. Maruti Clean Coal and Power Ltd.
Hira Arcade, Ground floor
New Bus Stand, Pandri
Raipur – 492001
7. Jaiprakash Power Ventures Ltd.
Sector -128, Dist. Gautam Budh Nagar,
NOIDA- 201304
8. Jindal India Thermal Power Limited
Plot No. 12, Sector B, Pocket-1,
Local Shopping Complex, Vasant Kunj
New Delhi – 110070
9. Chhattisgarh State Power Trading Company Ltd.
2nd Floor, Vidyut Sewa Bhawan,
Danganiya, Raipur- 492013
10. GMR Kamalanga Energy Ltd.
Skip House, 25/1, Museum Road,
Bangalore – 560025
11. Haryana Power Purchase Centre
11th floor, Shakti Bhawan
Sector-6, Panchkula 134109
12. Vedanta Aluminum and Power
(Formerly Sesa Sterlite Ltd.)
Bhurkhamunda, P.O.-Kalimandir
Distt.Jharsuguda (Odisha) – 768202



13. Ind Barath Pvt. Ltd.
Plot No. 30-A, Road No. 1
Film Nagar, Jubilee Hills
Hyderabad – 500033
14. PTC India Limited
2nd Floor, NBCC Towers
15 Bhikaji Kama Place
New Delhi -110066
15. Monnet Power Company Ltd.
Monnet Marg, Mandir Hasaud,
Raipur-492101

.....**Respondents**

For Petitioner : Ms. Swapna Seshadri, Advocate, PGCIL
Shri Aryaman Saxena, Advocate, PGCIL
Shri A.M. Pavgi, PGCIL
Ms. Jyoti Prasad, PGCIL

For Respondents : Shri Sanjay Sen, Senior Advocate, Lanco Babandh
Shri Deepak Khurana, Advocate, Lanco Babandh
Shri R.M. Jhala, Lanco Babandh
Shri Janmejaya Mahapatra, Jhabua Power Limited
Shri Kumar Mihir, Advocate, JPVL
Shri Sanjiv K. Goel, JPVL
Shri Aditya Pujari, Vedanta
Shri Sakya Singh Chaudhuri, Advocate EP MPL
Ms. Molshree Bhatnagar, Advocate EP MPL

ORDER

The present Regulatory Compliance Application has been filed by Power Grid Corporation of India Limited (PGCIL) under Section 79 (1) (c) of the Electricity Act, 2003 (hereinafter referred to as the 'Act') read with Regulation 21 of the Central Electricity Regulatory Commission (Sharing of Transmission Charges and Losses in Inter-State Transmission) Regulations, 2010 (hereinafter referred to as 'Sharing Regulation') and Regulations 111 and 115 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 read with Regulation 2 (1) (j) and Regulation 6 (l) (d) of the Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012 seeking compliance with the Sharing Regulations, BCD



Procedure and the Commission's order dated 31.5.2010 by the Independent Power Producers-cum-LTA Customers of High Capacity Power Transmission Corridor I and IV (HPPTC I & IV) to establish payment security mechanism by opening and maintaining revolving letter of credit pursuant to commissioning of the identified transmission network.

Submissions of the Petitioner:

2. The Commission vide order dated 31.5.2010 in Petition No. 233/MP/2009 granted regulatory approval for the development and execution of certain identified transmission systems for evacuation of power from various generation projects planned to be promoted by the Independent Power Producers (IPPs) to be executed as part of High Capacity Power Transmission Corridors. The Commission while according regulatory approval directed CTU to ensure that the proposed transmission projects for which regulatory approval has been granted are executed within the time frames matching with the commissioning schedules of the IPPs and the transmission charges and its sharing by the constituents will be determined by the Commission in accordance with the applicable regulations on terms and conditions of tariff as specified by the Commission from time to time.

3. The Petitioner has submitted that the Respondents in the present petition were parties in Petition No. 233/MP/2009 and had given their consent to bear the transmission charges. There was a clear representation from all the beneficiaries that the construction bank guarantee of ₹5 lakh/MW should be maintained even though the cost of the transmission system being installed by the Petitioner was much higher on account of the beneficiaries agreeing to pay for the transmission system by way of transmission charges. The Petitioner has submitted that in 2010, the Commission



notified the Sharing Regulations which *inter-alia* provides that DICs are required to execute BPTA/TSA with PGCIL.

4. In conformity with the Commission's order dated 31.5.2010 in Petition No. 233/MP/2009 and Sharing Regulations, the Respondents signed BPTAs with PGCIL and furnished the construction bank guarantees at the rate of ₹5 lakh/MW. As per the BPTA and Sharing Regulations and Detailed Procedure made thereunder, the Respondents are liable to pay the transmission charges and to open the LC in favour of the CTU.

5. The Petitioner has submitted that the approved transmission systems comprising of two High Capacity Power Transmission Corridors, namely HCPTC I pertaining to the generating stations in Odisha and HCPTC-IV pertaining to the generating stations in Chhattisgarh, have been commissioned (except for Angul-Jharsuguda line) to facilitate evacuation of power from these generation projects. However, the Respondents have failed to open LCs as required under TSA and Sharing Regulations. Accordingly, the Petitioner issued a notice on 17.7.2015 to all the Respondents for opening of the LCs. The Petitioner has submitted that none of the Respondents complied with their obligations to open the LCs. Subsequently, the Petitioner issued legal notices dated 9.10.2015 to all the Respondents directing them to open the LCs. However, only three out of the fifteen Respondents have opened LCs while the remaining Respondents have taken various positions of bilateral aspects and are seeking to convert the present regulatory compliance proceedings into adjudicatory proceedings by raising hyper-technical objections in an effort to flout the relevant regulations and avoid opening of LCs.



6. The Petitioner has submitted that the Respondents have not only violated the provisions of the Model TSA pertaining to payment security but have also defeated the mandate of Sharing Regulations which provides for smooth recovery of transmission charges. According to the Petitioner, the conduct of the Respondents makes it difficult for the Petitioner to comply with its obligations under Article 7 of the Revenue Sharing Agreement notified under the Sharing Regulations which provides for recovery of payment from DICs by CTU on behalf of other ISTS licensees through payment security mechanism in the event of default/partial payment by the DICs in accordance with Billing, Collection and Disbursement Procedure (BCD Procedure). The failure of the Respondents to abide by their set of obligations during the construction phase of transmission and generation projects makes it an appropriate case for encashment of the bank guarantee submitted for the construction phase and its benefit to be passed on to the beneficiaries/DICs. Accordingly, the Petitioner has made the following prayers in the Petition.

7. The Petitioner through an IA No. 35/2015 amended its petition with the following prayers:

(a) Hold and direct the respondents to open, maintain a revolving letter of credit in terms of Regulation 13 of the Sharing Regulations, clause 3.6 of the BCD Procedure and Article 2 of the BPTA/TSA during the tenure of the open access granted.

(b) Direct the respondents to act in strict compliance of the Sharing Regulations, BCD Procedure and the Commission's orders dated 29.4.2011 and 30.5.2011;



(c) Issue guidelines and directions in regard to the procedure to be followed in case of default by the DIC/LTA customers of their obligations in regard to payment/compliance with Payment Security Mechanism and other obligations, for cancellation of long term access, encashment of construction phase bank guarantee and payment of relinquishment charges; and

(d) In default of payment of relinquishment charges, issue directions to disallow access to the grid by the respondents through any form of open access.

8. Notices were issued to the respondents to file their replies. Replies to the petition have been filed by Lanco Babandh Power Ltd. (LANCO), Essar Power (MP) Ltd. (EPMPL), Jindal India Thermal Power Ltd. (JITPL), GMR Kamalanga Energy Ltd. (GMRKEL), Monnet Power Company Ltd. (MPCL), Jhabua Power Ltd. (JPL), Jaiprakash Power Ventures Ltd. (JVPL), Essar Power Ltd. (EPL) and Vedanta Ltd. The Petitioner has filed rejoinders to the replies of the Respondents.

9. Lanco Babandh Power Ltd. (LANCO), Respondent No. 1, vide its affidavits dated 27.10.2015, 7.12.2015 and 15.1.2016, has submitted as under:

(a) The application suffers from mis-joinder of the parties and mis-joinder of cause of action. The present petition seeks blanket directions from the Commission for cancellation of LTAs of the Respondents and encashment of BG thereof without addressing the factual background and status of each case. The obligations undertaken by the Respondents under the BPTA and TSA are separate in nature and all the Respondents cannot be clubbed together and a



blanket allegation cannot be made against all the Respondents for non-fulfillment of such obligations. Further, the legal process including principles of natural justice cannot be held hostage to the fact that the Petitioner would not be able to raise bills and/or make collections thereof by the end of the financial year 2015-16. Therefore, the Petitioner has not approached the Commission with individual cases and is seeking a blanket order without the need to go into the facts of each case. The Petitioner has impleaded 15 parties as Respondents to the present petition who are separate entities and have no connection or relation with each other at all and the reliefs sought against the Respondents arise out of separate acts and transactions pertaining to each and every Respondent and there is no commonality between the Respondents in this regard. Each and every Respondent had separately applied for and was granted the LTA; the quantum of LTA granted to each of the Respondents was different; the reasons for delay on the part of the Respondents in coming up with the generation projects thereby leading to delay in establishing payment security mechanism are different; and therefore, the reliefs sought cannot be said to be arising from same act or transaction or acts or series of transactions against all the Respondents. In support of its contention, LANCO has relied upon the Order I, Rule 3 of Code of Civil Procedure, 1908, and has submitted that parties can be combined in one suit as defendants, if the relief sought is arising out of the same act or series of acts of the parties. Further, the reliefs claimed by the Petitioner relate to specific performance of the obligations arising from contracts namely, BPTAs/TSAs executed between the Petitioner with each of the Respondents. Since, the transmission system on which open access has been granted to each of the Respondents is separate and distinct



with different timelines for development and commissioning, each cause of action is separate and distinct for each Respondent. Therefore, the Respondents cannot be clubbed together. There is no basis for joinder of either the Respondents or cause of actions in the manner sought to be done by the Petitioner in the present petition.

(b) As per Regulation 2(1)(j) of the Payment of Fee Regulations, "Regulatory Compliance Application" means the petitions filed by the Power Exchanges or the inter-State trading licensees or inter-State transmission licensees including deemed licensees or generating companies for compliance of any requirement of the regulations and order issued by the Commission. The present petition has been filed for seeking regulatory compliance. However, the pleadings and reliefs sought reveal that they are adjudicatory in nature. The Petitioner is seeking direction to the Respondents to comply with the provisions of the BPTA and TSA executed between the Petitioner and the Respondents. However, the said relief cannot be subject matter of the regulatory compliance as the Petitioner is essentially seeking specific performance of the BPTA and TSA which are contractual in nature and enforcement of the same cannot be done by way of a Regulatory Compliance Application. Once the commercial aspects of the transactions are recorded in the form of a contract, the Petitioner cannot abandon the contract route and cannot seek relief under "Power to Remove Difficulty" provisions of the Sharing Regulations or under Sections 129 and 142 of the Act. Moreover, no breach of terms and conditions of the TSA or BPTA has been specified by the Petitioner. Further, the issue whether LANCO is liable to open and maintain a revolving LC under the BPTA



and TSA is a contractual dispute and the same cannot be decided by way of the instant Regulatory Compliance Application.

(c) The Petitioner has not specified the regulations that are alleged to have been breached and are therefore, being sought to be enforced. The Petitioner has referred to various regulations under which inherent powers of the Commission are sought to be invoked. However, the Petitioner has failed to disclose the substantive provisions of law that have been allegedly violated by LANCO. Till such specific violation of the regulations/orders is demonstrated on facts, the jurisdiction of regulatory compliance application cannot be invoked in law. The provisions of BCD Procedure do not constitute regulations. Therefore, the Petitioner has failed to establish the jurisdictional facts qua the relief of regulatory compliance in the present case. The inherent powers of the Commission can be invoked only in cases where the same is derived from any substantive power under the law. The inherent powers of the Commission cannot be invoked to substitute/supplant its adjudicatory powers under Section 79(1)(f) of the Act.

(d) It is well settled principle of law that the party must plead the material facts and adduce evidence to substantiate the same so that the court may proceed to adjudicate upon that issue. However, the Petitioner has made vague and unspecific averments in the petition. Therefore, the Commission as a court cannot make an inquiry into the facts of case in the present proceedings because the Petitioner has not made any pleadings in relation thereto.



- (e) The Petitioner is seeking compliance of Regulation 13 of the Sharing Regulations which *inter-alia* requires the DICs and the CTU to enter into a new TSA or modify the existing BPTA. The regulation further provides that the TSA shall *inter-alia* cover commercial aspects, which includes provisions for treatment of delay in injection/withdrawal by DICs, treatment of delay in commissioning of transmission lines, payment security mechanisms, default and its consequences, disputes resolution mechanism, termination provisions, force majeure conditions, etc. Evidently, the regulations provide that the commercial aspects of the relationship between the Petitioner and the Respondents would be governed by the terms of the TSA.
- (f) LANCO had also approached the Commission for reduction of LTA quantum on grounds of force majeure. The Commission vide order dated 8.6.2013 in Petition No. 118/MP/2012 allowed LANCO to relinquish 800 MW out of 1600 MW LTA. The Commission is fully aware of the occurrence of force majeure events. Therefore, the Commission cannot pass a general order allegedly for regulatory compliance without adjudicating on this factual aspect as to whether there is a *bonafide* reason for delay in generation capacity and consequent delay in establishment of payment security mechanism.
- (g) The Petitioner has relied on the consent given in order dated 31.5.2010 in Petition No. 233/MP/2009 by the Respondents to bear transmission charges till the time the beneficiaries are firmed up. However, the said consent is given to the Petitioner and is not a consent or undertaking given to court. A proceeding for compliance of court order will arise only if there is a consent given to court, which is not the case here. Since, no specific consent was



given by LANCO, the obligation to pay transmission charges flows only from the TSA and thereby the question of rights and obligations of parties goes back to contract (TSA), which has not been relied upon for the purposes of grant of relief in the present proceedings.

(h) BPTAs/TSAs are the principal documents related to the present proceedings which have not been filed by the Petitioner. The contention of the Petitioner that force majeure and other difficulties have nothing to do with the present petition is misconceived as the Petitioner itself has concealed certain correspondences relating to obligations of the parties under the BPTA and delay in completion of the LANCO`s project which were exchanged between the Petitioner and LANCO vide letters dated 6.5.2014, 10.12.2014 and 2.2.2015 which establish the reasons of delay of LANCO`s project and events of force majeure.

(i) The Petitioner has contended that in the scheme of regulations, there is no provision for termination of LTA whereas on the other hand it has contended that the LTA is liable to be terminated.

10. Essar Power MP Ltd. (EPMPL), Respondent No. 5, vide its affidavits dated 30.10.2015, 16.11.2015, 5.1.2016 and 2.2.2016 has made similar submissions as LANCO namely, misjoinder of cause of action, jurisdiction and inherent power of the Commission and therefore, they are not repeated for the sake of brevity. Other issues raised by EPMPL are discussed as under:

(a) No cause of action has been made out by the Petitioner against EPMPL. Since EPMPL was not a party in Petition No. 233/MP/2009, the Petitioner has failed



to substantiate how the order dated 31.5.2010 in Petition No. 233/MP/2009 is binding on it and the directions which have been violated by EPMPPL.

(b) The contention of the Petitioner that the identified transmission systems associated with the grant of LTA to the Respondents have been commissioned is factually wrong. In the 10th JCC meeting, PGCIL informed that the transmission system for EPMPPL was likely to be commissioned by March, 2016 and accordingly, EPMPPL intimated the Petitioner that it would take up the process of putting in place the payment security mechanism having regard to such schedule. The provisions of the Sharing Regulations can only be made applicable once the identified transmission systems are commissioned and the LTA is operationalized. Since, neither the identified transmission system is commissioned nor the LTA has been operationalized, the provisions of the Sharing Regulations, are not attracted in case of EPMPPL. Therefore, the Petitioner cannot seek compliance of such BCD Procedures as it would be effected only once the billing and collection as per the Sharing Regulations is initiated.

(c) The Petitioner is seeking compliance of order dated 31.5.2010 in Petition No. 233/MP/2009, Payment Security Mechanism as laid down in respective BPTA/TSA, provisions of the Sharing Regulations for payment of transmission charges and provisions pertaining to establishing payment security mechanism under BCD Procedures. However, EPMPPL was not a party to the said petition. It is well settled law that a person cannot be held against the proceedings wherein he has not been made party. The consent given by the Project



Developers of IPPs to bear transmission charges till the time the beneficiaries are firmed up, did not include EPMPL.

(d) The Petitioner has relied on various judgments to establish that the Commission has wide powers to regulate inter-State transmission of electricity under Section 79(1)(c) of the Act. However, it is a settled law that power to enforce/govern is limited to the extent and scope of regulations. Therefore, the Petitioner cannot seek compliance of contractual obligations under the regulatory compliance proceedings.

(e) The Petitioner has maintained that it is seeking a direction for regulatory compliance and not asking for dispute resolution. However, the Commission in the proceedings dated 8.12.2015 observed that case of each of the Respondents is distinct and accordingly, the parent document i.e. TSA from which the obligations between the Petitioner and the Respondents emanates has to be put on record and no direction can be given in a vacuum. However, the present case is of regulatory compliance and not for dispute redressal and as such, the Petitioner cannot seek relief under the present application.

11. Jindal India Thermal Power Ltd. (JITPL), Respondent No. 8, vide its affidavit dated 1.12.2015 has raised the issues of maintainability, jurisdiction, not being a party in Petition No. 233/MP/2009, etc. Since, these issues are similar to the issues raised by other Respondents, they are not being repeated for the sake of brevity. The other issues raised by JITPL are discussed as under:

(a) The present petition is pre-mature as the cause of action has not arisen since the petition is preferred on the premise that the LTA customers are unwilling



and non co-operative towards establishing payment security mechanism and thus are jeopardizing the payment of transmission charges towards the concerned transmission licensee. The obligation to establish payment security mechanism by way of opening of LC as per Clause 1(b) of the BPTA is to be performed three months prior to the scheduled date of open access. However, the scheduled date of open access has not been communicated by the Petitioner. Since, the scheduled date of common transmission system was March, 2016, the question does not arise for opening of LC.

(b) As per Regulation 13(1) (j) of the Sharing Regulations, the Petitioner should have approached the Member Secretary, Regional Electricity Board or Regional Power Committee regarding any dispute before approaching the Commission. The Petitioner is avoiding the Dispute Resolution Mechanism under Transmission Service Agreement. Further, as per Regulation 32 of the Connectivity Regulations, all disputes arising out of the regulations shall be decided by the Commission on an application made by the person aggrieved. In view of specific dispute redressal procedure under the Connectivity Regulations and Detailed Procedures made thereunder, the reliance on the removal of difficulties provisions by the Petitioner in the instant application is misconceived and misplaced.

(c) The Petitioner is unnecessarily burdening JITPL with the liability to pay transmission charges for 1200 MW whereas only 1100 MW was sought by JITPL. Therefore, the Petitioner is abusing its dominant position to seek establishment of payment security mechanism corresponding to the 1200 MW LTA which is disputed by JITPL.



(d) JITPL, vide its letter dated 24.11.2014, apprised the Petitioner about the existence of force majeure events, which have rendered the implementation of the BPTA unviable and impossible and requested the Petitioner to relinquish the LTA granted and to return the Bank Guarantee furnished pursuant to execution of BPTA. The Petitioner vide its letter dated 2.1.2015 denied the existence of force majeure events and stated that JITPL is free to proceed for such relinquishment subject to payment of relinquishment charges as per the applicable regulations.

12. GMR Kamalanga Energy Ltd. (GKEL), Respondent No. 10, vide affidavits dated 2.11.2015, 17.11.2015 and 2.2.2016 has raised various issues. Since, the certain issues raised by GKEL such as mis-joinder of causes, mis-joinder of parties, regulatory compliance cannot be sought against the provisions of the BPTA/TSA, dispute resolution procedure under BPTA/TSA, etc. are similar to the issues raised by LANCO, EPMPPL and other Respondents, the same are not repeated for the sake of brevity. Other issues raised by GKEL are discussed as under:

(a) Since, LC is required to be opened by the LTTC to secure the transmission licensee against any payment defaults upon operationalization of open access, the important consideration is quantum of open access and the date of operationalization of access. However, the Petitioner has neither committed to a date for operationalization of LTA nor has referred to the pending discussion on the issue of reduction on quantum of LTA and change in region of part of the quantum of LTA and accordingly, the present petition is premature and speculative.



- (b) The Petitioner had directed GKEL to open the LC for supply of quantum of power to Haryana Discoms on the premise that no response has been received on their request from the Haryana Discoms and for supply of contracted capacity to the Haryana Discoms.
- (c) The Petitioner has sought to link the bank guarantees furnished by GKEL for the purpose of ensuring the construction of the power plant and dedicated transmission line which has already been achieved. Since, the Petitioner itself has failed to complete the transmission system within its scope of work under the BPTA, it is liable for breach of the terms of the BPTA.
- (d) The Petitioner is guilty of suppression of material facts as well as filing of wrong affidavit before the Commission regarding completion of various segments of the subject transmission line. In Petition No. 203/MP/2015, the Petitioner had submitted that the subject transmission line is ready and GKEL has an obligation to open an LC for approximately ₹17.5 crore. However, the subject transmission line is not yet ready. The Petitioner has misled the Commission on a matter of fact whereby the Petitioner has withheld the respondent's bank guarantee of ₹17.5 crore.
- (e) The Petitioner has relied upon the Commission's order dated 31.5.2010 in Petition No. 233/MP/2009 stating that the generators would bear the transmission charges till the beneficiaries are firmed up. Since, no specific consent was given to GKEL, the obligation to pay transmission charges flows only from the TSA and, therefore, the question of rights and obligations of



parties goes back to contract, which has not been relied upon for the purposes of grant of relief in the present proceeding.

(f) The Petitioner has relied upon an interim order dated 29.4.2011 directing all DICs to make timely payments of transmission charges and other charges to the Petitioner in accordance with the bills raised by the CTU. However, the said interim order is not relevant to the instant proceedings, where the facts are different and the jural relationship between the parties is governed by contracts.

(g) The Petitioner has not disclosed all material facts which are germane to the resolution of the dispute between the Petitioner and GKEL as it has suppressed reference of communication vide letters dated 5.1.2013, 23.12.2013, 4.3.2014, 17.7.2015, 24.9.2015, 9.10.2015, 30.9.2015 and is making efforts to wriggle out of its obligation of providing LTA to the LTTCs including GKEL and use the entire capacity for MTOA and STOA and make windfall gains.

13. Jhabua Power Ltd. (JPL), in its reply dated 4.1.2016 and 15.1.2016 has raised issues which are similar to issues raised by LANCO and therefore they are not repeated herein. JPL has submitted that the present petition is not maintainable under the provisions of inherent powers and the "Power to Remove Difficulty" as contended by the Petitioner. Jurisdiction has been wrongly invoked for contractual disputes when there is a specific adjudication clause and that the petition suffers from mis-joinder of causes.



14. Vedanta Ltd (Vedanta), Respondent No. 12, vide affidavit dated 23.2.2016 has raised various issues which are similar to the issues raised by LANCO, EMPL, GKEL and other Respondents and are not being repeated for the sake of brevity.

15. Monnet Power Company Ltd. (MPCL), Respondent No. 15, vide its affidavit dated 8.12.2015 in addition to issues raised by the above Respondents has submitted as under:

(a) MPCL encountered *force majeure events* and ROW issue resulting in considerable cost over-run and delay in execution of the project. As per Clause 9 (Force Majeure Clause) of the BPTA, the obligations of MPCL stand suspended till such time when the force majeure and consequential delay thereof are cured. In this regard, PGCIL was informed on a regular basis in the JCC meetings. MPCL at no point of time has sought relinquishment of the BPTA entered into with PGCIL and intends to perform its obligations under the BPTA. Therefore, the present case involves adjudication of bilateral disputes arising out of contractual arrangement and the same cannot be preferred by way of regulatory compliance.

(b) Regarding the provisions of Billing, Collection and Disbursement procedure qua MPCL, the same has become un-implementable as MPCL's power plant is yet to be set up and commissioned. Therefore, when MPCL is not evacuating power, the question of computation of the average of the first month's bill does not arise. Since, MPCL has not executed any TSA with PGCIL, the relationship between MPCL and PGCIL needs to be governed under the provisions of the BPTA.



16. Ind Bharat Private Limited, Maruti Clean Coal and Power Limited and PTC India Limited have submitted that since they have opened LC as per extant provisions, they should be discharged from the liability for not opening the requisite payment security mechanism required for operationalization of the LTA and notices issued against them required to be withdrawn.

17. The Petitioner, vide affidavit dated 8.12.2015, has submitted the following clarifications:

(a) PGCIL has invested substantial money in the setting up of the HCPTC I and IV costing ₹738730 lakh and ₹160638 lakh respectively as against the available bank guarantee of ₹27800 lakh and ₹28450 lakh respectively for HCPTC I and IV. These transmission assets need to be serviced by the Respondents and in case of non-payment of transmission service charges, PGCIL would be placed in an extremely precarious position. Accordingly, the payment security mechanism/LC is of utmost importance at this stage.

(b) Under Sections 129 and 142 of the Act, the Commission has powers to pass orders seeking compliance of the Act, Regulations and orders of the Commission. Further, under Regulation 21 of the Sharing Regulations, the Commission can remedy a situation wherein it has become difficult to give effect to the provisions of the Sharing Regulations. Therefore, the Commission has jurisdiction to redress the difficulties being faced by PGCIL. Under Regulation 111 (Inherent Powers), Regulation 115 (Power to Remove Difficulties) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and within the meaning of Regulation 2(1)(j) of



Payment of Fees Regulations, the Commission is empowered to pass suitable orders and directions in this regard.

(c) As regards the Respondent's contention that PGCIL is seeking common approach under the garb of a Regulatory Compliance Application to avoid payment of court fees, PGCIL has submitted that since all Respondents except three Respondents, have not complied with the provisions of the Regulations and direction of the Commission, a common relief is sought against the Respondents. The orders granting regulatory approval, the provisions of the regulations and the BPTA/TSA are applicable across the board for all the parties and irrespective of the facts of the individual cases. The Commission's order granting approval for development of the HCPTC I and IV was issued commonly for all the Respondents and not on an individual basis. In the case of violation of Regulation 12(5) of the Sharing Regulations pertaining to non-payment, delayed payment, partial payment, the Commission has entertained a common petition against multiple Respondents and issued orders dated 3.2.2014 and 14.9.2015 in Petition Nos. 78/MP/2013 and 78/MP/2014 respectively.

(d) As regards the Respondent's contention that the petition is premature and cause of action has not arisen, PGCIL has submitted that as per the BPTA, the LC has to be opened 3 months prior to operationalization of the LTA. In the instant case, all elements of the transmission corridor except one line are ready and the LTA would be fully operationalized and therefore, LC ought to have been opened by now. However, despite repeated reminders and legal



notices dated 17.7.2015 and 9.10.2015, the Respondents have not opened the LCs.

(e) As regards the contention of the Respondents that there is mis-joinder of parties as per Order 1, Rule 3 of the Code of Civil Procedure, 1908, the Petitioner has submitted that its grievances are common against all the Respondents as the conduct of the Respondents is in violation of their obligations under the Sharing Regulations, Connectivity Regulations, BCD procedure, Detailed Procedures, BPTA and Model TSA. This is not an individual issue as by not opening LC for payment of transmission charges, the Respondents have signified their unwillingness to comply with regulatory, procedural and contractual framework established by the Commission.

(f) As regards the Respondent's contention that the petition is in the nature of dispute resolution and relief is sought for bilateral contractual issues, PGCIL has submitted that since PGCIL is not seeking any dispute resolution but only seeking direction to the Respondents to comply with the provisions of the statutory regulations and directions of the Commission, the petition is maintainable as a Regulatory Compliance Application. As per Regulation 12(8) of the Sharing Regulations, the DICs are required to provide for payment security as determined by the Detailed Procedures i.e. the payment security is not only to be dealt with under the TSA but have to be dealt also under the regulatory provision.

(g) With regard to the contention of the Respondents that the Petitioner is intentionally short circuiting the process prescribed under the TSA and



approaching the Commission by way of Regulatory Compliance Application, PGCIL has clarified that the TSA is a statutory contract as observed by the Commission in several orders. The Sharing Regulations, BCD procedure and the Detailed Procedure made under the Connectivity Regulations provides for payment security mechanism. Even if a party does not sign the TSA, the Commission considers them to have signed the TSA and as such, the terms of TSA cannot be varied and the TSA flows from the regulations. Therefore, the payment security is not merely a contractual term but is a regulatory mechanism consciously legislated by the Commission and non-compliance of the same can be brought by the CTU by way of Regulatory Compliance Application.

- (h) With regard to the Respondents` contention that the matter is not maintainable as a Regulatory Compliance Application, PGCIL has clarified that Regulation 2(1)(j) of the Payment of Fees Regulations provides for three conditions in the definition of “Regulatory Compliance Application” which have been satisfied in the present case.
- (i) With regard to the status of the transmission system required for operationalisation of open access to the Respondents, PGCIL has submitted that the Angul-Jharsuguda 765 kV line, Circuit 1 has been completed and was charged on 25.1.2016 and was commissioned on 27.1.2016. Once the transmission system has been commissioned and the clear non-compliance of the regulations on the part of the Respondents is being brought out by the Petitioner, allowing the respondents to raise hyper-technical objections would defeat the purpose of providing for payment security mechanism in the



regulations and would amount to permitting the Respondents to flout the regulations.

18. The Petitioner has further submitted that Maruti Clean Coal & Power Ltd. and Ind Bharat Pvt. Ltd. have opened the LC. In so far as PTC India is concerned, pursuant to an Interim order passed by the Hon'ble Supreme Court in IA No. 9 of 2015 in Civil Appeal No. 10329 of 2011, Lanco Amarkantak Power Limited has opened the LC qua LANCO. However, the said Respondents are necessary parties qua the main petition. The Petitioner has further submitted that JITPL had filed Petition No. 55/MP/2015 seeking relinquishment of LTA granted to it which is on different issues pertaining to factual adjudication on the existence of force majeure events and whether there can be a relinquishment of LTA. However, the responsibility for servicing the transmission system is on all the IPPs/beneficiaries for whom the system has been set up and as such JITPL is not absolved of its obligations.

19. The Petitioner has filed the IA seeking disposal of the petition with immediate effect with appropriate directions in terms of the prayers made in the petition.

Analysis and Decision:

20. The present Regulatory Compliance Application has been filed by PGCIL seeking directions to the Respondents to open the LC in terms of Regulation 13 of the Sharing Regulations, Clause 3.6 of the BCD Procedure and Article 2 (a) of the BPTA/LTA and to comply with the directions of the Commission in orders dated 29.4.2011 and 31.5.2010 in Petition No. 233/MP/2009 and issue guidelines and directions in regard to the procedure to be followed in case of default by the DIC/LTA



customers of their obligations in regard to payment/compliance with payment security mechanism and other obligations for cancellation of LTA, encashment of construction Bank Guarantee and payment of relinquishment charges. The Petitioner through an IA No. 35/2015 amended its petition with the following prayers:

- (a) Hold and direct the respondents to open, maintain a revolving letter of credit in terms of Regulation 13 of the Sharing Regulations, clause 3.6 of the BCD Procedure and Article 2 of the BPTA/TSA during the tenure of the open access granted.
- (b) Direct the respondents to act in strict compliance of the Sharing Regulations, BCD Procedure and the Commission's orders dated 29.4.2011 and 30.5.2010;
- (c) Issue guidelines and directions in regard to the procedure to be followed in case of default by the DIC/LTA customers of their obligations in regard to payment/compliance with Payment Security Mechanism and other obligations, for cancellation of long term access, encashment of construction phase bank guarantee and payment of relinquishment charges; and
- (d) In default of payment of relinquishment charges, issue directions to disallow access to the grid by the respondents through any form of open access.

21. The Petitioner has submitted that it has commissioned certain critical transmission lines in the High Capacity Power Transmission Corridor (HCPTC) I and IV. However, the LTTCs have not opened the requisite payment security mechanisms required for operationalization of the LTA. According to the Petitioner, the Respondents, by not opening LC for payment of transmission charges, have signified



their sheer unwillingness to comply with the regulatory, procedural and contractual framework established by the Commission in advancement of the objectives of the Act and the National Electricity Policy. The Respondents have raised the issue of the maintainability of the petition and have submitted that since, the reliefs sought against the respondents arise out of separate acts and transactions pertaining to each and every Respondent, it is not permissible under law to seek common relief on the basis of non-specific generalized common pleadings against all the Respondents and the Petitioner is required to file a separate petition against each of the Respondent.

22. It is pertinent to note that during the proceedings, certain IPPs have opened their LCs and certain IPPs have relinquished their LTA either in part or in full. The Petitioner has submitted the status of the Respondents (LTC/IPP) as under:

S.No	Generator Name	Capacity for which Access granted	Date of Commencement of LTA	Dedicated / Connectivity line & Status	Associated Transmission System	Remarks
1.	MP Power Management Company Ltd. (MPPMCL is a power trader and had applied for LTA for procuring power from Jhabua Power plant)	246 MW (WR-246 MW)	TSA signed on 30.7.2011. BPTA signed on 19.2.2014. As per BPTA, LTA effective date 1.4.2014. (LTA shall be effective from the date of availability of above identified transmission system strengthening	Jhabua TPS - Jabalpur Pool 400kV D/c (Triple) line: Commissioned	Jabalpur Pool - Bhopal - Indore 765kV S/c + Jabalpur Pool - Bina 765kV 3rd S/c + Estb of 2x1500MVA Jabalpur Pool station (TBCB line Commissioned on 1.7.2015)	197.5 MW LTA is under operation (w.e.f 10.5.2016) and L.C has been opened and balance LTA of 48.5 MW has been relinquished.

2.	Jhabua Power Ltd	210 MW (WR-210)	TSA signed on 31.12.2012. BPTA signed on 31.12.2012. As per BPTA, Effective date of LTA is 1.4.2014 or availability of Transmission system whichever is later		Jabalpur Pool - Bhopal - Indore 765kV S/c + Jabalpur Pool - Bina 765kV 3rd S/c	109.25 MW LTA is under operation (w.e.f 20.12.2016) & L.C has been opened. Balance LTA of 5.75 MW has been relinquished. 95 MW is to be operational from Oct, 2017.
3.	MP Power Management Company Ltd. (MPPMCL is a power trader and had applied for LTA for procuring power from MB Power plant in Annapur, MP)	394.8 MW (WR-394.8)	TSA signed on 30.7.2011. BPTA signed on 19.2.2014. As per BPTA, LTA effective date is 1.4.2014. (LTA shall be effective from the date of availability of above identified transmission system strengthening or date of signing of LTAA/TSA whichever is earlier.		Commissioned	LC has been opened & LTA is operationalized. 197.4 MW LTA is yet to be operationalized.
4.	Bina Power Supply Company Ltd (2X250)	265.35 MW (WR-132.68 MW, NR-132.67 MW)	BPTA signed on 24.2.2010.	Bina TPS - Bina (PG) / Bina (MPPTCL) 400kV D/c line - Commissioned	Bina - Gwalior - Jaipur - Bhiwani + HCPTC-IV	Relinquishment of LTA for full quantum. Petition filed in CERC (98/MP/2015).
5.	Maruti Clean Coal (1X300)	171 MW (WR-126, NR-45)	TSA signed on 6.8.2012. BPTA signed on 24.2.2010.	LILO of one ckt of ACB TPS - WR PS(Bilaspur) 400 kV D/c line is Commissioned	Bina - Gwalior - Jaipur - Bhiwani + HCPTC-IV	171 MW LTA is under operation and LC has been opened.



6.	Jaiprakash Power Ventures Ltd. (2X660)	465.3 MW	TSA signed on 27.3.2012. BPTA signed on 24.2.2010.	Jaiprakash - Satna 400kV D/c (High Capacity) line – commissioned	Bina - Gwalior - Jaipur - Bhiwani + HCPTC-IV	465.3 MW LTA is under operation to MP on firm basis and balance quantum of 775.5 MW LTA has been relinquished as per JPVL's prayer in Petition no. 293/MP/2015
7.	Mahan (Essar power Ltd.(2X600)	1200 MW(WR 1200)	TSA signed on 17.8.2012. BPTA signed on 7.1.2009.	Mahan TPS – WR PS 400kV D/c line - expected by June'17	WR Regional System	LTA is not operationalized & LC has not been opened.
8.	Lanco Amarkantak Power Pvt. Ltd. (2X660) on behalf of PTC	300 MW (Haryana)	BPTA signed on 24.2.2010.	LANCO – Champa PS 400kV D/c (Quad) line - expected by Mar'17	HCPTC -	LTA is under operation (w.e.f 5.12.2016) & LC has been opened.
9.	*CSPTCL	432 MW	TSA signed on 22.6.2011.BPTA signed on 24.2.2010.		HCPTC - IV	418 MW LTA is relinquished & for balance 14 MW LC has not been opened.
10.	Sterlite Energy Ltd (4X600 MW)	400 MW (NR 200 WR 200 MW)	BPTA signed on 5.7.2010. Commencement of LTA as per BPTA : September,2011	765/400 kV Jharsuguda Pool	HCPTC-I Transmission system associated with IPP Projects in Orissa	Entire LTA capacity has been relinquished, petition filed in CERC (3/MP/2016)



11.	Ind Barath Energy(Utkal) Ltd (2x350 MW)	616 MW (NR-116, SR-500)	TSA signed on 19.8.2014. BPTA signed on 24.2.2010. Commencement of LTA : September,2011	400k V Ind Barath-Jharsugud a Pool D/c line: Completed on 28.9.2016 (Construction completed, line charging expected by 21.1.2017)	HCPTC-I Transmission system associated with IPP Projects in Orissa	500 MW LTA is under operation & LC has been opened. For balance capacity 116 MW LTA is not operational & LC has not been opened.
12.	GMR Kamalanga Energy Ltd	800 MW (200 MW-SR,600 MW-NR.)	TSA signed on 4.9.2013.BPTA signed on 24.2.2010	765/400kV Angul Pool	HCPTC-I (Transmission system associated with IPP Projects in Orissa	387 MW LTA is under operation & LC has been opened. 153 MW LTA has been relinquished, petition filed in CERC. (41/MP/2016) For balance 260 MW LTA, LC has not been opened & LTA is not in operation.
13.	Monet Power Company Ltd (2x525 MW)	900 MW (NR 300, WR-225, SR-150, ER-225)	TSA signed on 19.8.2014. BPTA signed on 24.2.2010. Commencement of LTA : September,2011	400kV Monet TPS-Angul Pool D/c line- Dec'16	HCPTC-I (Transmission system associated with IPP Projects in Orissa	LTA has not been operationalized & LC has not been opened.
14.	Lanco Babandh Pvt Ltd (2640 MW)	800 MW (4X660 MW) (650 MW-NR,150 MW-WR)	TSA signed on 18.12.2014. BPTA signed on 24.2.2010. Commencement of LTA : September, 2011	765/400kV Angul Pool	HCPTC-I (Transmission system associated with IPP Projects in Orissa	LTA has not been operationalized & LC has not been opened.



15.	Jindal India Thermal Power Ltd (2X600 MW)	1044 MW (NR 834 WR-210)	TSA signed on 19.8.2014. BPTA signed on 13.5.2010. Commencement of LTA : September,2011	Angul-Jharsuguda 765 kV line-II Jabalpur-Dharamjairgarh 765 kV D/C line	HCPTC-I (Transmission system associated with IPP Projects in Orissa	Relinquished entire LTA capacity, Petition filed in CERC (55/MP/2015).
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*CSPTCL has applied for 432 MW LTA out of which, CSPTCL has relinquished 418 MW LTA and has filed petition before CERC and balance 14 MW LTA is not in operation. However, it is noted that the CSPTCL has filed petition No. 84/MP/2016 before CERC for seeking relinquishment of 4871 MW LTA.

23. After consideration of the documents on record, pleading of the parties and the submissions made during the hearing, the following issues arise for our consideration:

- (a) Issue No. 1: Whether the petition is maintainable in the present form?
- (b) Issue No. 2: Whether the Respondents are required to open and maintain a Revolving Letter of Credit in terms of various Regulations and orders of the Commission and agreements in force?
- (c) Issue No: 3 Whether any guidelines and directions are required to be issued in regard to the procedure to be followed in case of default by the DICs/LTA customers of their obligations in regard to payment/compliance with Payment Security Mechanism and other obligations, for cancellation of Long Term Access, encashment of Construction phase Bank Guarantee and payment of relinquishment charges;
- (d) Issue No. 4: What should be the effective date from which billing should start for operationalization of LTA?



- (e) Issue No. 5: How the cases of the LTA Customers shall be dealt with where the associated transmission system required for LTA operationalization as identified in BPTA have been commissioned but LC has not been opened and billing has not been started by CTU from the effective date of LTA?
- (f) Issue No. 6: How the cases of the LTA Customers where the LTAs have been relinquished LTA prior to operationalization of LTA by CTU?
- (g) Issue No. 7: What should be the effective date of LTA in case LTA grant is subject to the commissioning/availability of dedicated transmission line (under the scope of the Generator) and same has not been commissioned by IPPs/Generators?

The above issues have been examined in the subsequent paragraphs.

Issue No. 1: Whether the Petition is maintainable in the present form?

24. The Petitioner has filed the present petition under the following provisions seeking compliance of the Commission's order dated 31.5.2010 in Petition No.233/MP/2009, Commission's order dated 29.4.2011 approving the Model Transmission Service Agreement, the provisions of Regulation 13 of the Sharing Regulations, Article 2 of the BPTA/TSA, Clause 3.6 of the BCD Procedure by the LTA Customers/IPP's of HCPTC-I and HCPTC-IV:

- (a) Section 79 (1) (c) and (k) of the Electricity Act, 2003;
- (b) Regulation 21 of the Sharing Regulations;
- (c) Regulations 111 and 115 of the Conduct of Business Regulations;



(d) Regulations 2(1) (i) and 6 (1)(d) of the Payment of Fees Regulations.

25. The Respondents have contended that none of the reliefs as prayed by the Petitioner can be construed as Regulatory Compliance within the meaning of Regulation 2(1)(j) read with the Payment of Fees Regulations. The Respondents have submitted that the entities impleaded in the petition are separate entities and have no connection or relation with each other at all. The Respondents have contended that as per settled position of law, the Petitioner cannot seek common relief on the basis of the non-specific generalized common pleadings against all the Respondents and the Petitioner is required to file separate petition for each Respondent. The Respondents have argued that there are no proper pleadings by the Petitioner despite having been given opportunities to amend the petition and the petition should be dismissed for want of pleadings. The Respondents have submitted that the main issue of the Petitioner is that the Respondents be directed to comply with the provisions of the BPTA and TSA executed between the Petitioner and the Respondents and the obligations under the BPTA and TSA being contractual in nature, the issue of liability of opening of letter of credit under the BPTA and TSA cannot be decided by way of Regulatory Compliance Application.

26. The Petitioner has submitted that the Petitioner is the *Dominus Litus* and can decide what its pleadings should be. The Respondents cannot force the Petitioner to plead in a particular manner so that it is convenient for the Respondents to reply to the same. The Petitioner has submitted that the present petition has been preferred in a common manner since the issues of non-compliance with the Regulations and order of the Commission affect the beneficiaries as a whole and a common approach is required in regard to the reliefs sought. The Petitioner has submitted that the



Commission's orders granting regulatory approval, the provisions of the Regulations and the TSA relevant for the present case are applicable across the board for all the parties, and irrespective of the facts of individual cases. The Petitioner has submitted that the matter involves the principles of transmission system development and payment security mechanism mandated to be created by the beneficiaries. The Petitioner has submitted that it is not seeking adjudication of disputes but only seeking direction to the respondents to comply with the provisions of the statutory regulations and directions issued by the Commission in various orders.

27. We have considered the submissions of the Petitioner and the Respondents. The Petition has been filed as a Regulatory Compliance Application. Regulatory Compliance Application has been defined in Regulation 2(1)(j) and fee of ₹50,000/ per application has been prescribed under Regulation 6(1)(d) of the Payment of Fees Regulations. Regulation 2(1)(j) of the Payment of Fees Regulations is extracted as under:

“Regulatory Compliance Application” means the petitions filed by the Power Exchanges or the inter-State trading licensees or inter-State transmission licensees including deemed licensees or generating companies for compliance of any requirement under any of the regulations issued by the Commission or any order of the Commission but does not include the periodic reports and returns as required under the relevant regulations;”

In the Statement of Reasons, the rationale for Regulatory Compliance Application has been given as under:

“10.....In terms of section 96 of the Act, all proceedings before the Commission shall be deemed to be judicial proceedings. The word ‘proceedings’ has been defined in the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 to “mean and include proceedings of all nature that the Commission may hold in the discharge of its functions under the Act”. Therefore, the decisions of the Commission in all its proceedings are issued in the form of orders irrespective of whether hearing is required or not. The reports and returns raised from the generating companies or licensees or power exchanges are in terms of the various regulations and orders of the Commission and are used for the purpose of monitoring the



activities of these regulated entities and ensuring compliance with the provisions of the Act and regulations. No order or decision is required to be issued in case of such reports and returns except in cases of non-compliance which are initiated suo motu by the Commission. Moreover, these returns are filed in the form of affidavit in prescribed format and not in the form of applications. Therefore, these reports and returns are excluded from the purview of Compliance Applications. Accordingly, the definition of 'Compliance Applications' has been qualified by the words "but does not include the periodic reports and returns as required under the relevant regulations". Any compliance other than the reports and returns under any of the regulations will be covered under 'Compliance Applications'. Applications by the licensees for change of name of the company, applications by the power exchange for approval of Independent Directors, application for approval of Rules, Bye-laws and Business Rules of Power exchange or any amendment thereto, applications for approval of various contracts or products to be introduced by the power exchange etc. would be covered under "Compliance Application". For these, the licensees or power exchanges are not required to file the miscellaneous petition as they are covered under compliance applications. The term has been changed to 'Regulatory Compliance Application' to convey the true purpose of the application....."

Under the above provisions, Regulatory Compliance Applications can be filed by the Power Exchanges, inter-State trading licensees, inter-State transmission licensees including deemed transmission licensees, generating companies for compliance of any requirement under any of the regulations issued by the Commission or order issued by the Commission but does not include periodic reports and returns. It is evident from the provisions of the Payment of Fees Regulations and the Statement of Reasons that the Regulatory Compliance Application can be filed by the inter-State transmission licensee including a deemed transmission licensee for compliance of any requirement under any regulations or order of the Commission by the licensee itself, and for not securing compliance with any order or regulations by other entities including the generating companies for which the provisions of Section 129 or 142 of the Act or the relevant provisions under the respective regulations are available. Considering the other provisions under which the application has been filed, namely Section 79(1)(c), Regulation 21 of the Sharing Regulations, Regulations 111 and 115 of the Conduct of Business Regulations, the Commission is of the view that the present application should be treated as a Miscellaneous Application and the



Petitioner is directed to deposit the balance fee.

28. The Petitioner has invoked the provisions of Section 79(1)(c) of the Act which provides that the Commission shall have the functions “to regulate inter-State transmission of electricity.” It is beyond doubt that HPTPC I and IV have been executed as inter-State transmission systems by CTU after obtaining regulatory approval for the same under the Central Electricity Regulatory Commission (Grant of Regulatory Approval for execution of Inter-State Transmission Scheme to Central Transmission Utility) Regulations, 2010 (hereinafter referred to as the “Regulatory Approval Regulations”). Preamble of the said Regulatory Approval Regulations provides as under:

“The Central Transmission Utility has been vested with the functions under sub clause (c) of sub-section (2) of Section 38 of the Electricity Act, 2003 (the Act) to ensure development of an efficient, co-ordinated and economical system of inter-State transmission lines for smooth flow of electricity from the generating stations to the load centres. Para 5.3.2 of the National Electricity Policy notified by the Central Government under Section 3 of the Act vide Resolution No.23/40/2004R&R(Vol.II) dated 12.1.2005 provides that “network expansion should be planned and implemented keeping in view the anticipated transmission needs that would be incident on the system in the open access regime. Prior agreement with the beneficiaries would not be a pre-condition for network expansion. CTU/STU should undertake network expansion after identifying the requirements in consultation with stakeholders and taking up the execution after due regulatory approval.” The Central Commission which has been vested with the power under clause (c) of sub-section (1) of Section 79 of the Act to regulate the inter-State transmission of electricity is making these regulations to streamline the procedure for according regulatory approval to Central Transmission Utility for network expansion in consonance with the National Electricity Plan.”

Thus, Regulatory Approval Regulations has been framed by the Commission in exercise of its power under Section 79(1)(c) read with Section 38(2)(c) of the Act. One of the conditions for according regulatory approval under the Regulatory Approval Regulations is the submission of LTA applications by the generators to CTU in accordance with the Central Electricity Regulatory Commission (Grant of Connectivity, Long-Term Access and Medium-Term Open Access to the Inter-State



Transmission and Related Matters) Regulations, 2009 (Connectivity Regulations) for which there is absence of Power Purchase Agreement between the generators and the beneficiaries. Regulation 3 (1)(i) of the Regulatory Approval Regulations provides as under:

“(1) These regulations shall apply to:

(i) an ISTS Scheme proposed by Central Transmission Utility, for which generators have sought long-term access as per the Central Electricity Regulatory Commission (Grant of Connectivity, Long-Term Access and Medium-Term Open Access to the Inter-State Transmission and Related Matters) Regulations, 2009, and for which consultation with Central Electricity Authority and beneficiaries if already identified has been held for setting up the ISTS Scheme, but for which Power Purchase Agreements with all the beneficiaries have not been signed on the date of application.”

Regulation 6(1) of the Regulatory Approval Regulations provides for approval of the transmission scheme submitted by the CTU for approval and Regulation 6(2) provides for implementation of the transmission scheme as per the approval of the Commission. Regulation 6(2) of Regulatory Approval Application provides as under:

“(2) The Central Transmission Utility shall implement the transmission elements out of the approved ISTS Scheme in a coordinated manner considering the progress of the generation project(s) in accordance with the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium term open access to the Inter-State Transmission and Related Matters) Regulations, 2009.

Provided that elements of System Strengthening Scheme shall be implemented as per initial schedule.

Provided further that, as far as possible, elements specific to one generation project shall be matched with that project and elements common to more than one generation project shall be matched with the first one and the scheme shall be implemented accordingly.”

As per the above provisions, CTU has to ensure that the transmission elements specific to one generation project are matched with the said project and in case of transmission elements common to more than one generation project, the transmission scheme shall be implemented by matching the scheme with the first



element. Regulation 7 deals with the recovery of transmission charges for the approved transmission scheme as under:

“7. Recovery of charges of approved transmission Scheme

(1) The transmission tariff of the ISTS Scheme approved by the Commission under Regulation 6 of these regulations shall be determined in accordance with the prevailing regulations on terms and conditions of tariff specified by the Commission under Section 61 of the Act.

(2) The tariff of the ISTS Scheme determined in accordance with clause (1) of this regulation shall be borne by the users of the Scheme.

(3) The method of sharing of transmission charges among the users of the ISTS Scheme shall be based on the sharing methodology as may be specified by the Commission from time to time.”

It is, therefore, statutorily provided that the transmission scheme being developed by the CTU in terms of the Regulatory Approval accorded under the Regulatory Approval Regulations shall be shared by the users of the scheme. The term ‘user’ includes the generating company and, therefore, where the beneficiaries are not identified, the generating companies who are the LTA Customers shall share the transmission charges. Further, the method of sharing of the transmission charges shall be based on the sharing methodology as may be specified by the Commission from time to time.

29. The Commission has notified the Sharing Regulations which came into effect from 1.7.2011. The Sharing Regulations provides for the methodology for sharing of the ISTS transmission charges by the Designated ISTS Customers which also include the generating companies. Under Regulation 12 of Sharing Regulations, CTU is responsible for billing, collection and disbursement of the transmission charges. Regulation 12(8) of the Sharing Regulations provides that “Designated ISTS Customers shall provide payment security as determined through detailed



procedures developed by the CTU. The level of such payment security shall be related to the Approved Withdrawal or Approved Injection.” Thus, it is a statutory requirement for the DICs to open and maintain the payment security mechanism related to the approved withdrawal or approved injection of the concerned DICs. Under Regulation 12(8) of the Sharing Regulations, CTU shall prepare a Detailed Procedure for billing, collection and disbursement and obtain the approval of the Commission. Regulation 13 provides for the Transmission Service Agreement to be entered between the DICs and CTU which among other things shall include the provisions for Payment Security Mechanism. In compliance with the above provisions, the BCD Procedure and Model Transmission Service Agreements have been notified with the approval of the Commission. Clause 3.6 of BCD Procedure provides that not later than one month prior to the effective date, each DIC shall through a scheduled bank, open a confirmed irrevocable, unconditional and revolving Letter of Credit in favour of the CTU, to be made operative from a date prior to the due date of its bill and shall be renewed annually. It is noted that the Respondents have entered into the Transmission Service Agreements with PGCIL. Clause 12.3 of the TSA provides that each DIC unequivocally agrees to allow CTU to enforce recovery of payment through Letter of Credit on behalf of all the ISTS licensees in the event of default in payment by the DIC, in accordance with the BCD Procedure. These documents are statutory in nature and can be enforced in the same manner as the Sharing Regulations.

30. The Petitioner approached the Commission for regulatory approval of the 9 High Capacity Power Transmission Corridors (HCPTC) including HCPTC I and IV. The basis for seeking regulatory approval was the LTA applications supported by



required Bank Guarantee and the various milestones achieved by these generators to set up their respective projects. The Commission after examining all documents on record and hearing the affected IPPs granted regulatory approval for development of 9 HCPTCs by CTU. While according the approval, the Commission made the following observations in its order dated 31.5.2010:

"28. From the foregoing discussion, we are satisfied that there is a pressing need for developing the nine HCPTC in order to harness the generation projects and bring the power to the load centers....."

"41. Based on the affidavits submitted by the project developers of IPPs and on the spot assessment by CTU, the progress of IPPs at different stages of implementation is satisfactory and utilization level of proposed HCPTC at the time of their progressive commissioning is expected to be sufficient. Moreover, the project developers of IPPs have signed and submitted Bank guarantee in many cases. Hence, we accord regulatory approval for execution of the nine nos. of HCPTCs proposed by CTU as per the project scope as mentioned in Annexures-I to IX of this order.

42. The petitioner is directed to ensure that the proposed transmission projects for which regulatory approval has been granted are executed within the time frames matching with the commissioning schedules of the IPPs so that the beneficiaries are not burdened with higher IDC. The Petitioner has also prayed for ensuring recovery of its capital investment by way of evolving alternate methodology. We would like to clarify for the benefit of all concerned that the transmission charges and its sharing by the constituents will be determined by the Commission in accordance with the applicable regulations on terms and conditions of tariff as specified by the Commission from time to time.

43. It is evident from submission of the Petitioner that in certain cases, the project developers of IPPs have given consent to bear the transmission charges till the time beneficiaries are firmed up. It shall be the responsibility of the Central Transmission Utility to ensure completion of these projects at optimum cost using best contractual practices including International Competitive bidding."

In the light of the regulatory approval as quoted above, the Petitioner was required to implement the 9 HCPTCs in the timeframes matching with the commissioning schedules of IPPs and the transmission charges and its sharing were to be determined in accordance with the applicable regulations on terms and conditions of tariff issued by the Commission from time to time. It is pertinent to mention that prior to coming into force of the Sharing Regulations, sharing of the transmission charges were also being determined in accordance with the regulations



on terms and conditions of tariff. Subsequent to the implementation of the Sharing Regulations, sharing of the transmission charges is being governed by the provisions of Sharing Regulations as discussed in paragraphs above.

31. The Petitioner after implementation of the transmission systems covered under HCPTC I and IV asked the Respondents to open LCs. Except for three generators, others contested the directions of CTU to open the LC before operationalisation of the LTA or ignored its directions. The Petitioner has approached the Commission seeking directions to the Respondents to open and maintain a revolving Letter of Credit in terms of Regulation 13 of the Sharing Regulations, Clause 3.6 of the BCD Procedure and Article 2 of the BPTA/TSA. It is pertinent to reiterate that the transmission schemes have been implemented as per regulatory approval accorded in accordance with the provisions of the Regulatory Approval Regulations framed in exercise of the powers under Section 79(1)(c) read with Section 38(2)(c) of the Act. Regulation 6 of the Regulatory Approval Regulations provides for execution of the transmission system and Regulation 7 deals with the sharing of the transmission charges by the generators in accordance with the sharing methodology as may be specified by the Commission from time to time. The sharing methodology has been provided in the Sharing Regulations, the BCD Procedure and the Transmission Service Agreement which require opening and maintenance of payment security mechanism. Therefore, payment security mechanism is a statutory requirement. Any guidance and clarifications with regard to payment security mechanism and operationalisation of LTA can be sought by the Petitioner by invoking the power of the Commission under Section 79(1)(c) of the Act read with relevant provisions of the Regulatory Approval Application, Sharing Regulations, BCD Procedure and



Transmission Service Agreements which have statutory flavor. Hence, the petition is maintainable under Section 79(1)(c) of the Act.

32. The Petitioner has also invoked the powers of the Commission under Regulation 21 of the Sharing Regulations and Regulation 111 and 115 of the Conduct of Business Regulations. Regulation 21 of the Sharing Regulations provides as under:

“21. Power to remove difficulties: (1) If any difficulty arises in giving effect to any of the provisions of these Regulations, the Commission, may by general or special order, direct the Implementing Agency, NLDC, CTU, RLDC, RPC, ISTS Licensees and Designated ISTS Customers, to take suitable action, not being inconsistent with the provisions of the Act, which appears to the Commission to be necessary or expedient for the purpose of removing the difficulties.

(2) The Implementing Agency, NLDC, CTU, RLDC, RPC, ISTS Licensees and Designated ISTS Customers may make an application to the Commission and seek suitable orders to remove any difficulties that may arise in implementation of these Regulations.

(3) Notwithstanding Sub-Regulations (1) and (2), if any difficulty arises in giving effect to the provisions of these Regulations, the Commission may, by general or specific order, make such provisions not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulty.”

According to the above provisions, CTU has the option to approach the Commission through an appropriate application for removal of difficulties if any difficulty arises in giving effect to any provision of the regulation. As regards the Power to Remove Difficulty, Hon'ble Supreme Court in Mahadeva Upendra Sinai and Others v. Union Of India {(1975) 3 SCC 765}, which is extracted as under:-

"The existence or arising of a difficulty is the sine qua non for the exercise of power. If this condition precedent is not satisfied as an objective fact, the power under this clause cannot be invoked at all. Again the "difficulty" contemplated by the clause must be a difficulty arising in giving effect to the provisions of this Act and not a difficulty arising aliunde or an extraneous difficulty. Further, the Central Government can exercise the power under the clause only to the extent it is necessary for giving effect to the Act, etc., and no further. It may slightly tinker with the Act to round off angularities and smoothen the joints or remove minor obscurities to make it workable, but it cannot change, disfigure or do violence to the basic structure and primary features of the Act. In no case, can it, under the guise of removing the difficulty,



change the scheme and essential provisions of this Act."

The above judgment, says that for exercise of the power to remove difficulty, the difficulty must be a difficulty arising in giving effect to the Act, and not a difficulty which has arisen as an extraneous difficulty. Further, the removal of difficulty power may be exercised to remove the minor obscurities and round off the angularities to make the provisions workable but cannot be used to change the scheme and essential provisions of the Act. The Petitioner has made the application for issue of directions to the Respondents to open the Letter of Credit as Payment Security Mechanism as the Respondents have not opened the LCs. In our view, this is a case of enforcement of the relevant provisions of Regulatory Approval Regulations, Sharing Regulations, BCD Procedure and the provisions of TSAs and not the case of removal of any difficulty in giving effect to any provisions of the Sharing Regulations.

33. The Petitioner has also invoked Regulation 111 and 115 of the Conduct of Business Regulations. Both regulations are extracted as under:

"111. Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for ends of justice or to prevent the abuse of the process of the Commission.

115. If any difficulty arises in giving effect to any of the provisions of these Regulations, the Commission may, by general or special order, do anything not being inconsistent with the provisions of the Act, which appears to it to be necessary or expedient for the purpose of removing the difficulties."

In our view, the inherent power under Regulation 111 of the Conduct of Business Regulations enables the Commission to address any procedural limitations in order to achieve the ends of justice and prevent the abuse of the process. In the present case there are no procedural limitations in the Conduct of Business Regulations which prevents the Commission to grant relief to the Petitioner which can be removed by exercising inherent power. Power to issue directions to the



Respondents to open and maintain payment security mechanism has to be found in the substantive regulations, namely, Sharing Regulations and BCD Procedure.

34. In the light of the above discussion, we are of the view that the subject transmission systems have been built on the basis of regulatory approval accorded under the Regulatory Approval Regulations of the Commission which has been notified in exercise of power under Section 79(1)(c) read with Section 178 of the Act. Further the said regulations provide for sharing of charges by the users of the transmission systems in accordance with the methodology specified by the Commission from time to time. The Commission has notified the Sharing Regulations for sharing of transmission charges. The Sharing Regulations, the BCD Procedure and Transmission Service Agreements notified under the Sharing Regulations provide for opening of payment security mechanisms related to the Approved Withdrawal or Approved Injection by a DIC. Thus, the development of HCTPCs by CTU is the result of the exercise of the jurisdiction of the Commission under Section 79(1)(c) of the Act to regulate inter-State transmission of electricity. It is a settled principle that the power to regulate includes the power to enforce and issue directions. Therefore, appropriate directions can be issued to the DICs (in this case the generators as they do not have identified beneficiaries) under Section 79(1)(c) of the Act read with the provisions of Regulation 13 of the Sharing Regulations and BCD Procedure to put in place the payment security mechanism for smooth operationalisation of the LTA.

35. In the meanwhile certain developments have taken place. In some of the cases, the LTA Customers have either fully or partially abandoned the projects. In some other cases, the LTA Customers have relinquished the LTA capacity either fully



or partially. Therefore, there are various scenarios for operationalisation of LTAs and correspondingly for maintenance of the payment security mechanisms to ensure payment of transmission charges for the LTA granted. These issues have been dealt with in latter part of this order.

Issue No.2: Whether the Respondents are required to open and maintain a Revolving Letter of Credit in terms of various Regulations and orders of the Commission and agreements in force?

36. The Petitioner has prayed to direct the Respondents to open and maintain a revolving Letter of Credit in terms of the Sharing Regulations, Detailed Procedure made thereunder and as per the provisions of the BPTA/TSA. The Petitioner has submitted that the LTTCs have not opened the requisite payment security mechanisms required for operationalization of LTA. The Petitioner has submitted that, the Respondents have been showing adverse signs towards timely completion of their generation projects. This is accompanied by their reluctance to make adequate participation in the Joint Coordination Committee meetings and eventually their reluctance in bearing with the liability to pay for transmission charges as the identified transmission systems are commissioned.

37. The Petitioner has submitted that PGCIL vide its letters dated 17.7.2015 and 20.8.2015 requested the Respondents to open the LC in compliance of their obligations under the applicable Regulations/Procedures/Regulatory Agreements. However, none of the Respondents have complied with their obligations to open the LC as required. Under the Model Transmission Service Agreement and clause 12.1 of the Billing, Collection and Disbursement of Transmission Charges, the DICs and the ISTS licensees are required to abide by the detailed “Billing, Collection and Disbursement procedure” of CTU as approved by the Commission and it shall be



construed as part of the Agreement. According to the Petitioner, the LTA Customers/ DICs are required to establish adequate payment security mechanism in the form of Letter of Credit before the LTA is operationalised. Moreover, there is a difficulty of general nature faced in the extant procedure relating to billing and collection of charges, wherein PGCIL bills a DIC in month 2 (i.e. On 5.2.2015) for use of ISTS in month 1 (January 2015) and the 'due date' for a DIC to make payment is 60 days from the date of the bill, [month-4 (i.e. April 2015)]. Accordingly, the position of payment/non-payment becomes clear to the biller only by Month 4 (i.e. by April 2015) or even later in certain cases. Therefore, a Letter of Credit provides a cushion to the Petitioner against untimely and unwarranted acts of default in payment of transmission charges.

38. The Petitioner has argued that operationalization of LTA without the adequate payment security mechanism leaves the Petitioner with no alternate remedy to recover the outstanding transmission charges. The Petitioner has submitted that in the case of Power Grid Corporation of India Limited vs. Corporate Power Limited (Petition No. 136/MP/2014), MTOA for Corporate Power Limited was operationalized, without the requisite LC to cover up its default which exposed the Petitioner to non-recovery of transmission charges. The Petitioner has submitted that operationalization of LTA without the adequate payment security mechanism is not only contrary to governing covenants of the applicable Regulations, but also exposes the Petitioner to the risk of increasing its Non-Performing Assets. Therefore, the Petitioner did not operationalize the LTAs in respect of these LTTCs/DICs in the absence of LCs.

39. We have considered the submissions of the Petitioner and Respondents. The



Commission vide order dated 29.4.2011 approved the Model Transmission Service Agreement and the BCD Procedure in terms of Regulation 13 of the Sharing Regulations. The Respondents have either signed the TSA or are the default signatories of the Transmission Service Agreement. Clause 12 of BCD Procedure provides as follows:

“12.0 Billing, Collection and Disbursement of Transmission Charges

12.1 The DICs and the ISTS Licensees shall abide by the detailed “Billing, Collection and Disbursement Procedure” of CTU, as approved by the Commission and such “Billing Collection and Disbursement Procedure” shall be construed, as part of this Agreement.

12.2 The CTU shall raise bills, collect and disburse in accordance with the detailed “Billing, Collection and Disbursement Procedure”.

12.3 Each DIC unequivocally agrees to allow CTU to enforce recovery of payment through Letter of Credit on behalf of all the ISTS Licensees in the event of default in payment by the DIC, in accordance with the detailed “Billing, Collection and Disbursement Procedure”.

12.4 The DICs also agree and empower the CTU to undertake Regulation of Power Supply, to recover charges under the provisions of CERC (Regulation of Power Supply) Regulations, 2010 and any amendments thereof.

12.5 If payment by a DIC against any invoice raised under Billing, Collection and Disbursement procedure is outstanding beyond thirty (30) days after the due date or in case the required Letter of credit or any other agreed payment security mechanism is not maintained by the DIC, the CTU is empowered to undertake Regulation of Power Supply on behalf of all the ISTS Licensees so as to recover charges under the provisions of CERC (Regulation of Power Supply) Regulations, 2010 and any amendments thereof.”

Clause 3.6 of Billing, Collection and Disbursement (BCD) Procedure approved under Sharing Regulations provides as under:

“3.6 Letter of Credit

3.6.1 Not later than one (1) month prior to the Effective Date, each DIC shall, through a scheduled bank, open a confirmed irrevocable, unconditional and revolving Letter of Credit in favour of the CTU, to be made operative from a date prior to the Due Date of its first Bill and shall be renewed annually.

3.6.2 Each DIC unequivocally agrees to allow CTU to enforce recovery of payment under any Bill through the Letter of Credit provided by the DIC. In event that more than



one Bill becomes overdue; the amount recovered through the enforcement of Letter of Credit shall be appropriated against such overdue Bills on as per FIFO method. Each DIC unequivocally agrees to allow CTU to enforce recovery of payment through Letter of Credit on behalf of all the ISTS Licensees in the event of default in payment by the DIC, in accordance with Clause 3.6.6.

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

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

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

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

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

3.6.4 Each DIC shall cause its respective scheduled bank issuing the Letter of Credit to intimate the CTU, in writing regarding establishing of Letter of Credit.

3.6.5 In case of drawal of the Letter of Credit by the CTU in accordance with the terms of this Clause 3.6, the amount of the Letter of Credit shall be reinstated within seven (7) days from the date of such drawal.

3.6.6 If any DIC fails to pay any Bill Amount or part thereof within and including the thirtieth (30th) day after Due Date, then, unless an Bill Dispute Notice is received by the CTU, as per the provisions of Clause 3.5.2, the CTU may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from the concerned DIC, an amount equal to the Bill Amount or part thereof plus Late Payment Surcharge, if applicable, in accordance with Clause 3.4, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- (a) a copy of the Bill, which has remained unpaid/ partially paid by such DIC;
 - (b) a certificate from the CTU to the effect that the Bill at item (a) above, or specified part thereof, is in accordance with the Procedure and has remained unpaid/partially paid beyond the thirtieth (30th) day after Due Date; and
 - (c) calculations of applicable Late Payment Surcharge, if any.
- Provided that the failure on the part of the CTU to present the documents for encashment of the Letter of Credit shall not attract any Late Payment Surcharge on the concerned DIC.

3.6.7 Each DIC shall ensure that the Letter of Credit shall be renewed thirty (30) days prior to its expiry.



3.6.8 All charges relating the Letter of Credit shall be borne by the DIC.

As per the BCD procedure, DIC is required to open LC one month prior to the effective date but from the reading of definition of “effective date’ in TSA read with clause 3 of the TSA, it is clear that effective date in BCD Procedure cannot be same as the effective date in the TSA.

Effective date is defined in TSA as follows:

“Effective Date” shall have the meaning as ascribed thereto in Article 3 of this Agreement;”

Article 3 of TSA provides as under:

“3.0 Effectiveness of the Agreement

3.1 For the existing DICs and ISTS Licensees, this Agreement shall be effective from the date, as notified under Sharing Regulations or as notified by the Commission.

3.2 Any new DICs or new ISTS Licensees shall be Party to this Agreement from the date of signing of the Supplementary Agreement, as executed between the CTU and the new DIC or ISTS Licensee, as the case may be.

3.3 For the owners of RPC certified lines, this Agreement shall be effective from the date of such approval by RPC and inclusion of these assets in the calculation of Point of Connection (PoC) charges.

3.4 From the Effective Date, each Party undertakes to each other Party to comply with and to perform its obligations in accordance with and subject to this Agreement.

3.5 This agreement shall deemed to have come into force w.e.f. the date(s) as mentioned at Article 3.1, 3.2 and 3.3 above and shall, without prejudice to the provisions under Article 16, remain operative till the same is renewed/replaced/modified.”

40. We have perused the letters of CTU granting LTA to the Respondents. None of the letters granting LTA to these DICs indicates any firm date of commencement of LTA. We have further perused the LTA Agreements entered into by the Petitioner with the DICs. As per the Attachment 1 of the LTA Agreement (which is format LTA-5), LTA shall be effective from the date of availability of identified transmission



system strengthening or date of LTA sought, whichever is later. Further, Annexure 4 of the BPTA provides for completion of transmission system specified in the Agreement in 30 to 42 months from the date of regulatory approval in case of HCPTC-I and HCPTC-IV respectively. Since, the scheduled date of commissioning of the 1st unit of various generating stations were different, the 'Effective Date' could only be the date of operationalization of the LTA i.e. date from which LTA is sought or the date of commissioning of transmission system, whichever is later.

41. On the issue of opening of LC by the Respondents, CTU vide its letter dated 17.7.2015 requested the Respondents to open the LC. Relevant portion of the letter is extracted as under:

“This is in reference to Agreement for Long Term Access entered into between POWERGRID & M/s. Jhabua Power Ltd. on 31.12.2012 for LTA of 210 MW and our letter dated 27.05.2014 regarding opening of Letter of Credit (LC). It may be recalled that said Long Term Access (LTA) is going to commence shortly. As per the terms of LTA intimation issued by CTU, commencement of LTA is subject to (i) signing of LTA Agreement, (ii) signing of Transmission Service Agreement (TSA) and (iii) establishment of Letter of Credit (LC) of requisite amount In above regard, your attention is drawn to the following:

- I. LTA Agreement and TSA have already been signed and a copy of each is available with you.
- II. In line with the terms of the LTA Agreement, M/S Jhabua Power Ltd .is required to open a letter of Credit of Rs. 8.79 Cr. (calculations enclosed as per prevailing PoC rates) in favour of POWERGRID towards payment security mechanism as per CERC regulations. In regard to LC, you are requested to contact our Regional Head Quarter, WR-11 \Vadodra as per details given below:”

Subsequently, CTU served a legal notice dated 9.10.2015 on Jhabua Power Ltd. which is extracted as under:

“This is to draw your kind attention to the letter dtd. 17.07.2015 {mentioned at reference point above), wherein it was informed that the system strengthening undertaken by CTU/Power Grid, to facilitate transfer of power from your proposed generating station is nearing its commissioning, therefore your obligation to open the required payment security mechanism in form of a Letter of Credit is necessitated.



The obligation, mentioned above, prima-facie relies on the existing regulatory regime envisaged by CERC in form of its Connectivity Regulations, its detailed procedure and Sharing Regulations read along with the BCD Procedure and TSA/RSA. A combined reading construes that an LTA Customer is bound to open an confirmed irrevocable, unconditional, and revolving Letter of Credit for a amount equivalent to 2.10 times of the average monthly billing as provided in the BCD Procedure, one month prior to the effective date of the LTA. As such, the details of the amount of LC along with the instructions for submitting the same are duly incorporated in our earlier correspondences mentioned above.

In light of the above, you are requested to comply with the existing terms of the LTA Agreement on the granted quantum and furnish the appropriate security mechanism as elaborated in our previous correspondence dated 17.07.2015 within a stipulated time of 7 days from the receipt of this notice; failing which necessary actions shall be taken at our end.”

Perusal of the above letter reveals that though the LTA customers have been asked to open the LC one month prior to the effective date of LTA, no firm date has been indicated as the effective date. The Petitioner should have indicated the effective date i.e. firm date of commercial operation of the transmission lines for part or full operationalisation of the LTA to the LTA customers at least 45 days prior to such effective date to enable the LTA Customers to open the Letter of Credit for the required amount. If the commercial operation of the transmission systems involved for operationalisation of LTA is expected to be delayed beyond the intimated effective date, CTU shall intimate about the revised effective date to enable the LTA Customer to arrange and put in place the LC accordingly.

42. GKPL has argued that the Petitioner has been changing the date of commissioning of the transmission systems. The Petitioner in its letter dated 17.7.2015 has mentioned the commissioning date as "August, 2015" which was subsequently changed to "September, 2015" in the status report furnished by the Petitioner (Annexure-P 3 of the original petition). However, the Petitioner in the present petition has pleaded that the identified transmission system is "either commissioned or is about to be commissioned". Further, in the amended petition, the



promised commissioning timeline is "December, 2015". It is, therefore, apparent from the Petitioner's own statements that the commercial operation of the identified transmission system for operationalization of the LTA keeps on shifting from time to time. Therefore, insistence on opening of LC in the absence of a firm effective date for operationalisation of LTA is not called for as this would put additional financial burden on the LTA Customers to open and maintain LC. Unless there is a firm commitment towards the date of operationalization of LTA, CTU should not insist on opening of LC on the basis of tentative date.

43. Mahan (Essar) Power Ltd., CSPTCL, Ind Barath Energy (Utkal) Ltd., GMR Kamalanga Energy Ltd., Monnet Power Company Ltd., have contended that they have not opened LCs as instructed by CTU since their LTAs have either not been operationalized or have been only partly operationalized. In our order dated 16.2.2015 in Petition No.92/MP/2014, we had directed the CTU to part operationalise the LTA if some of the transmission lines covered under the LTA are ready. Therefore, the LTA Customers are required to open the LCs even if the LTAs are partly operationalised. We are of the view that the Respondents cannot be allowed to make excuses for not opening the LCs when the transmission line built on the basis of their commitment are ready. A suitable payment security framework is very important in order to ensure that the transmission systems built on the basis of the commitments given by the Project Developers at the time of grant of LTAs are serviced in tariff and to ensure the viability of investment in the transmission sector.

44. The Commission vide order dated 29.4.2011 has approved the Transmission Service Agreement, Revenue Sharing Agreement, and BCD Procedure made in accordance with the provisions of Chapters 5 and 6 of the Sharing Regulations.



Regulation 12(8) of the Sharing Regulations provides as under:

“(8) Designated ISTS Customers shall provide payment security as determined through detailed procedures developed by the CTU. The level of such payment security shall be related to the Approved Withdrawal or Approved Injection.”

Further, Clause 3.6 of Billing, Collection and Disbursement procedure provides as under:

“3.6. Letter of Credit

3.6.1 Not later than one (1) month prior to the Effective Date, each DIC shall, through a scheduled bank, open a confirmed irrevocable, unconditional and revolving Letter of Credit in favour of the CTU, to be made operative from a date prior to the Due Date of its first Bill and shall be renewed annually.

3.6.2 Each DIC unequivocally agrees to allow CTU to enforce recovery of payment under any Bill through the Letter of Credit provided by the DIC. In event that more than one Bill becomes overdue; the amount recovered through the enforcement of Letter of Credit shall be appropriated against such overdue Bills on as per FIFO method. Each DIC unequivocally agrees to allow CTU to enforce recovery of payment through Letter of Credit on behalf of all the ISTS Licensees in the event of default in payment by the DIC, in accordance with Clause 3.6.6.”

As per the above provisions, DICs are required to open the LC as a payment security measure one month prior to actual commissioning of the transmission system or date of commencement of LTA whichever is later. It is pertinent to mention that the BCD Procedure having been approved by the Commission has the statutory force and have to be complied with by all concerned.

Clauses 12.2 and 12.3 of Transmission Service Agreement provides as under:

“12.2 The CTU shall raise bills, collect and disburse in accordance with the detailed “Billing, Collection and Disbursement Procedure.

12.3 Each DIC unequivocally agrees to allow CTU to enforce recovery of payment through Letter of Credit on behalf of all the ISTS Licensees in the event of default in payment by the DIC, in accordance with the detailed “Billing, Collection and Disbursement Procedure”.

45. In the light of the provisions as quoted above, we are of the view that the DICs are under a statutory and contractual obligations to open the payment security



mechanism. As per the BCD Procedure, the payment security mechanism is required to be opened one month prior to the effective date and the level of such payment security mechanism shall be related to approved injection and approved withdrawal. It is observed that the DICs are not opening the LCs despite being intimated about the effective date for operationalisation of LTA. This has serious consequence on the recovery of transmission charges and servicing of the transmission systems through tariff.

46. In the light of the above discussion, we direct the Respondents to open the LCs for the required amount one month before the firm effective date of operationalization of the LTA as intimated by the CTU. This is a statutory and regulatory requirement which needs to be strictly complied with.

Issue No. 3: Whether any guidelines and directions are required to be issued in regard to the procedure to be followed in case of default by the DICs/LTA customers of their obligations in regard to payment/compliance with Payment Security Mechanism and other obligations, for cancellation of Long Term Access, encashment of Construction phase Bank Guarantee and payment of relinquishment charges?

47. The Petitioner has prayed to issue guidelines and directions with regard to the procedure to be followed in case of default by the DIC/LTA Customers in discharge of their obligations in regard to payment/compliance with Payment Security Mechanism and other obligations, cancellation of Long Term Access in the event of default, encashment of Construction phase Bank Guarantee and payment of relinquishment charges.

48. Clause 16 of the Transmission Service Agreement provides for Events of Default on the part of DICs and the consequence thereof as under:



“16.2 Event of Default of a DIC

16.2.1 The occurrence and continuation of any of the following events shall constitute a DIC Event of Default, unless any such DIC Event of Default occurs as a result of the ISTS Licensee Event of Default or a Force Majeure Event:

16.2.1.1 A DIC fails to comply with the prevailing regulations including the Indian Electricity Grid Code or is in material breach of this Agreement and such material breach is not rectified by the said DIC within thirty (30) days of receipt of notice in this regard from the concerned ISTS Licensee or the CTU;

16.2.1.2 Any of the representations and warranties made by the DIC in Article 19.1.1 of this Agreement being found to be untrue or inaccurate; or

16.2.1.3 If,

(a) a DIC becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days; or

(b) any winding up or bankruptcy or insolvency order is passed against a DIC; or

(c) a DIC goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, Provided that it shall not constitute a DIC Event of Default where such dissolution or liquidation of such DIC is for the purpose of a merger consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement, similar to such DIC and expressly assumes all obligations of such DIC under this Agreement and is in a position to perform them.”

Clause 16.4 of the Transmission Service Agreement provides as under:

“16.4 Cessation of DIC being Party to this Agreement

16.4.1 Upon the occurrence and continuance of a DIC Event of Default under Article 16.2, the CTU may serve notice on the concerned DIC, with a copy to the CERC, which shall specify in reasonable detail, the circumstances giving rise to such Notice.

16.4.2 Following the issue of such notice, as mentioned in Article 16.4.1, the Consultation Period shall apply and CTU and the concerned DIC discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

16.4.3 During the Consultation Period, the DIC shall, save as otherwise provided in this Agreement, continue to perform its obligations under this Agreement.

16.4.4 Following the expiry of the Consultation Period, unless the CTU and the concerned DIC shall have otherwise agreed to the contrary or the circumstances giving rise to such notice as mentioned in Article 16.4.1 shall have ceased to exist or shall have been remedied, the concerned DIC shall cease to be a Party to this Agreement and the CTU shall issue a written notice (“Termination Notice”) of thirty (30) days to this effect with a copy to the Commission and Implementing Agency. The concerned DIC shall cease to be a Party to this Agreement on the date of expiry of



the Termination Notice.”

As per the above provisions, if a DIC fails to comply with the provisions of the regulations or is in material breach of the TSA which is not rectified within 30 days of the receipt of notice in this regard, it shall constitute a DIC event of defaults. We have already held that maintenance of payment security mechanism is a statutory requirement under Regulation 12 (8) of the Sharing Regulations and BCD Procedure and TSA. Therefore, non-maintenance of LC is not only non-compliance of the provisions of the Sharing Regulations and BCD Procedure but also breach of the terms of the TSA. On occurrence of the DIC`s event of default, CTU is required to take necessary action in terms of clause 16.4 of the TSA. At the expiry of termination notice, the defaulting DIC shall cease to be party to the TSA. After the termination of TSA, the concerned DIC shall be ineligible to inject power into ISTS.

Issue No. 4: What should be the effective date from which billing should start for operationalization of LTA?

49. Clause 2(c) of the BPTA provides as under:

“2(c) Each Long term transmission customer(including/assignee) shall pay the applicable transmission charges from the date of commissioning of the respective transmission system which would not be prior to the schedule commissioning date of generating units as indicated by the respective developer as per Annexure-I. The Commissioning of the transmission system would be preponed only if the same is agreed mutually by concerned parties.”

As per the above provisions, LTA customer is required to pay the applicable transmission charges from the date of commissioning of the respective transmission system or the date of commencement of LTA whichever is later which would not be prior to the scheduled commissioning date of generating units as indicated by the respective developer as per Annexure-I of the BPTA.

50. Regulation 14 of the Connectivity Regulations provides as under:



“14. Communication of Estimate of Transmission Charges, etc.: While granting long-term access, the nodal agency shall communicate to the applicant, the date from which long-term access shall be granted and an estimate of the transmission charges likely to be payable based on the prevailing costs, prices and methodology of sharing of transmission charges specified by the Commission.”

As per the above provision, CTU is required to indicate firm date from which LTA shall be granted. However, CTU while granting LTA has indicated that LTA grant is subject to commissioning of identified transmission system. Therefore, in certain cases, the generators have commissioned their generating stations and are injecting power in short term due to two possibilities. First, the entire transmission system associated with the generator has not been commissioned, and therefore, CTU has not operationalized the LTA. Secondly, entire transmission system associated with the generator has been commissioned but CTU has not operationalized LTA due to non-availability of payment security mechanism by the generator. In certain cases, the scheduled date of commencement of LTA is over but the complete transmission system required as per the LTA grant is not commissioned.

51. The Petitioner has argued that operationalization of LTA without the adequate payment security mechanism is not only contrary to governing covenants of the applicable Regulations, but also exposes the Petitioner to the risk of increasing its Non-Performing Assets. It is noted that CTU has established a particular set of transmission lines on request of the LTA by the generator(s) and based on the regulatory approval. The LTA Agreements signed between the CTU and generators clearly provides that the generator is liable to pay the transmission charges. Once the transmission system for operationalization of LTA has achieved its commercial operation and the transmission charges start accruing, liability for payment of such charges cannot be made subject to opening of payment security mechanism by a generator. In such cases, the generators get a perverse incentive by not opening



payment security mechanism and consequently the transmission charges are borne by the other DICs in proportion to their LTAs. In our view, once the transmission systems are put under commercial operation, liability for payment of the transmission charges shall accrue to the generators who are under statutory and contractual obligations to bear the transmission charges for the concerned transmission systems. CTU as a statutory body is expected to be proactive in safeguarding interests of transmission licensees and the beneficiaries/discoms who would be burdened with transmission charges otherwise payable by the generators.

52. CTU has expressed apprehension that if LTA is operationalized in the absence of LC, the Petitioner would not be able to recover the transmission charges in the event of default by the DICs. In our view, though there is provision in the BCD Procedure for opening of LC one month prior to the effective date, LC is not a condition precedent for operationalization of LTA. If LTA is not operationalized pending opening of LCs, this will give perverse incentives to the DICs not to open the LCs to avoid paying the transmission charges. There is therefore a need for prescribing certain deterrent measures against the defaulting DICs. In our view, a DIC who has been granted LTA but does not intend to open the LCs, he shall be debarred from applying for medium term open access and short term open access. As a result, the DIC in order to avail the medium term and short term open access will be forced to make payment of LTA charges. Accordingly, we direct that if the DIC fails to make payment of the transmission charges or open letter of credit at the end of the month after operationalization of LTA, it shall be denied medium term open access and short term open access till it makes payment of transmission charges and open letter of credit.



Issue No.5: How the cases of the LTA Customers shall be dealt with where the associated transmission system required for LTA operationalization as identified in BPTA have been commissioned but LC has not been opened and billing has not been started by CTU from the effective date of LTA?

53. The Petitioner has submitted the status of the Respondents as under:

S. No	Name of LTC Customer	Current Status
1.	Mahan (Essar Power Ltd.)	LC has not been opened and LTA is not in operation. (1200 MW)
2.	CSPTCL	418 MW LTA relinquished and 14 MW LTA is not in operation and LC has not been opened.
3.	Ind Barath Energy (Utkal) Ltd.	500 MW LTA is under operation and LC has been opened. For balance 116 MW LTA is not operational and LC has not been opened.
4.	GMR Kamalanga Energy Ltd.	387 MW LTA is under operation and LC has been opened. 153 MW LTA capacity has been relinquished and balance capacity 260 MW LTA is not in operation and LC has not been opened.
5.	Monnet Power Company Ltd.	LTA is not operationalized and LC has not been opened.
6.	Lanco Babandh Pvt. Ltd.	LTA is not Operationalized and LC has not been opened.

54. As discussed in preceding paragraphs, the LC is an instrument for payment of recovery mechanism which can be invoked by the transmission service provider (in this case, the Petitioner is transmission service provider) on default of payment. The transmission service charges are payable from the date of commencement of LTA. Since, the Petitioner has already developed the transmission system as identified in the BPTA, the LC is required to be in place immediately if not already done. The transmission service charges shall be payable from the date of commencement of LTA. Therefore, the Respondents are directed to comply with the regulatory requirements for availing the transmission service from the petitioner and open the LC within 30 days of the date of issue of the order.



55. Where entire Associated Transmission System has been commissioned but the generator has not established payment security mechanism and/or the generating stations have not been commissioned, the CTU shall operationalize the LTA from the date of commissioning of the entire transmission system retrospectively and shall raise the bills as per Regulations in vogue. In case, a particular generator has done certain transactions under STOA / MTOA post the date of commencement of LTA, the charges already paid towards such transactions shall be offset from the bills to be raised for the LTA.

56. With regard to part transmission system commissioned post 1.5.2015, the second proviso of Regulation 8(5) of Sharing Regulations effective from 1.5.2015 provides for part operationalization/commencement of LTA as under:

“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.”

57. The Commission vide orders dated 30.6.2016 and 6.7.2017 in Petition Nos. 10/SM/2014 and 103/MP/2017 respectively has dealt with the similar issue. Relevant portion of the order dated 30.6.2016 in Petition No. 10/SM/2014 is extracted as under:

“27. We are in agreement with the recommendations of SRPC. In our view, the LTA of UPCL shall be operationalised with effect from COD of 400 kV Hassan-Mysore D/C transmission line i.e. from 1.7.2011 and shall be effective from the same date. LTA has been granted for 939 MW i.e. Karnataka 895 MW and Punjab 94 MW. 400 kV Hassan-Mysore line was commissioned on 1.7.2011. Therefore, payment of transmission charges for the 400 kV Hassan-Mysore line has to commence with effect from 1.7.2011.

Further, BPTA has not been signed so far towards LTA sought by Udupi. Despite the non-signing of BPTA, power is flowing on 400 kV Hassan-Mysore D/C transmission line. As submitted by UPCL in SRPC, 845 MW injection at Hassan has been based as per the load flow study of KPTCL. In other words, the ESCOMs of Karnataka have been drawing their shares of power as well as the share of Power of Punjab from



Udupi through the 400 kV Hassan-Mysore D/C transmission line. In our view, even though ESCOMs of Karnataka and PSPCL have not signed the BPTA towards LTA sought by Udupi, since the Hassan-Mysore line has been commissioned on 1.7.2011. LTA is deemed to have been operationalized with effect from 1.7.2011.”

The relevant portion of the order dated 6.7.2017 in Petition No. 103/MP/2017 is extracted as under:

“15. We also observe that even though the transmission lines were ready in February, 2016, PGCIL has operationalized the LTA only in July, 2016. Since the LTA customers carry the liability to pay the transmission charges from the date of commissioning of the transmission system based on which LTA has been granted, any delay in operationalization of the LTA beyond the COD of the concerned transmission system goes against the letter and spirit of the Connectivity Regulations and BPTA. In our view, CTU should take immediate steps to operationalize the LTA after commissioning of the transmission system without being at the mercy of the LTA customers to open the LC in order to operationalize the LTA.”

58. The Petitioner shall keep the above decision in view with regard to the operationalisation of LTA.

Issue No.6: How the cases of the LTA Customers where the LTAs have been relinquished prior to operationalization of LTA by CTU?

59. In these cases, the generators shall be liable for transmission charges from the date of operationalisation of LTA till the date of relinquishment. From the date of relinquishment, the generator shall be liable for payment of relinquishment charges as determined by the Commission in Petition No. 92/MP/2015.

Issue No.7: What should be the effective date of LTA in case LTA grant is subject to the commissioning/availability of dedicated transmission line (under the scope of the Generator) and same has not been commissioned by IPPs/Generators?

60. The generators have argued on the above issue. However, we have considered the submission of one of the generators, namely EPMPPL. EPMPPL vide its affidavit dated 30.10.2016, has submitted that the scheduled date of open access has not been communicated by the Petitioner. However, the Petitioner in the petition has



given operationalization details of the LTA applicants in Table -1 annexed with the petition at Page 90. EPMPPL has submitted that at Point 6 of the said table, the schedule of completion of common transmission system has been indicated tentatively as March 2016. Therefore, the question of payment security mechanism being not established by EPMPPL, does not arise at this stage. The Petitioner vide its letter dated 17.7.2015 informed EPMPPL that the transmission system planned is scheduled for commissioning by September/October, 2015. The relevant portion of the said letter is extracted as under:

".....We write with reference to Agreement for Long Term Access entered into between PGCIL & M/s. Essar Power MP Ltd, on 7.1.2009 for LTA of 1200 MW {700MW –Essar Steel: 400MW: 100; Essar power MP Ltd. The transmission system planned is scheduled for commissioning by Sept/Oct.2015.
....."

Perusal of the above letter reveals that the CTU did not indicate firm date from which LTA was effective rather indicated September/October, 2015. In our view, CTU should have indicated firm date from which LTA was effective.

61. EPMPPL, vide its affidavit dated 30.10.2015, has placed on record the copy of the grant of LTA which is extracted as under:

'(d) Transmission strengthening requirement (Dedicated part):

- i) WR Pooling Station (near Sipat)-Mahan TPS 400kV D/c (Triple)
- ii) Establishment of 400/220kV, 3x500MVA substation at Hazdra (Essar Steel)

M/s Essar Power MP Ltd shall ensure availability of above identified system strengthening scheme at its own cost before commencement of Long-term Open Access

Note: Interconnection at Hazira (Essar Steel) with WR grid shall be on standalone basis, is on radial mode and shall not be directly or indirectly connected to 220kV network of GETCO.

(e) Date of commencement of open access :

Date of commencement of above open access would be from the fulfillment of below listed all conditions.



- (1) Availability of above dedicated tr. system (para d)
- (2) Availability of following tr. System indicated
 - a) Establishment of 400/765 kV 3x 1500MVA WR Pooling Station (near Sipat)
 - b) LILO of 765 kV Sipat-Seoni 2xS/c at WR Pooling station
 - c) Installation of 765/400 kV 3x1500 MVA transformers at Wardha to charge Seoni-Wardha 2xS/C at 765 kV level.
- (3) Removing of LILO arrangement of 400L-V Vindhyachal-Korba STPP one line at Mahan TPS & restoration of LILO of 400 kV Vindhyachal-Korba STPP line to its original configuration.
- (4) Availability of transmission system of various generation projects viz. Sipat-I & II, Sipat-U supplementary schemes, Kahalgaon-IL, Barh and all other Western Region system strengthening schemes like WRSS-L II, HL IV scheduled for implementation by time frame from which open access is desired,
- (5) Signing of BPTA with POWERGRID by M/s Essar Power MP Ltd for sharing of Western Regional transmission charges corresponding to entire 1200MW generation capacity.”

Perusal of the above letter reveals that PGCIL has indicated date of commencement of Open Access, subject to the availability of the indicated dedicated transmission system. In our view, such conditions for grant of LTA should not affect commencement of LTA if the associated transmission system is commissioned.

62. With regard to delay in completion of dedicated transmission line by the generator, the Appellate Tribunal for Electricity vide its judgment dated 13.10.2015 in Appeal No. 6/2015 (GETCO Vs GERC) has observed as under:

“10.(XXI)...

The Respondent No.2 has sought for connection through a dedicated transmission line to Varsana sub-station and had entered into BPTA for use of the Intra State Transmission System beyond Varsana sub-station. The issue at present is delay in commissioning of the dedicated transmission line and whether the transmission charges payable for the MW capacity contracted on the Intra-State transmission line should not be claimed by extending commencement of the BPTA to 31.12.2014...

11. Respondent No.2 has raised the issue of nonpayment of transmission charges to the Appellant as there has been no use of the transmission system by the Respondent no.2 and further in the absence of any proof of stranded capacity on the transmission system. In the impugned order, the State Commission has not dealt with the above on the grounds that it is not necessary to deal with the same on account of extension of time till 31.12.2014 being allowed. The Respondent no.2 is bound by the



terms and conditions of the BPTA. Under the BPTA Respondent no.2 reserved capacity of 275 MW on the Intra-State Transmission Network. Respondent no.2 has not terminated the BPTA or surrendered the capacity. The above capacity has been blocked for the Respondent no.2 by the Appellant and cannot be given to others. In terms of the Open Access Regulations, Respondent no.2 is liable to pay the transmission charges as determined by the State Commission based on per MW capacity booked irrespective of the actual use of the transmission line. Respondent no.2 is bound to pay the transmission charges as per the Regulation irrespective of whether it had used the transmission or not.”

As per the above judgment, irrespective of availability of dedicated transmission line, the charges for transmission capacity booked for the applicant are required to be paid. Accordingly, we direct that in cases where LTA capacity has been reserved for the Respondents as per the BPTA signed by them but CTU has granted LTA subject to commissioning of dedicated transmission line, the LTA shall be made operational retrospectively even if dedicated transmission line has not been commissioned and the Respondents are bound to pay the transmission charges.

Summary of Decisions:

63. The summary of our decisions is as under:

- (a) The Petition is maintainable under Section 79(1)(c) read with the Sharing Regulations and BCD Procedure. The petition is treated as a Miscellaneous Petition instead of Regulatory Compliance Application.
- (b) Payment Security Mechanism is an important regulatory requirement for availing the transmission services and all Respondents are directed to open the LC for the required amount one month before the operationalization of LTA. CTU is directed to inform the firm dates to facilitate institution of Payment Security Mechanism.
- (c) Opening of the LC is a statutory requirement in terms of Regulation 12(8)



of Sharing Regulations, clause 3.6 of the BCD Procedure and Transmission Service Agreement. Failure to open the LCs constitute on event of default by DIC in terms of Article 16.2 of the TSA leading to termination of TSA under Article 16.4 of the TSA.

(d) Where the entire transmission system has been commissioned but the generator has not established payment security mechanism and/or the generating station has not been commissioned, CTU shall operationalize the LTA from the date of the commissioning of the entire transmission system and raise the bills as per Regulations in vogue. In case, a particular generator has carried out certain transactions under STOA / MTOA after the date of commencement of LTA i.e. date of commissioning of entire transmission system, the charges already paid towards such transactions shall be offset from the bills to be raised for LTA. If the generatro does not open the LCs, it shall be denied medium term open access and short term open access till hte LCs are opened.

(e) With regard to part transmission system commissioned post 1.5.2015, CTU shall operationalize part LTA in terms of Regulation 8(5) of Sharing Regulations and shall raise the bills as per Regulations in vogue. In case, a particular generator has carried out certain transactions under STOA/MTOA after the date of commencement of the LTA, the charges already paid towards such transactions shall be offset from the bills to be raised for the LTA.

(f) With regard to Associated Transmission System commissioned but LTA



being relinquished post the effective date of LTA, CTU shall estimate date of operationalisation of LTA for all the generators under above paras (a) and (b), irrespective of whether they have relinquished the LTA. In case, LTA has been relinquished post effective date of LTA as estimated under above paras (a) and (b), the generator shall be liable to pay transmission charges for the period from effective date of LTA till date of relinquishment and thereafter as determined by the Commission in Petition No. 92/MP/2015.

(g) The charges collected under the above cases shall be reimbursed back to LTA customers under Sharing Regulations for the corresponding period.

64. The LTA shall be made effective retrospectively for the entire quantum of LTA as per above paras (a), (b) and (c) irrespective of payment security established by all the generators including the above generators.

65. The Petition along with IAs is disposed of in terms of the above.

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

sd/-
(A.S. Bakshi)
Member

sd/-
(A. K. Singhal)
Member

