

**Central Electricity Regulatory Commission,  
New Delhi**

**Petition No. 92/MP/2017 alongwith  
IA No. 91/2017**

**Coram:**

**Shri A.K. Singhal, Member  
Shri A.S. Bakshi, Member  
Dr. M. K. Iyer, Member**

**Date of Order: 8<sup>th</sup> of May, 2018**

**In the matter of:**

Petition under Section 79 (1) (c) of the Electricity Act, 2003 read with Regulation 111 & 114 of the CERC Conduct of Business Regulations, 1999 and appropriate provisions of the CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009; CERC (Sharing of Interstate Transmission Charges and Losses) Regulations, 2010; Central Electricity Regulatory Commission (Grant of Regulatory Approval for execution of Inter-State Transmission Scheme to Central Transmission Utility) Regulations, 2010 for Signing of Long Term Access Agreement for Transmission System for evacuation of power from Unchahar TPS of NTPC.

**And**

**In the matter of**

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

**....Petitioner**

**VERSUS**

1. NTPC Limited  
Core 7, SCOPE Complex  
Lodhi Road, New Delhi – 110003
2. Rajasthan Rajya Vidyut Prasaran Nigam Ltd.  
Vidyut Bhawan Vidyut Marg,  
Jaipur- 302 005
3. Ajmer Vidyut Vitran Nigam Ltd  
400 KV GSS Building, Ajmer Road, Heerapura,  
Jaipur – 302024



4. Jaipur Vidyut Vitran Nigam Ltd  
400 KV GSS Building, Ajmer Road, Heerapura,  
Jaipur – 302024
5. Jodhpur Vidyut Vitran Nigam Ltd  
400 KV GSS Building, Ajmer Road, Heerapura,  
Jaipur – 302024
6. Himachal Pradesh State Electricity Board  
Vidyut Bhawan, Shimla - 171 004 (H.P)
7. Punjab State Electricity Board,  
The mall, Patiala-147 001
8. Haryana Power Purchase Centre,  
IInd Floor, Shakti Bhawan,  
Sector-6, Panchkula - 134 109
9. Power Development Department  
janipura Grid Station, Jammu (Tawi) - 180 007
10. Uttar Pradesh Power Corporation Ltd.  
10th Floor, Shakti Bhawan Extn.  
14, Ashok Marg, Lucknow - 226 001
11. Delhi Transco Ltd.  
Shakti Sadan  
Kotla Road (near ITO), New Delhi – 110002
12. BSES Rajdhani Power Ltd  
Shakti Kiran Building, Karkardooma,  
Delhi-110092
13. BSES Rajdhani Power Ltd,  
BSES Bhawan, Nehru Place, New Delhi – 110019
14. North Delhi Power Ltd.  
Power Trading & Load Dispatch Group,  
Cennet Building, Adjacent to 66/11Kv Pitampura-3  
Grid Building, Near PP jewelers,  
Pitampura, New Delhi-110034
15. Chandigarh Administration  
Sector -9, Chandigarh – 160009



16. Uttarakhand Power Corporation Ltd.  
Urja Bhawan, Kanwali Road, Dehradun – 248001
17. Northern Central Railway  
Allahabad – 211011
18. New Delhi Municipal Council  
Palika Kendra, Sansad Marg,  
New Delhi-110002

... Respondents

**Parties present:**

Ms. Swapna Seshadri, Advocate, PGCIL  
Ms. Rhea Luthra, Advocate, PGCIL  
Ms. Parichita Chowdhary, Advocate, PGCIL  
Ms. Ranjitha Ramachandran, Advocate, NTPC  
Ms. Poorva Saigal, Advocate, NTPC  
Shri Manoj Kumar Sharma, NTPC  
Shri Naresh Kumar Agarwal, RRVPNL

**ORDER**

The Petitioner, Power Grid Corporation of India Limited (PGCIL), has filed the present petition under Section 79(1)(c) of the Electricity Act, 2003 read with Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Access in inter-State transmission and related matters) Regulations, 2009 (hereinafter referred to as the “Connectivity Regulations”) and Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 (hereinafter referred to as “the Sharing Regulations”) for seeking directions to the respondents to sign the LTA Agreement for Transmission System for evacuation of power from Unchahar TPS of NTPC.

2. The Petitioner has submitted that the following facts have led to the filing of the present petition:



(a) The Respondent No. 1, NTPC Limited is in the process of setting up a 500 MW thermal power project at Unchahar in the State of Uttar Pradesh. NTPC made an application to CTU for grant of long term access vide letter No 01:CD:706 dated 8.8.2011. The beneficiaries of the system were submitted to the Petitioner as under :

<b>Beneficiaries</b>	<b>(MW)</b>
Uttar Pradesh	167.38
UPCL	23.19
Delhi Discoms	72.39
Haryana	33
Rajasthan Discoms	64.67
HPSEB	18.91
PDD,J&K	38.4
UT, Chandigarh	3.46
Unallocated	74.37

(b) The above aspect of connectivity was discussed in the Connectivity / LTA meeting dated 2.1.2013. Thereafter, the LTA was granted by the Petitioner vide letter dated C/CTU/LTA/N/2013/05 dated 3.1.2014 to NTPC. The following transmission system was decided to be implemented –

- Unchahar-Fatehpur 400 kV D/c line
- 500MVA, 400/220 kV ICT at NTPC switchyard of Unchahar Thermal Power project.

(c) The matter of Connectivity & LTA of Unchahar Generation project was also discussed in the 27<sup>th</sup> TCC/ 30<sup>th</sup> NRPC meeting held on 27/28<sup>th</sup> February 2014 as under :

“D4.13.1 As discussed during 25<sup>th</sup> NRPC meeting held on 24-2-2012 it was agreed Unchahar power project would be connected to ISTS through Unchahar – Fatehpur 400 kV D/c from Nov 2016. Further a 400/220kV, 500MVA transformer would be provided at Unchahar for anchoring to the Generating units by NTPC. Line is being implemented under tariff based competitive bidding.”



(d) In fact, the Unchahar-Fatehpur D/c line is one of the lines identified to be constructed under the competitive bidding route. The decision for lines / assets to be implemented through competitive bidding is taken by the Empowered Committee and the decision to implement the Unchahar-Fatehpur 400 kV D/c line was implemented under bidding route by PUTL was taken on 17 Feb 2012.

(e) Pursuant to the award, the Unchahar-Fatehpur 400 kV D/c has been implemented and got commissioned in November 2016. The Unchahar Generating Station is also under implementation and has availed start up power for commissioning activities.

(f) The Petitioner has been pursuing with all the concerned parties to sign the LTA Agreement in compliance of Regulation 15 of the Connectivity Regulations.

(g) A combined reading of the Regulation 15 and detailed procedure notified under the connectivity Regulations clarifies the position that Regulation 2 (b) (i) deals with the categories of applicants for connectivity, Regulation 2 (b) (ii) & (iii) deals with the applicants for LTOA/ MTOA. This includes a generating company as well as distribution licensees, Regulation 15 of the Connectivity Regulations uses the term 'applicant' and mandates such an 'applicant' to sign the LTA Agreement with the CTU.

(h) Further, the term 'applicant' needs to be given a contextual meaning, namely that whichever category of person is the 'applicant' with the CTU needs to sign the LTA Agreement. The signing of the LTA Agreement is not an option but a mandate since the word used in Regulation 15 is 'shall'. The Detailed Procedure gives an exception to such applicants who are central generating companies



and whose power is being allocated by the Central Government to give a bank guarantee to the CTU and the CTU can however undertake the transmission system augmentation if there is an agreement to pay the transmission charges in the Standing Committee. There is also an option that the beneficiaries of such a generating station, if identified can sign the LTA Agreement with the CTU directly.

(i) The Petitioner has been writing to NTPC, who is the applicant to sign the LTA Agreement. NTPC has taken the position that only the beneficiaries of the power from the Unchahar Station need to sign the LTA and NTPC is only a facilitator in this process.

(j) The Petitioner has also in parallel pursued with the beneficiaries to sign the LTA. However, except, UPPCL, Haryana, Uttarakhand & Rajasthan, no other beneficiary has signed the LTA Agreement. The Petitioner is placed in a precarious position due to the unreasonable position being taken by NTPC that it is not required to sign the LTA Agreement and is only a facilitator. It is worthwhile to note that TPDDL, a Delhi Discom, has refused to avail the share of power (72.39MW) from this generation project.

(k) The stand taken by NTPC is not in accordance with the Connectivity Regulations. The mandate, as per the Connectivity Regulations is on the 'applicant' to sign the LTA Agreement. In the present case, NTPC is the applicant. The Detailed Procedure only gives an option to the beneficiaries to directly sign the LTA Agreement with the CTU and cannot be read against the provisions of the Connectivity Regulations.



(l) The transmission charges for the system need to be paid by the beneficiaries of such system. However, this does not take away the mandate on the applicant to sign the LTA Agreement with the CTU. Such signing is a requirement of the Regulations and needs to be complied with by the 'applicant'.

(m) NTPC is taking the position that it is an 'applicant' on behalf of the beneficiaries. This being the case, NTPC is still mandated under the Connectivity Regulations to sign the LTA Agreement to enable the compliance of the Regulatory provisions.

(n) In the meanwhile, NTPC vide its letter No. 01:CD:136 dated 24.10.2016 has also unilaterally revised the quantum of power to be availed by respective beneficiaries and also the change in date of applicability of long term access. The Petitioner vide its letter dated 7.12.2016 has clarified that such revisions are not tenable and needs to be done only as per the Connectivity Regulations.

(o) In the facts and circumstances mentioned above, the Petitioner has been constrained to file the present petition seeking directions for regulatory compliance.

(p) The issues in the present petition is pivotal and will arise in several cases where the transmission systems and generation capacities are being implemented in parallel. The Commission has therefore in Regulation 15 of the Connectivity Regulations used the term 'applicant' and mandated the applicant to sign the LTA Agreement. In the present case, the transmission system is already completed (being under competitive bidding), and either NTPC or the



beneficiaries of Unchahar TPP need to sign the LTA Agreement at the earliest possible.

3. Against the above background, the Petitioner has made the following prayers:

- a) Admit the petition;
- b) List the matter for urgent hearing in light of the grounds raised above;
- c) Direct NTPC – ‘the applicant’ to sign the LTA Agreement as per the Connectivity Regulations;
- d) In the alternative, direct the beneficiaries of Unchahar Station to sign the LTA Agreement, as per the detailed procedure and
- e) Pass such other orders as deemed fit and proper.

4. Notices were issued to the respondents to file their replies. Reply to the Petition has been filed by NTPC Ltd., Respondent No.1 and Petitioner has filed rejoinder to the same.

#### **Reply of the Respondent No.1**

5. The Respondent, NTPC, vide its reply affidavit dated 27.6.2017, has submitted as under:

(a) The power generated from the Unchahar, Stage-IV has been apportioned between the various beneficiaries, namely, the State Utilities of UP, Uttarakhand, Delhi (TPDDL), Haryana, Rajasthan, HP, J&K and UT of Chandigarh in terms of the Government of India Guidelines. The allocation of power from Unchahar Stage-IV is to be made by the MoP and is under process;

(b) The PPAs between NTPC and each of the said beneficiaries provide for the beneficiaries to arrange for the transmission of power from the bus-bar of the

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Unchahar Generating Station. The obligation of NTPC under the PPA is to generate and deliver electricity at the bus-bar. Clause 3.1 of the PPA with UPPCL, *inter alia*, provides as under:

“3.1 Sale of electricity shall be at bus-bars of the station and it shall be the obligation and responsibility of UPPCL to make the required arrangement for evacuation of electricity from such delivery points of the NTPC.

3.2 For timely and expeditious development of the required transmission system for evacuation of power from the said project to its various beneficiaries, NTPC shall initially make an application for connectivity and long term access to the CTU/ POWERGRID on behalf of the beneficiaries. The UPPCL hereby consents for NTPC to make the said application on its behalf. The UPPCL also agrees to subsequently sign all necessary agreements, including BPTA with POWERGRID/ Other transmission licensees developing the identified transmission system, corresponding to their share of allocated capacity from the project.”

The Respondent has submitted that similar PPA has been signed with other beneficiaries also.

(c) The PPAs with other beneficiaries also contain similar clauses. NTPC’s obligation shall stand fulfilled by making available the delivery of power at the bus bar. The transmission of such electricity from the bus bar to the destination of the beneficiaries is entirely the responsibility of the beneficiaries and is a post-delivery event of the contracted power by NTPC. This aspect has been held by the Commission in its judgment dated 3.2.2014 in Petition No. 145/MP/2013.

(d) In the present case, the beneficiaries of the power to be generated at Unchahar Generating station have been identified and delivery of the power, in so far as the obligation of NTPC is concerned, is at bus-bar of the generating station. Accordingly, the Long Term Open Access Agreement needs to be signed by such beneficiaries- purchasers of power from Unchahar Station, Stage IV in respect of the quantum of contracted capacity and the said beneficiaries are liable to discharge all the obligations qua Powergrid and as provided under



the applicable Regulations for availing the transmission facilities for conveyance of power from the place of generation to the periphery of the respective State Transmission system.

(e) On 8.8.2011, NTPC, in order to facilitate the processing of LTA, on behalf of the beneficiaries, based on their clear and explicit written consent, applied to the POWERGRID for grant of LTA. The Application dated 8.8.2011 specifically states as under:

“Please find enclosed the LTA application including Format LTA-I and LTA-2 along with the application fees of Rs. 3,00,000 (Rupees three lacs only) vide bankers cheque No. 701572 dated 08.08.2011, as per CERC Regulation on "Grant of Connectivity, Long Term Access and Medium-term Open Access in inter-State Transmission and related matters Regulations, 2009" and subsequent procedures dated 31.12.2009. The drawls of various beneficiaries, considered in the application are considered as per existing Gol guidelines. Final allocation of power shall be notified by Gol at the time of commissioning of station. Application for Grant of Connectivity has already been made vide out letter dated 27.01.2011 (copy of letter enclosed) NTPC is making this application on behalf of the beneficiaries. The beneficiaries have agreed for subsequent signing of all necessary agreements including BPTA etc with Powergrid other transmission licensee developing the identified transmission system corresponding to their final share of allocated capacity from the protect. It is requested that the enclosed application may be processed at your end. Since few beneficiaries are yet to sign PPA (Haryana, Rajasthan, Chandigarh & J&K). NTPC may revise the application for draw of various beneficiaries.”

(f) The respondent has referred to the order dated 9.3.2016 in Petition No. 69/MP/2015, North Karanpura STPS of NTPC Limited, as well as the order dated 31.1.2013 in Petition No. 133/MP/2012 applicable on the facts and circumstances of the present case. The relevant extracts of the order dated 9.3.2016 is as under:

“19. The Commission in the said order has clarified that in case of inter-State generating stations owned by Central government where power has been allocated by Central Government, the long term agreements shall be signed by beneficiaries of the generating stations.



20. In the present case, the Government of India, Ministry of Power vide its letter dated 7.9.2015 has allocated the power from the generating station to the beneficiaries of Eastern Region. Accordingly, as per the provisions of Regulation 15 of the Connectivity Regulations and Clause 27.3 of the Detailed Procedure approved there under, and in our finding in order dated 31.1.2013 in PetitionNo. 133/MP/2012. The beneficiaries of the generating station are directed to sign the LTA Agreement with CTU within one month from the issue of the order.”

(g) TPDDL has indicated that he is not in a position to sign the LTA agreement and has requested the MoP for de-allocation of power. Similarly, HPSEB is now not willing to sign LTA Agreement and has requested to NTPC for surrender of its share from the Unchahar Stage-IV. The contention of the Petitioner that refusal of TPDDL to avail the power from Unchahar, Stage-IV, is contrary to the terms of the order dated 31.3.2017 in Petition No. 182/MP/2015.

(h) On 24.10.2016, POWERGRID was requested for a revision in the LTA quantum in terms of the 2<sup>nd</sup> Amendment to the Sharing Regulations notified on 28.3.2012, which *inter alia* provides as under:-

(2) The following proviso shall be inserted under sub-clause (f) of clause (I) of Regulation 2 of the Principal Regulations:

"Provided that the overload capability of a generating unit in which the DIC has an allocation or with which it has signed a contract, shall not be used for calculating the approved withdrawal under long term access (LTA)."

(i) The LTA Application dated 8.8.2011 was based on norms applicable as per the 2009 Tariff Regulations. These norms have been revised in the 2014 Tariff Regulations, e.g. Auxiliary Energy Consumption for 500 MW and above unit has been revised to 5.75% (with induced draft Cooling Tower). Accordingly, NTPC applied for a revised LTA for 471.25 MW instead of the earlier 495.78 MW. Powergrid is yet to give effect to the revision sought for by NTPC.



6. NTPC, vide affidavit dated 26.8.2017, has placed on record the allocation letter dated 6.7.2017 issued by Ministry of Power in respect of Unchahar Thermal Power Station, Stage-IV. Relevant portion of the said letter dated 26.8.2017 is extracted as under:

<b>Northern Region</b>	<b>Net Share (MW)</b>	<b>% of installed capacity</b>
Haryana	37.95	7.59
Himachal Pradesh	22.21	4.44
J&K	55.19	11.04
Punjab	0.00	0.00
Rajasthan	74.09	14.82
U.P	173.14	34.63
Uttarakhand	30.64	6.13
Chandigarh	4.19	0.84
Delhi	27.59	5.52
Unallocated	75.00	15.00
Total (WR)	500.00	100.00

#### **Rejoinder to the Reply of the Respondent**

7. The Petitioner vide affidavit dated 3.10.2017 has submitted as under:

(a) The main issue arising out in the matter is signing of Long Term Access Agreement which is a statutory duty as per the Regulations. The Associated Transmission System has been developed based on the LTA application by the LTA Applicant viz. NTPC. PPAs are irrelevant for the Petitioner who in the capacity of CTU has developed the Transmission System for NTPC and also is not a party to the PPAs entered by NTPC and its beneficiaries. The Petitioner as CTU is not concerned if beneficiaries are reluctant to sign the LTA Agreement for what so ever reason in view of the fact that huge expenses have been incurred in order to prepare the Transmission System based on the extensive studies undertaken after receipt of the LTA Application of NTPC.



(b) These expenses are to be recovered over a long period by way of the transmission charges to be paid by NTPC and other DICs who later join the ISTS. Whether or not the beneficiaries require power at this stage is irrelevant since, the Petitioner as CTU has fulfilled its part of the statutory duty by planning the system and incurring expenses for the benefit of the LTA Applicant. Further, the PPAs are a contract between the beneficiaries and NTPC and as such have no bearing on the development of the ATS. In a sharp contrast, the duty of a generator to coordinate with CTU is a statutory obligation, which must be discharged for the efficient and timely development of the required transmission system.

(c) The beneficiaries, TPDDL and HPSEBL have clearly stated that they are not in a position to take the power from the Unchahar Generating Station. HPSEBL has taken the position that it is surrendering the power from Unchahar IV and does not require to sign the LTA Agreement. However, it is the sole responsibility of LTA Applicant viz. NTPC to sign the LTA Agreement since all the beneficiaries are not ready to sign the LTA Agreement. The Petitioner during the pendency of the petition was endeavoring to get the beneficiaries to sign the LTA Agreement. However, since all the beneficiaries have not signed the LTA Agreement, the issue now needs to be decided by the Commission.

(d) The clauses of the PPA between NTPC and the beneficiaries cannot override the provisions of the Connectivity Regulations and the Detailed Procedure. The rights and obligations assumed by NTPC and the beneficiaries qua each other in the PPA cannot decide the legal issue which has arisen in the present case. Further, the reliance on the order of the Commission dated 3.2.2014 in the Petition No. 145/MP/2013 (DNH Power Distribution Company Ltd v/s NSPCL) is

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also misconceived. The denial of Open Access was sought to be adjudicated as a 'Force Majeure' which was not accepted by the Commission.

(e) The issue raised in the present petition is whether the generating company is liable to sign the LTA Agreement as per the Connectivity Regulations. NTPC remains the Applicant irrespective of the PPAs signed. It's only an option that in cases where PPAs have been signed, the beneficiaries may sign the LTA Agreement. Further, in the present case, the beneficiaries cannot be now termed as firm as two of them are surrendering their allocation of power. Even if all the beneficiaries were ready to sign the LTA Agreement, it was an option only and not mandatory for the beneficiaries to sign the LTA Agreement. However, in the present scenario, NTPC is the only entity who was granted LTA as per the Regulations and the sole responsibility of signing LTA Agreement in the present circumstances is with NTPC alone.

(f) NTPC has erred in interpreting Regulation 2 (b) (i) and 2 (b) (ii) & (hi). As per Regulation 15 of the Connectivity Regulations, applicant is required to sign the LTA Agreement with the Petitioner in accordance with the provision specified in the Detailed Procedure. The Petitioner, due to non-signing of LTA Agreement by the beneficiaries, wrote to NTPC to sign/facilitate signing of LTA Agreements by the beneficiaries. However, the same has not been materialized.

(g) NTPC has contended that the term 'Applicant' mentioned in the Regulations only includes the beneficiaries and not the generating company. NTPC has further contended that it is the sole responsibility of the Long Term Beneficiaries for all the obligations relating to the transmission system to be implemented by



the Petitioner for transmission of power from the Unchahar Generating Station in terms of the TSA entered into under the Sharing Regulations.

(h) The contention of NTPC that it has no responsibility to sign LTA as it has not signed the TSA is erroneous as NTPC has indeed signed the TSA with CTU on 4.4.2015. The provisions of Regulation 15 of the Connectivity Regulations cannot be given a go by. The primary submission of the Petitioner is that NTPC should sign the LTA Agreement qua the beneficiaries who do not come forward and sign the LTA Agreement due to the definition of the word 'Applicant' contained in Regulation 2 (b) read with Regulation 15 of the Connectivity Regulations.

(i) The Petitioner has pursued the matter with the beneficiaries as well as with NTPC regarding signing of the LTA Agreement. The Petitioner is placed in a precarious position due to the unreasonable position being taken by NTPC that it is not required to sign the LTA Agreement and is only a facilitator. It is erroneous on the part of NTPC to refer the order dated 31.1.2013 in Petition No. 133/MP/2012 to shirk its statutory duty of signing LTA Agreement as in the present case all the beneficiaries are not willing to sign the LTA Agreement unlike the issue of Petition No. 133/MP/2012.

(j) The decision of the Commission dated 31.1.2013 (PTCUL Case) was rendered in the context of the generating stations being connected at the STU and thereafter the CTU network. The terms of the PPA executed between the Respondent No.1 and its beneficiaries are not binding on the Petitioner in any manner. In the circumstances mentioned above, there is no merit in the contentions sought to be raised by NTPC.



**Submission in IA No. 91/2017:**

8. PGCIL in the IA has submitted as under:

(a) The issue to be decided is the manner in which the transmission systems for power evacuation from Central Sector Generating Companies need to be developed if the beneficiaries do not come forward to sign the LTA Agreement despite entering into the PPA and being aware of their obligations under the PPA. The principal reason in the reluctance to sign the LTA Agreement by the beneficiaries is because they do not require the power and have surrendered the power. Further, a Central Generating Station has several beneficiaries and it is not that the CTU can break down the planning and execution of the transmission system for evacuation in a disjointed manner and for particular beneficiaries only.

(b) NTPC has taken the position that it has no responsibility qua the beneficiaries who need to sign the LTA Agreement since the sale of power is at the bus bar of the generating station. While the matter has remained pending for adjudication, there have been certain subsequent developments which have necessitated the filing of the present application. While the transmission system for operationalisation of LTA was in place from Unchahar TPP IV (500 MW) it has been operationalized from 30.9.2017. While 6 of the beneficiaries of power from the generating station have signed the LTA Agreement (UPPCL, UPCL, HPPC, UT of Chandigarh, RUVNL, Power Department of J & K), 2 of the beneficiaries of power have refused to sign the LTA stating that the power is not required.





(c) HPSEBL and TPDDL have signed the PPAs but are taking the position that they are in the process of surrendering the power and therefore, would not require the LTA. The transmission system for evacuation of power from the Central Sector Generating Stations cannot be planned in isolation and irrespective of whether the PPA is honoured between the parties, in so far as the Petitioner / Applicant is concerned, the transmission system has to be serviced.

(d) In view of the fact that the first Unit of Unchahar Stage-IV has been commissioned on 30.9.2017, and in the RTA, for the month of October, 2017, the capacities allocated from the station to the various beneficiaries have been included, there is urgency in the matter and therefore, the present application is being moved. In the interim period and till the main matter is decided, the Petitioner /Applicant is proposing the following methodology of billing ;

- i) The beneficiaries TPDDL and HPSEBL are pursuing with MOP to get the power re-allocated. However, on the date of commissioning of the generating station and operationalisation of LTA i.e on 30.9.2017, the power has not been re-allocated.
- ii) Till such time the power is re-allocated, the beneficiaries to whom the power had been originally allocated will pay for the transmission charges and from the date of re-allocation, the new beneficiaries will pay the transmission charges in proportion to the power reallocated;
- iii) From the date of re-allocation there would be no difficulty because another beneficiary would take the power and sign the LTA Agreement, & utilize the LTA. The beneficiary to whom the power has been re-allocated would then pay for both the power purchase and the transmission charges;



(e) The above facts are also consistent with the principle in the Power Purchase Agreements entered into between NTPC and the beneficiaries which provides as under :

"12.4 In other cases NTPC shall have the right to terminate this Agreement. In the event of termination of this Agreement, UPPCL shall be liable and continue to pay the Capacity Charges each month till firm arrangement for sale of UPPCL's share with alternate customers substituting the UPPCL is tied up."

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6.2.10 Notwithstanding the obligations of UPPCL to pay all dues as per this Agreement, in the event of default in opening of LC of requisite amount in favour of NTPC or non-payment of bills within a period of 60 days of billing, NTPC shall be entitled to regulate/divert the contracted capacity of the UPPCL to any other Bulk Power Customer(s)/Third Party(ies) as per the provisions of the generic procedure for regulation of power supply issued by CERC from time to time read with the provisions of TPA (during the validity of TPA) till the time default is set right.

In case of default in payment of bills beyond a period of 90 days of billing, NTPC shall have the right to re-allocate power to other Bulk Power Customer(s).

It is clarified that the above arrangement shall not be construed as relieving UPPCL of any of its obligations to NTPC including obligation of payment of Capacity Charges.

For removal of any doubt it is clarified that in case of default, UPPCL shall continue to be liable to pay the Capacity Charges in proportion to its Contracted Capacity during the period of regulation/diversion of capacity or till the capacity is re-allocated to other Bulk Power Customer(s)/Third Party(ies). "

(f) Similar to the payment of fixed charges by the old beneficiaries to NTPC till such time the power gets re-allocated, the transmission charges should also be paid by the old beneficiaries till such time the power gets re-allocated. This would ensure that the transmission charges/LTA Charges are not loaded on the other beneficiaries of the system and as and when the new beneficiary gets decided, all the consequences follow. This would also act as a good and fair interim solution till the time a final view is taken in the matter by the Commission.



## **Reply of NTPC to the IA filed by the Petitioner**

9. The respondent, NTPC vide affidavit dated 12.1.2018 has submitted as under:

(a) The Petitioner has filed the Interim Application in regard to the signing of the Long Term Access Agreement and the billing/payment for the transmission system constructed by Powergrid for evacuation of power from the Unchahar Thermal Power Station, Stage IV(500 MW) of NTPC Limited, the first unit of which was declared under commercial operation on 30.9.2017.

(b) The power generated from the Unchahar Thermal Power Station, Stage IV has been apportioned between the various beneficiaries, namely, the State Utilities of Uttar Pradesh, Uttarakhand, Delhi (TATA Power Delhi Distribution Company Limited), Haryana, Rajasthan, Himachal Pradesh, Jammu and Kashmir and UT of Chandigarh in terms of the allocation made by the Ministry of Power on 6.7.2017.

(c) In terms of the above allocation, in the present case, the beneficiaries of the power to be generated at Unchahar Generating Station have been identified. Accordingly, the Long Term Open Access Agreement needs to be signed by such beneficiaries – purchasers of power from Unchahar Station, Stage IV in respect of the quantum of contracted capacity. The LTA Agreements with Rajasthan, Uttar Pradesh, Chandigarh, Haryana, Jammu & Kashmir and Uttarakhand have been signed. Initially, Himachal Pradesh State Electricity Board Limited (HPSEBL) refused to sign the LTA Agreement but subsequently on 29.12.2017, HBSEBL has also signed the LTA Agreement. However, Tata Power Delhi Distribution Company Limited has indicated that they are not in a



position to sign the LTA agreement and have requested for de-allocation of power.

(d) The Commission vide order dated 18.12.2017 in Petition No. 85/MP/2014 in the case of Power Grid Corporation of India Limited v Damodar Valley Corporation and Ors, has held that in case of PPAs based on Ministry of Power allocations, the beneficiaries are deemed LTA customers and it is immaterial whether the identified beneficiaries sign the LTA or not. The relevant portion of the said order dated 18.12.2017 is extracted as under:

“54. Therefore, the question arises as to what should be the basis of grant of LTA i.e. whether the PPA dated 24.8.2006 read with the minutes of the meeting dated 6.2.2012 or the application for LTA by a distribution company. As per the definition of LTA Customer in the Connectivity Regulation, a Long Term Customer is a person who has been granted long term access to inter-State transmission system including a person who has been allocated power from the Central Generating Stations by Government of India (Ministry of Power). In case of DVC, it is a mixed case of allocation by Ministry of Power and contractual arrangements between DVC and its beneficiaries. Allocation of power by Ministry of Power is mainly confined to sale on short term basis and all long term sale of power is based on contractual arrangement. **In case of PPAs based on Ministry of Power allocation, the beneficiaries are deemed LTA customers and, therefore, it is immaterial whether they sign the LTA Agreement or not and they shall be liable for LTA charges based on their allocation till the time their allocation is rescinded or transferred by Ministry of Power.....”**

(e) The principle laid down by the Commission in the above case squarely applies to the NTPC Generating Stations wherein the allocation is made by the Ministry of Power. Accordingly, the remaining beneficiary i.e. Tata Power Delhi Distribution Limited (27.59 MW) that is yet to sign the LTA Agreement and is proposing to surrender its allocated power, is a deemed LTA customer and shall be liable to pay the LTA charges until the request for surrender of allocated power is accepted by re-allocation to any other procurer and the allocation made to the said beneficiary is rescinded by the Ministry of Power.



(f) Further, the refusal of Tata Power to avail the power from Unchahar, Stage IV, is contrary to the terms of the order dated 31.3.2017 in Petition No. 182/MP/2015 wherein it was held that Tata Power cannot seek to unilaterally terminate the PPA (including for Unchahar, Stage IV) and the only avenue open to Tata Power is to approach the Ministry of Power, Government of India. Accordingly, until the Central Government deems it appropriate to re-allocate the share of Tata Power, the party shall continue to be bound by the provisions of the PPA and the LTA.

(g) Tata Power is liable to pay the applicable charges to the Petitioner. Uttar Pradesh has agreed to take surrendered share of Tata Power and HPSEBL from Unchahar-IV. In this regard, NTPC, vide letter dated 20.10.2017 has requested MoP, GoI to re-allocate surrendered share of power of these entities to Uttar Pradesh. Until such time the Ministry of Power re-allocates the power from Tata Power and HPSEBL, they shall continue to be liable to pay the LTA charges to the Petitioner for their contracted capacity in terms of the Ministry of Power allocation dated 6.7.2017.

(h) Despite seeking surrender of contracted capacity, Tata Power and HPSEBL have continued to schedule power from Unchahar, Stage IV. In this regard, NTPC has placed on record the Regional Energy Accounts (REA) for the months of September, October and November, 2017 indicating the power scheduled by Tata Power and HPSEBL. Since, both the above entities are availing power from Unchahar-IV, they are liable to pay transmission charges corresponding to their share of power allocated from Unchahar-IV.



10. NTPC vide affidavit dated 23.4.2018 has submitted that Ministry of Power vide letter dated 4/10.4.2018 has re-allocated 49.8 MW power surrendered from Unchahar Thermal Power Station, Stage-IV by Himachal Pradesh State Electricity Board Limited (22.21 MW) and Tata Power Delhi Distribution Limited (27.59 MW to Uttar Pradesh Power Corporation Limited (UPPCL).

**Analysis and Decision:**

11. The Petitioner has prayed to direct NTPC to sign the LTA Agreements or alternatively, direct the beneficiaries of Unchahar Generating Station to sign the LTA Agreement. According to the Petitioner, NTPC Limited is setting up a 500 MW thermal power project at Unchahar in the State of Uttar Pradesh and has made an application to CTU for grant of LTA on 8.8.2011 with beneficiaries such as distribution companies of U.P., Uttarakhand, Delhi, Haryana, Rajasthan, H.P., PDD-J&K and UT of Chandigarh.

12. The Petitioner in its IA No. IA 91/2017 has submitted that most of the beneficiaries have signed the LTA Agreements, whereas TPDDL has refused to sign the LTA Agreement on the ground that the power is not required and requested for re-allocation of power. TPDDL and HPSEBL are pursuing the matter with the Ministry of Power to get the power re-allocated. However, on the date of commissioning of the generating station and operationalization of LTA i.e. on 30.9.2017, the power was not re-allocated.

13. NTPC has submitted that NTPC, in order to facilitate the processing of LTA, on behalf of the beneficiaries based on their clear and explicit written consent, applied to CTU for grant of LTA on 8.8.2011 which was granted by CTU. NTPC has



submitted that Ministry of Power vide letter dated 6.7.2017 has made allocation in respect of Unchahar Thermal Power Station, Stage-IV as under:

<b>Northern Region</b>	<b>Net Share (MW)</b>	<b>% of installed capacity</b>
Haryana	37.95	7.59
Himachal Pradesh	22.21	4.44
J&K	55.19	11.04
Punjab	0.00	0.00
Rajasthan	74.09	14.82
U.P	173.14	34.63
Uttarakhand	30.64	6.13
Chandigarh	4.19	0.84
Delhi	27.59	5.52
Unallocated	75.00	15.00
<b>Total (WR)</b>	<b>500.00</b>	<b>100.00</b>

14. NTPC has contended that the LTA Agreements with Rajasthan, Uttar Pradesh, Chandigarh, Haryana, Jammu & Kashmir and Uttarakhand have been signed. Initially, Himachal Pradesh State Electricity Board Limited refused to sign the LTA Agreement but subsequently on 29.12.2017, HBSEBL has also signed the LTA Agreement. However, Tata Power Delhi Distribution Company Limited has indicated that he is not in a position to sign the LTA Agreement and has requested for de-allocation of power. NTPC has submitted that Tata Power Delhi Distribution Limited (27.59 MW) which has proposed to surrender its allocated power, is a deemed LTA customer and shall be liable to pay the LTA charges until the request for surrender of allocated power is accepted by re-allocation to any other procurer and the allocation made to the said beneficiary is rescinded/ re-allocated to other by the Ministry of Power.

15. NTPC has submitted that TPDDL and HPSEBL have continued to schedule power from Unchahar, Stage IV despite seeking surrender of their contracted capacities. NTPC has further submitted that since both the beneficiaries are availing



power from Unchahar-IV, they are liable to pay transmission charges corresponding to their share of power allocated from Unchahar-IV.

16. NTPC vide affidavit dated 23.4.2018 has submitted that Ministry of Power vide letter dated 4/10.4.2018 has re-allocated 49.8 MW power surrendered by HPESBL (22.21 MW) and TPDDL (27.59 MW) from Unchahar Thermal Power Station, Stage-IV to Uttar Pradesh Power Corporation Limited (UPPCL).

17. We have considered the submissions of Petitioner and Respondents. From the documents and pleadings available on record, it is observed that the beneficiaries, namely, Rajasthan, Uttar Pradesh, Chandigarh, Haryana, Jammu & Kashmir and Uttarakhand have signed LTA Agreements and the surrendered capacities of HPSEBL (22.21 MW) and TPDDL (27.59 MW) have been re-allocated by Ministry of Power vide letter dated 4/10.4.2018 in favour of UPPCL. Therefore, the Petitioner's prayer to direct the respondents, HPSEBL and TPPDL to sign LTA Agreement has also to be seen in light of re-allocation by Ministry of Power. However, before re-allocation of power by MoP, these beneficiaries have scheduled power from the generating station.

18. The Commission in its order dated 9.3.2017 in Petition No. 20/MP/2017 has dealt with the issue of signing of LTA Agreement by the beneficiaries who have surrendered their share or have sought re-allocation of their share from the Central Generating Station of NTPC. The Commission in the said order has observed as under:

"30... In case, the share of any beneficiary has been re-allocated by Government of India, Ministry of Power, then the concerned beneficiary shall be relieved from its obligations under the LTA Agreement from the date of re-allocation coming into effect. The new beneficiaries shall have to enter into LTA Agreement within a reasonable time not later than the date of coming into effect of the re-allocation of power. If the said beneficiary fails to enter into LTA Agreement by the stipulated





date, PGCIL shall operationalize the LTA and the said beneficiary shall be required bear the transmission charges proportionate to its share in the capacity of the generating station.

.....  
33.....It is pertinent to note that allocation of power and de-allocation of power among the beneficiaries from the Central Generating Stations is vested with MoP, Gol and is not within the control of the Petitioner. Cancellation of the LTA on account of failure of the beneficiaries to sign the LTA Agreements pending decision on their request for de-allocation of power will virtually amount to cancellation of PPAs with concerned beneficiaries even before decision of Ministry of Power, Gol. Considering the fact that signing of the LTA Agreements by the beneficiaries is linked to the decision of MoP, Gol for de-allocation of shares of the existing beneficiaries and re-allocation of shares to new beneficiaries, it will not be appropriate to cancel the LTA. In order to ensure that PGCIL does not suffer in recovery of its transmission charges, we have permitted PGCIL to operationalize the LTA and recover the transmission charges in terms of the provision of the PPAs till the LTA Agreements are signed after re-allocation of power.”

19. Further, the Commission in its order dated 18<sup>th</sup> of December, 2017 in Petition No. 85/MP/2014 has held that in case of PPAs based on MoP allocations, the beneficiaries are deemed LTA customers. The Commission in the said order has observed as under:

“54.....\_In case of PPAs based on Ministry of Power allocation, the beneficiaries are deemed LTA customers and, therefore, it is immaterial whether they sign the LTA Agreement or not and they shall be liable for LTA charges based on their allocation till the time their allocation is rescinded or transferred by Ministry of Power.....”

20. In the light of the above decisions of the Commission and considering the fact that both HPSEBL and TPDDL have scheduled their share of power from the generating station, they shall be considered as deemed LTA Customers till their shares were re-allocated by the Ministry of Power. Accordingly, we direct that the transmission charges shall be borne by HPSEBL and TPDDL proportionate to their share in the generating station in terms of the provision of the PPA from the date of operationalisation of LTA till re-allocation of power was made by MoP. Since, in the instant case, UPPCL is already a beneficiary of the generating station and has signed LTA Agreement, CTU shall take necessary action to sign the LTA



Agreement with UPPCL for the re-allocated capacity by the Ministry of Power that was surrendered by HPSEBL and TPDDL.

21. The Petition No.92/MP/2017 and IA No. 91/2017 are disposed of in terms of the above.

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

**Sd/-  
(A. S. Bakshi)  
Member**

**Sd/-  
(A. K. Singhal)  
Member**

