

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 85/MP/2014**  
**Along with**  
**I.A. No. 43/2019**

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

**Date of Order: 08.11.2019**

**In the matter of**

Petition read with appropriate provisions of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in Inter-State Transmission and related matters) Regulations, 2009 and Central Electricity Regulatory Commission (Sharing of Interstate Transmission Charges and Losses) Regulations, 2010 and in the matter of Non-payment of transmission charges pertaining to LTA of 119.19 MW power from Mejia Unit#8 (DVC) by Damodar Valley Corporation (DVC), Kolkata (Received by way of Remand from APTEL).

**And in the matter of**

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

**...Petitioner**

**Vs.**

Damodar Valley Corporation  
DVC Towers, Maniktala  
Civic Tower, VIP Road,  
Kolkata- 700054

BSES Yamuna Power Limited,  
BSES Bhawan, Nehru Place,  
New Delhi

Power System Operation Corporation Limited  
B-9, Qutab Institutional Area, Katwaria Sarai,  
New Delhi -1100016

**...Respondents**

**Parties Present:**

Shri Sitesh Mukherjee, Advocate, PGCIL  
Shri Divyanshu Bhatt, Advocate, PGCIL  
Ms. Jyoti Prasad, PGCIL  
Ms. Anita A. Srivastava, PGCIL



Shri K.K Jain, PGCIL  
Shri V. Srinivas, PGCIL  
Shri Ashok Pal, PGCIL  
Shri Vikas Singh, Sr. Advocate, DVC  
Shri Venkatesh, Advocate, DVC  
Shri Suhael Buttan, Advocate, DVC  
Shri Sumit, Advocate, DVC  
Shri Hasan Murtaza, Advocate, BYPL  
Shri Kartik Anand, Advocate, BYPL  
Shri Buddy Ranganadhan, Advocate, BYPL  
Ms. Subrata Ghosal, DVC  
Shri Shekhar Saklani, BYPL  
Shri Sunir Kakkar, BYPL  
Shri Sumeer Singh, BYPL  
Shri Abhishek Srivastava, BYPL  
Shri Subhendu Mukherjee, POSOCO  
Shri Alok Mishra, POSOCO  
Shri Gajendra Singh Vasavo, POSOCO

### **ORDER**

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

2. The Petitioner has made the following prayers :

*a) Direct DVC to make payment of transmission charges to CTU for the LTA of 119.19 MW power from Mejia Unit#8 (DVC) since Oct'12 along with surcharge for the delayed payment.*



b) *Pass such other order as the Hon'ble Commission may deem fit and just and proper in the circumstance mentioned above.*

3. The Commission vide its order dated 18.12.2017 disposed of the present Petition. Aggrieved by the Commission's order's dated 18.12.2017, the Respondent No. 1 i.e. Damodar Valley Corporation (DVC) approached the Appellate Tribunal for Electricity (APTEL). APTEL vide its Judgment dated 10.1.2019 in Appeal No. 90 OF 2018 & IA NO. 364 of 2018 & I. A No.. 1726 of 2018 has directed as under:

*"We make it clear that we have only heard the preliminary objections raised by the Appellant. The matter was heard by the bench consisting of four Members and the order was signed only by three Members. We further make it clear that the Impugned Order is set aside only on this ground alone. The Appeal is disposed of in the above terms.*

*For the foregoing reasons as stated above the instant Appeal filed by the Appellant is allowed Impugned Order passed by the 1st Respondent/the Central Commission dated 18.12.2017 passed in Petition No. 85/MP/2014 on the file of the Central Electricity Regulatory Commission, New Delhi is hereby set aside. The matter stand remitted back to the 1st Respondent/the Central Commission with a direction to dispose of the matter as expeditiously as possible at any rate within a period of three months from the date of appearance of the parties.*

*For the foregoing reasons as stated above the instant Appeal filed by the Appellant is allowed Impugned Order passed by the 1st Respondent/the Central Commission dated 18.12.2017 passed in Petition No. 85/MP/2014 on the file of the Central Electricity Regulatory Commission, New Delhi is hereby set aside. The matter stand remitted back to the 1st Respondent/the Central Commission with a direction to dispose of the matter as expeditiously as possible at any rate within a period of three months from the date of appearance of the parties.*

*The Appellant and Respondents are directed to appear before the 1st Respondent/the Central Electricity Regulatory Commission either personally or through their counsel on 28.01.2019 at 11.00 a.m. without notice to collect necessary date of hearing. All the contentions of both the parties are left open. "*

In the light of APTEL Order, the Petition was heard again .

### **Background of the Case**

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

Table A

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

Table B

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

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

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

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

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

Accordingly, the additional capacity which may be available from DVC, would be considered

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

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

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

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

Region and Western Region was proposed to be shared by the beneficiaries of the respective region. It was decided to refer the proposal to RPC for approval.

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

11. Special (6<sup>th</sup>) Meeting of the Technical Coordination Committee of Eastern Regional Power Committee was held on 11.6.2008 to discuss the proposal of transmission projects earlier finalized in the meeting of the Standing Committee on Transmission Planning in Eastern Region. At the said meeting, the Petitioner furnished the details of proposed tie-up/ allocation from DVC projects to the beneficiaries as per the details given hereunder:

<b>Project</b>	<b>Capacity</b>	<b>Delhi</b>	<b>Punjab</b>	<b>Madhya Pradesh</b>	<b>Haryana</b>	<b>DVC</b>	<b>West Bengal</b>
<b>Koderma TPS</b>	1000	775			100	125	
<b>Bokaro-A TPS</b>	500		200			300	
<b>Mejia B TPS</b>	1000	875			100	25	

<b>Durgapur TPS</b>	1000	450	200	100		50	200
<b>Raghunathpur TPS</b>	1200		300		100	500	300
<b>Total</b>	4700	2100	700	100	300	100	500

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

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

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

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



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

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

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

16. DVC held a meeting with the distribution companies, namely, BRPL, BYPL and NDPL on 6.2.2012 to discuss various commercial issues including reallocation of power among the three distribution companies as per the PPA entered into by erstwhile DTL. The following re-allocations were agreed in respect of Mejia Units 7 and 8:

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

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

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

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

Xxx

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

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

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

19. In this letter, the petitioner pointed out that the transmission system for evacuation of power from DVC generation projects was evolved as ISTS in line with Central sector generating stations and therefore no separate long-term agreement was envisaged and hence not signed. The petitioner, however, requested DVC and BYPL to sign the Transmission Service Agreement in view of the Commission's order dated 25.1.2012 in Petition No 213/MP/2011. The petitioner stated that till such time the Transmission Service Agreement was signed they were deemed signatory of the Model Transmission Service Agreement and would be bound by it. The Transmission Service Agreement dated 8.11.2013 was signed between the petitioner and BYPL, a copy of which has been placed on record by the petitioner under affidavit dated 18.7.2014. The petitioner under its further affidavit dated 15.12.2014 has also placed on record TSA dated 14.8.2014 signed with DVC.

20. The second unit of Mejia B TPS (Unit 8) was commissioned on 16.8.2012. The LTA for Mejia B TPS Unit 8 was included in the Regional Transmission Accounts with effect from October 2012 and accordingly, the Petitioner started billing BYPL with effect from

October 2012. BYPL under its letter dated 3.12.2012 informed the Petitioner that it had already surrendered the power from Mejia Unit 8 and intimated DVC about the same. BYPL stated that in March 2012, it had applied for long term access for 119 MW allocated to it from Mejia BTPS Unit 7. BYPL refuted its liability to pay the transmission charges since no power was being scheduled from Unit 8. The Petitioner, however, continued to bill BYPL till August 2013.

21. The Petitioner, vide its letter dated 31.12.2013, citing BYPL's letter dated 3.12.2012, sought a confirmation from DVC regarding surrender of 119.19 MW power from Mejia Unit 8 by BYPL so that billing of transmission charges for the same to BYPL could be discontinued and the same could be billed to DVC till PPA was signed by DVC with other beneficiaries. DVC, vide letter dated 7.1.2013, informed the Petitioner that BYPL suddenly surrendered the power which was not accepted by DVC. BYPL, vide its letter dated 10.1.2013, wrote to the Chief Operating Officer that transmission charges for supply of power from MTPS Unit 8 was not payable since BYPL had not applied for LTA from MTPS Unit 8. PGCIL, vide its letter dated 23.1.2013, advised BYPL to take up the matter with DVC to settle the issue of billing of transmission charges.

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

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

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

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

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

*Under the above back drop, if the re-allocation of above quantum of power is not settled, BYPL has to make payment of necessary transmission charges for evacuation of power from MTPS U# 7&8 of DVC. As such, DVC is in no way obligated to make good of default in payment by applicant BYPL and necessary bill has to be raised to BYPL by PGCIL for expeditious disposal of the issue between BYPL and PGCIL.”*

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

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

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

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

### **Submissions of the Petitioner**

25. The Petitioner has submitted that the designated transmission system was developed by the Petitioner for evacuation of power from the generating units of DVC. According to the Petitioner, transmission charges for the said transmission system are required to be paid by the concerned beneficiaries. The Petitioner has referred to Regulation 8(6) of the Sharing Regulations and has stated that for long term customers



availing supply from inter-State generating stations, the charges payable by such generating stations for the long term supply shall be billed directly to the respective Long Term Customer based on their share of capacity in the generating station. The Petitioner has also referred to fourth proviso to Regulation 11(9) of the Sharing Regulations and has contended that a generator being granted long term access to a target region without identified beneficiaries is liable to pay PoC injection charges plus the lowest of the PoC demand charges among all DICs in the target region. The Petitioner has submitted that keeping in view the agreement reached between DVC and BYPL vide minutes of meeting dated 6.2.2012 and in the light of Regulation 8(6) of the Sharing Regulations, the LTA of 119.19 MW from Mejia Unit 8 has been transferred from DVC to BYPL vide Petitioner's letter dated 19.4.2012 and billing of transmission charges was done to BYPL with effect from 19.4.2012. The Petitioner has submitted that BYPL did not honour the LTA transfer and has taken the position that the power itself has been surrendered and hence it was not liable to pay the transmission charges.

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

payment of transmission charges to CTU for LTA of 119.19 MW from MTPS Unit 8 since October 2012 along with surcharge for the delayed payment.

27. The matter was admitted and notices were issued to the parties to file their replies. The Commission also directed the Petitioner to implead BYPL and POSOCO as parties to the Petition. Both BYPL and POSOCO have also filed their replies.

### **Reply of DVC**

28. DVC vide its affidavit dated 22.7.2014 has submitted as under:

a) In terms of clauses 4.3 and 4.4 of the PPA dated 24.8.2006 between DVC and DTL, DVC is to sell power at the delivery point (periphery of DVC) and all charges beyond the periphery are to be borne by DTL. In terms of Connectivity Regulations, an applicant seeking long term access must apply through affidavit before PGCIL whereas in the present case, DVC never applied for LTA to PGCIL. Any verbal discussion, order or minutes of the meeting cannot make any generator or beneficiaries entitled for availing LTA unless and until the application for LTA is made before the Petitioner.

b) BYPL vide minutes of the meeting dated 6.2.2012 between the Petitioner and distribution companies of Delhi, confirmed to retain the full quantum of share of allocation of power from MTPS Unit 7 & 8 and accordingly, LTA was allowed by PGCIL to BYPL for 238.38 MW vide letter dated 19.4.2012 which has been admitted by the Petitioner vide letter dated 19.4.2012.

c) Clause 9.2 of the BPTA unequivocally provides that in case the beneficiary has not been identified, the obligation to pay the transmission charges have to be borne by DVC. However, in the case in hand, since the beneficiaries of the power generated by DVC had been identified from the inception, therefore, under no circumstances DVC is obligated to bear or pay the transmission charges.

d) The evacuation system of power from Mejia Unit 7 and 8 was conceptualized during the Minutes of Meeting dated 17.11.2006, 8.12.2006, 12.3.2007, 5.5.2007, 30.7.2007 and 11.6.2008. In all these meetings, DTL PPA and its consequent impact on payment of transmission charges was noted and made aware to PGCIL/CTU. Further, the said evacuation system was not for the sole purpose of evacuation of power from DVC and it also catered the evacuation for all new and upcoming power station in the Eastern region, contracted to supply power to the beneficiaries in the Northern and Western Region.

e) PGCIL while issuing the LTA dated 19.4.2012 itself has recognized that in any case BYPL would be signatory to the Model TSA even if it chooses not to sign the same. Hence, PGCIL cannot at this stage be permitted to backtrack from its contractual obligation and saddle DVC with onus of paying the same. Any refusal of payment by BYPL against the bills raised by PGCIL is a dispute between PGCIL and BYPL. DVC cannot be held responsible as DVC is not a LTA applicant.

f) The Commission vide its order dated 29.6.2011 while approving the TSA had categorically deleted the clause by which in a given case DIC were to make part payment or default in payment the liability would shift upon DIC for whom the charges are computed i.e. generating company. Thus, it is evident that the said deletion in unequivocal terms made only DIC or LTA customer responsible for the said charges.

g) The Commission vide its order dated 7.6.2013 in Petition No.7/RP/2011 (NTPC Ltd Vs PGCIL) has approved deletion of a provision regarding liability of the generator to pay the transmission charges where the generators have long term PPA and where sale of power is at the generation bus bar.

h) The Petitioner's reliance upon the proviso to Regulation 11(9) of the Sharing Regulations is misconceived since the said regulation is applicable in the case where a generator has been granted long term access to a target region without identified beneficiaries whereas in case of DVC, there is a bilateral PPA dated 24.8.2006 between DVC and DTL for 2500 MW power from different generating

stations of DVC. The said PPA has subsequently been re-assigned to distribution companies of Delhi vide DERC order dated 31.3.2007 and as per clause 4.3 of the PPA, transmission charges and losses for sale of power beyond the delivery point shall have to be borne by the beneficiaries including BYPL. Mere refusal of payment by BYPL does not mean that permission of LTA which was granted to BYPL will automatically get transferred to DVC along with all the consequences.

i) Petitioner's reliance on letter dated 14.12.2016 issued by DVC to demonstrate that since DVC accepted the surrender of power by BYPL from Mejia TPS # Unit 8 with effect from commercial operation and therefore liability shifts upon DVC is misplaced. The said letter nowhere exempts BYPL from its liability for the LTA granted by PGCIL as the LTA while is based on the PPA but is an independent contract and is bound by Connectivity Regulation and Sharing Regulation.

j) Regulation 18 of the Connectivity Regulation provides a mechanism for the relinquishment of LTA by LTA customers. However, BYPL failed to relinquish its LTA in terms of the Connectivity Regulation. PGCIL did not carry out any of the punitive and coercive action in terms of Connectivity Regulation for failure on the part of BYPL to make payment of transmission charges. Further, PGCIL also failed to appreciate the fact that the LTA was granted to BYPL and not to DVC.

k) At the time of grant of LTA to BYPL, there was a valid identified beneficiary i.e. BYPL from Mejia- Unit 8. Thus, a mere statement of surrender of power by BYPL cannot change the status from generator with identified beneficiary to generator without identified customer. Mere refusal of payment by BYPL does not mean that permission of LTA which was granted to BYPL will automatically get transferred to DVC along with all the consequences and incidental costs.

l) The PPA dated 24.8.2006 was signed between DVC and DTL, which obligated DTL under Article 4.3 read with Article 4.4 that all the transmission charges beyond delivery point would be borne by DTL. This PPA subsequently stood assigned to BYPL vide DERC order dated 31.03.2007. The said order

remains unchallenged and has attained finality. Therefore, admittedly the primary obligation of payment of transmission charges beyond delivery point of Mejia TPS (Unit 7&8) till date is casted upon BYPL.

### **Reply of BYPL**

29. BYPL in its reply vide affidavit dated 25.7.2014 has submitted as under :

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

b) BYPL applied for LTA for DVC's Mejia Unit 7 by its application dated 28.3.2012 for 119.19 MW with approval of STU, namely, DTL in accordance with the Connectivity Regulations. Further, in terms of Para 23.5 of the Detailed Procedure under Connectivity Regulations, BYPL submitted bank guarantee of Rs.11,90,000/- at the rate of Rs.10,000/- per MW to PGCIL for the total power to be transmitted clearly signifying that the bank guarantee amount was with reference to 119.19 MW from Mejia Unit 7 and not from both Units 7 & 8. However, Petitioner granted LTA for both Mejia Unit 7 & 8 vide its letter dated 19.4.2012 despite the fact that its application, STU clearance and bank guarantee were for 119.19 MW only.

c) The Petitioner erroneously started billing BYPL since October 2012 for Unit 8 on the basis of the LTA erroneously granted. BYPL deducted the amount from the bill with due intimation to the Petitioner. In a meeting held on 10.4.2013, it was decided that BYPL would pay the transmission charges for Mejia 8 and the Petitioner would resolve the matter within one month. BYPL paid an amount of Rs.13.58 crore to the Petitioner for the period from October 2012 to March 2013. The matter was not resolved by the Petitioner who continued to bill till August 2013. The Petitioner has unilaterally recovered ₹ 23.95 crore and the same should be refunded along with carrying cost.

d) The Petitioner had entered into BPTA dated 26.7.2008 with DVC wherein Clause 9.2 specifically provided that the DVC shall bear full transmission charges of the entire transmission system for DVC generation projects.

e) In the 6<sup>th</sup> TCC Meeting of ERPC dated 11.6.2008 and in the meeting at ERLDC, the requirement of transmission system to evacuate power from Mejia Units 7 & 8 were discussed and specified transmission lines were identified to be built up for these units. BYPL has submitted that if the transmission system was built considering the allocation to whole Delhi, the Petitioner should have to forcefully grant LTA also to BRPL and TPDDL (NDPL) as has been done in case of BYPL. BYPL has submitted that in the Record Note of Discussion dated 6.2.2012, BYPL had confirmed that they would not surrender any power out of their share. BYPL has submitted that Record Note of Discussion has no legal significance for considering the issue whether BYPL should make payment of transmission charges even though no LTA had been sought.

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

g) As per DVC letter dated 23.7.2013, surrender of power by BYPL has not been accepted by DVC. Therefore, the matter needs to be decided by the Appropriate Commission between DVC and BYPL. In the absence of a petition by DVC claiming the charges from BYPL, the issues arising in the present petition cannot be effectively adjudicated.

h) BYPL vide its application dated 28.3.2012 applied to the Petitioner for grant of LTA from 119 MW for MTPS unit-7. However, the Petitioner vide its letter dated 19.4.2012 wrongfully granted LTA of 238.38 MW and unilaterally imposed LTA for Unit 8 of 119.19 MW where no such requisition or application qua Unit 8 was ever made by BYPL.

### **Reply of POSOCO**

30. POSOCO in its reply dated 18.7.2014 has submitted that historically, transmission system evolved through a coordinated planning process and transmission plan was discussed and approved in the Standing Committee on Transmission Planning. Earlier, most of the ISGS were in the central sector with identified beneficiaries for the entire capacity of the plants. Even the unallocated capacity is also allocated and the transmission charges are paid by the beneficiaries for the full capacity of the generating station. In case of changes in allocation, the new beneficiary shared the charges. As per Regulation 2(m) of the Connectivity Regulations, long term customer means a person who has been granted long term access and includes a person who has been allocated central sector generation i.e. electricity supply from a generating station owned or controlled by the Central Government. POSOCO has submitted that though DVC is controlled by the Central Government, full output of the generating stations of DVC is not allocated by Government of India, unlike the generating stations of NTPC, NHPC or other PSUs under Ministry of Power. POSOCO has submitted that the issue of development of transmission system for evacuation of power from the generating stations of the DVC was discussed in the Standing Committee Meeting of Eastern Region held on 5.11.2007 and it was informed that based on CEA's recommendation, MoP had directed PGCIL to take up the scheme and match the same with the generation projects. Accordingly, the designated transmission system was developed by PGCIL for evacuation of power from the generating stations of DVC.

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

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

## **Reply of DVC**

33. DVC vide its affidavit dated 12.9.2014 in reply to the replies of BYPL and POSOCO and the Petitioner's rejoinder, has submitted as under:

a) As per Regulation 5 of the Connectivity Regulations, the person availing LTA is required to make an application to the CTU. However, DVC did not apply for LTA to the Petitioner. Therefore, the question of collecting the transmission charges from DVC did not apply at all. Had it been otherwise, the Petitioner would have raised the bill for transmission charges from the beginning. The Petitioner unjustifiably and erroneously raised the LTA bill for the 119.19 MW from Mejia Unit 8 for which nobody applied for LTA.

b) For evacuation of power from Mejia TPS Units 7 and 8, the Petitioner developed two transmission lines, namely LILO of Ckt-I of 400 kV D/C Maithon-Jamshedpur transmission line at Mejia-B TPS and 400 kV Mejia-Maithon D/C transmission line. The Commission while determining the tariff of these two lines directed that billing, collection and disbursement of the transmission charges would be governed by the provisions of the Sharing Regulations.

c) The transmission system has been developed by the Petitioner not only for evacuation of power from DVC but also from other generating companies of West Bengal, Sikkim, Bihar, Jharkhand, etc. Once any transmission asset is pooled in the regional system, it cannot be stated that the particular transmission line is solely used for the evacuation of power from a particular generating station.

d) The Petitioner intended to divert the issue by bringing out the dispute between DVC and BYPL regarding the surrender of power from Mejia Unit 8 to cover up its own fault of granting LTA over enthusiastically without having valid LTA application. Without invoking payment security mechanism for default in payment by BYPL or asking BYPL for relinquishing of access right under Regulation 18 of the Connectivity Regulations, the Petitioner started raising bills against DVC unjustifiably for non-payment by BYPL.

e) The Commission, vide order dated 29.6.2011, approved deletion of provision in the BCD Procedure for the generators who have a long term PPA and where sale of power is at the generator bus bar. The Petitioner misrepresented the said direction by stating that the above findings of the Commission applied in matters where PPA was entered into between the Central Generating Company and the beneficiaries. The direction of the Commission is valid and binding.

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

### **Rejoinder of the Petitioner**

34. The Petitioner in its rejoinder dated 18.7.2014 to the reply filed by DVC has submitted as under:

a) As per the BPTA dated 26.7.2008 executed between the Petitioner and DVC, DVC is under an obligation to pay transmission charges in case of any ambiguity as regards the beneficiaries to whom the power is to be supplied. Further, DVC is also liable to pay the transmission charges on the principle laid down in the Connectivity Regulations and Sharing Regulations on the ground that once ISTS has been developed, the same has to be serviced through tariff. Even if the beneficiaries of power have not been identified, it becomes the liability of the generating company to pay the transmission charges for the same.

b) The Petitioner is not a party to PPA signed between DVC and the Delhi Discoms and this is a matter entirely between DVC and BYPL. As a result, the obligation of DVC or the Delhi Discoms flowing from the PPA between them is a dispute between them for which the Petitioner cannot be made to suffer.

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

35. The Petitioner in its rejoinder to the reply filed by BYPL has submitted that the objections of BYPL with regard to the maintainability of the petition is not correct as the Petitioner has moulded the prayers in the petition in accordance with the contrary stand taken by DVC and BYPL. The Petitioner has submitted that the only issue raised in the petition is with regard to the payment of transmission charges for the capacity of 119.19 MW pertaining to transfer of power from Mejia unit of DVC to BYPL. The Petitioner has submitted that the contention of BYPL that it had never applied for open access with regard to 119.19 MW from Mejia Unit 8 is patently false as it has been clearly mentioned in the minutes of the meeting dated 6.2.2012 between DVC and Delhi Distribution Companies including BYPL that BYPL has a share of 119.19 MW each in Unit 7 and Unit 8 of Mejia TPS. The Petitioner has further submitted that in its letter dated 19.4.2012, the Petitioner has categorically stated that the transmission system for evacuation of power from DVC generating project was evolved as ISTS in line with the Central Sector Generating Stations and no separate LTA was envisaged and hence not signed. As regard BYPL's contention that it had applied for long term access only for 119.19 MW from Mejia Unit 7 vide its application dated 28.3.2012, the Petitioner has submitted that considering the PPA dated 24.8.2006 and the MOM dated 6.2.2012, the Petitioner in its letter dated 19.4.2012 had considered the allocation of 238.38 MW (119.19 MW each from

Units 7 & 8 of Mejia) and billing was done accordingly. The Petitioner has submitted that both DVC and BYPL are signatories to the Transmission Service Agreement and, therefore, are liable to comply with the statutory regulations notified by the Commission.

36. In light of remand back of the matter to the Commission, the Commission vide RoP dated 14.2.2019 directed the respondents to file their replies. In compliance of the direction of the Commission, the Respondents have filed their replies and the Petitioner has filed its rejoinders.

### **Submissions by DVC**

37. DVC through its additional affidavit dated 11.3.2019 has mainly reiterated its earlier submissions. DVC has additionally submitted as under:

a) The LTA was granted to BYPL and same is an admitted fact that BYPL applied for LTA of 119.19 MW from Mejia TPS Unit # 7 vide letter dated 28.3.2012 and PGCIL granted LTA of 238.38 MW to BYPL from Mejia TPS Units 7 & 8 vide letter dated 19.4.2012. The same was for 119.19 MW from Mejia TPS Unit 7 with immediate effect and 119.19 MW from Mejia TPS Unit # 8 after COD of Mejia TPS Unit 8. It clearly established that the PGCIL very well knew that the LTA applicant in the present case is BYPL and Transmission Charges if any is liable to be paid only by BYPL and not by the DVC.

b) It was in the knowledge of PGCIL that LTA applicant in the present case is BYPL and transmission charges, if any, is liable to be paid only by BYPL and not by the DVC. The said LTA was granted by PGCIL based on the assurance given by BYPL in the meeting held on 6.2.2012 read with Article 4 of the PPA dated 24.8.2006. Hence, since DVC itself is not a beneficiary/ applicant of LTA, in no manner, can either the Regulations, Orders and Agreements be perversely interpreted to saddle the DVC with the responsibility of payment of transmission charges.

c) PGCIL while issuing the LTA dated 19.4.2012 itself has recognized that in any case BYPL would be the signatory to the Model TSA even if it chooses not to sign the same. Hence, the PGCIL cannot now be permitted to backtrack from their contractual obligations and saddle the DVC with the onus of paying the same.

d) Mere refusal of payment by BYPL does not mean that permission of LTA which was granted to BYPL will automatically get transferred to DVC along with all the consequences. Moreover at the time of granting LTA of 119.19 MW to BYPL by PGCIL, there was a valid identified beneficiary like BYPL from Mejia Unit # 8. Thus a mere statement of surrender of power by BYPL cannot change the status of generator overnight from “Generator with identified beneficiary” to “Generator without identified beneficiary.”

e) PGCIL in its IA has placed on record a letter dated 14.12.2016 issued by DVC to demonstrate that DVC accepted the surrender of power by BYPL from Mejia TPS Unit #8 with effect from Commercial Operation. The aforesaid letter is in relation to of surrender of PPA between DVC and BYPL and the same in no manner either exonerates or exempts BYPL from its liability for the LTA granted by PGCIL as the LTA which is based on the PPA but is an independent arrangement/contract for which consequences under connectivity Regulations and under Sharing Regulations must follow for the LTA to be surrendered by BYPL. Therefore, the said Letter in no manner can be interpreted to shift the liability of BYPL upon the DVC which has been statutorily approved by the DERC in its Order dated 31.3.2007, neither it gives right to raise invoices for transmission charges upon DVC. Thus, letter of DVC dated 14.12.2016 issued to BYPL does not alter the current legal status of the parties.

### **Rejoinder by PGCIL**

38. PGCIL in its rejoinder vide affidavit dated 22.3.2019 to the reply dated 11.3.2019 filed by DVC has submitted as under :

a) The Petitioner operationalized the 119.19 MW LTA from Unit 8 of Mejia TPS based on the revision, to the original agreement dated 24.8.2006 entered into between DVC and DTL, in the meeting held on 06.02.2012 in the presence of both

DVC and Delhi Discoms including BYPL, wherein BYPL made a categorical statement that they would not surrender any power out of their share (119.19 MW each from Units 7 and 8 of Mejia TPS, respectively). The other Delhi Discoms viz. BRPL and NDPL expressly confirmed the surrender of their total share of power from Units 7 and 8 of Mejia TPS in advance in the said meeting and hence the same was not operationalized.

b) Even after operationalisation of said LTA of 119.19 MW from Unit 8 of Mejia TPS, BYPL did not raise any dispute or objection directly with the Petitioner. Instead, vide its letter dated 11.10.2012, BYPL wrote to DVC (without marking copy to the Petitioner) stating that they *propose to surrender* the entire 119.19 MW from Unit 8 of Mejia TPS, and would not be liable to pay any charges in respect thereof. Quite clearly, BYPL was casually attempting to shirk responsibility for the LTA charges which it had committed to bear at the beginning of the very same year at the meeting dated 06.02.2012.

c) The Petitioner is not a party to the PPA signed between DVC and the Delhi Discoms and this is a matter entirely inter se DVC and BYPL. As a result, the obligations of DVC or the Delhi Discoms flowing from the PPA between them is a dispute between them inter se for which the Petitioner cannot be made to suffer.

d) As per the Bulk Power Transmission Agreement (“BPTA”) signed between DVC and the Petitioner on 26.7.2008, it was clearly the obligation of DVC to pay transmission charges in case of any ambiguity as regards the beneficiaries to whom power is to be supplied. Further, as per Regulation 8(6) of Sharing Regulations, long term customers availing supplies from inter-State generating stations, the charges payable by such generators for such Long Term supply shall be billed directly to the respective Long Term customers based on their share of capacity in such generating stations.

e) As per the BPTA and the Sharing Regulations, it is clear that the contractual and regulatory regime is such that the liability of payment of transmission charges

for the said LTA lies primarily with the generator (DVC in the instant case) and in case of available firm PPA, the billing can directly be done on the beneficiary (BYPL in instant case). It is in view of these provisions that this Commission has observed that DVC was, contractually as well as in terms of the Sharing Regulations, always bound to bear the liability of paying transmission charges to the Petitioner.

f) Regulation 8(6) of the Sharing Regulation clearly recognizes the proposition that the liability of payment of transmission charges rests with the generator. However, the charges payable by such generator (DVC in the instant case) can be billed directly to the long term customer (BYPL in the instant case) based on its share of long term capacity in such generating station (Unit 8 of Mejia TPS in the instant case). Accordingly, the billing was initially commenced by the Petitioner on BYPL w.e.f 1.10.2012 for the said LTA quantum of 119.19 MW from Unit 8 of Mejia TPS of DVC. However, when the same was disputed by BYPL citing their surrender of the said power, the Petitioner was left with the only option to shift the billing for the LTA to DVC from 1.9.2013 onwards, as the obligation to pay transmission charges rests with DVC as the generator for whom the transmission system was built.

g) Once the power is surrendered as claimed by the beneficiary i.e. BYPL, the transmission charges shall become payable by the generator as a generator without identified beneficiary for the said LTA quantum.

At present both BYPL and DVC are looking to escape any liability whatsoever for the operationalized LTA despite providing their unambiguous consent to bear the same.

### **Submissions by POSOCO**

39. POSOCO in its reply vide affidavit dated 7.3.2019 has submitted as under:

a) DVC is not paying ERLDC monthly charges pertaining to 119.19 MW LTA of DVC (Mejia Thermal Power Station unit number 8) power which was allocated to

BYPL since September 2013 and the outstanding amount is being recovered at the time of yearly truing-up up to the extent possible.

b) The RLDC fees and charges amount up to March 2017 had been completely recovered from DVC during the annual truing-up process. But during the truing up in financial year 2017-18 it was observed that, the amount of ERLDC fees & charges to be refunded to DVC is less than the amount to be recovered (actual amount) from DVC. So, the amount due for 119.19 MW from DVC (for 2017-18) is Rs. 5,13,401 (Rupees Five Lakhs Thirteen Thousand and Four Hundred and One). Also the entire amount is due from DVC on account of the above quantum of 119.19 MW LTA with effect from April 2018 to till date. The matter has been intimated by ERLDC several times through regular correspondences to DVC.

c) DVC vide letter dated 3.2.2014 has also confirmed that the bills raised by ERLDC are being processed without considering the payment pertaining to LTA of 119.19 MW power from MTPS unit-8 which was allocated to BYPL but loaded on DVC as BYPL unilaterally refused to take the same.

d) The total outstanding amount from DVC on account of 119.19 MW LTA is ₹ 24.19 lakh up to November 2018.

### **Submissions by BYPL**

40. The Respondent No.2 i.e. BSES Yamuna Power Limited in its additional affidavit dated 6.5.2019 has submitted as under :

a) BYPL vide its application dated 28.03.2012 applied to Petitioner for grant of LTA from 119 MW for MTPS Unit-7. However, the Petitioner vide its letter dated 19.04.2012 granted LTA of 238.38 MW to the Respondent No. 2 erroneously and unilaterally imposing LTA for Unit-8 of 119.19 MW where no such requisition or application qua Unit-8 was ever made by the Respondent No. 2. Accordingly, the LTA of 238.38 MW i.e. an addition of 119.19 MW for Unit-7 and 119.19 MW for Unit-8, was entirely erroneous on the part of Petitioner.

b) The bills which have unlawfully recovered the transmission charges with effect from October 2012 for LTA of Unit-8 is wholly unsustainable in law and requires to be set aside with a consequential direction to Petitioner to refund the amount of ₹.23.95 crore along with carrying cost.

c) PGCIL has entered into a Bulk Power Transmission Agreement (BPTA) with DVC dated 26.07.2008 wherein the Petitioner has already agreed to collect Transmission Charges from Damodar Valley Corporation, and therefore, the Petitioner cannot be permitted to play hot and cold by claiming such charges from BYPL at the same time.

### **Submissions During Hearings**

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

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

42. The Petitioner has also filed an I.A. No 43/2019 seeking permission to treat the LTA capacity of 119.19 MW as relinquished subject to the payment of relinquishment charges in accordance with the decision of this Commission in Petition No. 92/MP/2015.

43. BYPL vide its affidavit dated 30.3.2019 in its reply to IA No 43/2019 filed by the Petitioner has reiterated its stand that BYPL does not owe any liability towards 119.19 MW from Mejia Unit 8 as BYPL had never applied for LTA and, therefore, no question of relinquishment arises. Further, the Petitioner has itself submitted that ISTS transmission system was developed by the Petitioner for evacuation of DVC's power and it becomes prime responsibility of DVC to pay the transmission charges and, therefore, no liability can be fastened upon BYPL.

44. The Petitioner, DVC and BYPL have also filed their written submissions dated 30.6.2019, 30.6.2019 and 9.7.2019.

45. PGCIL in its written submission dated 30.6.2019 has submitted as under :

a) The Petitioner operationalized the said LTA based on the revision, to the original agreement dated 24.8.2006 entered into between DVC and DTL, in the meeting held on 6.2.2012 in the presence of both DVC and Delhi Discoms including BYPL, wherein BYPL made a categorical statement that they would not surrender any power out of their share (119.19 MW each from Units 7 and 8 of Mejia TPS, respectively). The same evidences the express consent of DVC and BYPL for the Petitioner to operationalize the said quantum of LTA and bear the corresponding transmission charges. In the event of a beneficiary of a generating company (in this case BYPL) refuses to bear the liability for transmission charges, the generator company (in this case DVC) will be liable to bear the same in accordance with the Sharing Regulations.

b) If a generator is unable to utilize the transmission systems even after the operationalization of its LTA, for any reason whatsoever, it shall be liable to bear transmission charges, in terms of the provisions of the Sharing Regulations. Moreover, the Petitioner is not a party to the PPA signed between DVC and the Delhi Discoms and this is a matter entirely between DVC and BYPL. As a result, the obligations of DVC or the Delhi Discoms flowing from the PPA between them is a dispute between them inter se for which the Petitioner cannot be made to suffer. This Commission had in fact returned with a similar finding in its order dated 18.12.2017. Accordingly, it is always open for DVC to pursue legal proceedings against BYPL under the PPA.

As per the Bulk Power Transmission Agreement (“BPTA”) signed between DVC and the Petitioner on 26.7.2008, it was clearly the obligation of DVC to pay transmission charges in case of any ambiguity as regards the beneficiaries to whom power is to be supplied. Clause 9.2 of the BPTA reads as below: *“DVC shall bear full transmission charges and other charges of the entire transmission system for DVC generation projects (Koderma TPS, Mejia B, Maithon-RB JV projects, Bokara Extn) till finality regarding sharing/sharing mechanism of the Bulk Power Beneficiaries.”*

The Sharing Regulations clearly recognize the principle that transmission charges have to be paid by the generator in such a circumstance. As per Regulation 8(6) of Sharing Regulations: *“For long term customers availing supplies from inter-state generating stations, the charges payable by such generators for such Long Term supply shall be billed directly to the respective Long Term customers based on their share of capacity in such generating stations..... ”*

The Commission vide its order dated 18.12.2017 had categorically observed as follows: *“46. It is pertinent to mention that DTL vide its application dated 28.8.2006*

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

47. DVC and the Petitioner executed a BPTA dated 26.7.2008 in which DTL, Haryana and DVC were recognized as beneficiaries in respect of their respective shares in Mejia Unit 7 & 8 (2x500 MW) i.e. DTL: 850 MW, Haryana: 100 MW and DVC:25 MW. What is noteworthy is that despite DTL being shown as the beneficiary of Mejia Units 7 & 8, DVC had agreed to bear full transmission charges till such time proper mechanism for sharing of these charges by long-term beneficiaries was evolved. The relevant para of the BPTA is reproduced below:

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

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

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

- c) The liability of payment of transmission charges for the said LTA lies primarily with the generator (DVC in the instant case) and in case of available firm PPA, the billing can directly be done on the beneficiary (BYPL in instant case). It is in view of these provisions that this Commission has observed that DVC was, contractually as well as in terms of the Sharing Regulations, always bound to bear the liability of paying transmission charges to the Petitioner. The Commission had rightly fastened the liability of transmission charges upon DVC and the same

reasoning and finding ought to be upheld. To allow DVC to be exempted from bearing the aforementioned charges shall allow it to escape its contractual as well as statutory obligations, which ought not to be permitted.

d) The circumstances, under which the LTA of 119.19 MW from Unit 8 of Mejia TPS has been operationalized, was based on the PPA signed between DVC and DTL and subsequent revisions to the allocations among the beneficiaries finalized during various meetings of CEA that included the meeting held on 6.2.2012 between DVC and Delhi Discoms. Once the LTA is operationalized, the liability of generator (i.e. DVC) for payment of transmission charges as per the provisions of BPTA and Sharing Regulations is irrefutable. Regulation 2(1)(l) of the Sharing Regulations defines DIC as under:

## ***“2. Definitions***

*1. In these Regulations, unless the context otherwise requires:*

***(l) ‘Designated ISTS Customer or DIC’ means the user of any segment(s) or element(s) of the ISTS and shall include generator, State Transmission Utility, State Electricity Board or load serving entity including Bulk Consumer and any other entity or person directly connected to the ISTS and shall further include any intra-State entity who has obtained Medium Term Open Access or Long Term Access to ISTS.***

*Provided that where the ISTS charges were being billed to the distribution companies or any designated agency in the State for purchasing power before implementation of these regulations, the distribution companies or the designated agency, as the case may be, shall be treated as Designated ISTS Customer in that State for the purpose of preparation of Regional Transmission Account (RTA) by Regional Power Committees and for the purpose of billing and collection by the CTU:*

*Provided further that after implementation of these regulations, the States may designate any agency as Designated ISTS Customer for the above purpose.”*

e) The transition into the present regime under the Sharing Regulations required all the parties, which had previously signed BPTAs, to enter into a Transmission Services Agreement (“TSA”) with the Petitioner. Accordingly, DVC entered into a TSA dated 14.08.2014 with the CTU. Pertinently, the TSA dated 14.8.2014, as well as the Model TSA, which was approved and notified by Commission vide its order dated 29.4.2011 in Petition No. L-1/44/2010-CERC, incorporates the same definition of the term of DIC. Moreover, the Commission, vide its order dated 25.1.2012 in Petition No. 213/MP/2011, had held that till the TSAs are signed by all the DICs, they shall be considered to be deemed signatories

to the Model TSA and shall be bound by the terms therein. In view of the above, it is clear that the liability to bear transmission charges always rested with the generator, i.e. DVC, until the beneficiaries of its power were identified. In case of a firm PPA of the generator, such billing of the transmission charges can be done on the beneficiary as per Regulation 8(6) of Sharing Regulations as submitted hereinabove.

f) Regulation 8(6) clearly recognizes the proposition that the liability of payment of transmission charges rests with the generator. However, the charges payable by such generator (DVC in the instant case) can be billed directly to the long term customer (BYPL in the instant case) based on its share of long term capacity in such generating station (Unit 8 of Mejia TPS in the instant case). Accordingly, the billing was initially commenced by the Petitioner on BYPL w.e.f 01.10.2012 for the said LTA quantum of 119.19 MW from Unit 8 of Mejia TPS of DVC. However, when the same was disputed by BYPL citing their surrender of the said power, the Petitioner was left with the only option to shift the billing for the LTA to DVC from 01.09.2013 onwards, as the obligation to pay transmission charges rests with DVC as the generator for whom the transmission system was built. Once the power is surrendered as claimed by the beneficiary i.e. BYPL, the transmission charges shall become payable by the generator as a generator without identified beneficiary for the said LTA quantum and the leviable transmission charges is guided by the fourth proviso to Regulation 11(9) as mentioned below:

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

g) The definition of the term “target region” provides that the LTA has to be obtained by the generating company. DVC has stated that this is different from the instant situation wherein the LTA application had been filed by the identified beneficiary, namely BYPL. The Petitioner has already clarified in detail the circumstances, under which the LTA of 119.19 MW from Unit 8 of Mejia TPS has been operationalized, based on the PPA signed between DVC and DTL and subsequent revisions to the allocations among the beneficiaries finalized during various meetings of CEA that included the meeting held on 06.02.2012 between DVC and Delhi Discoms. Once the LTA is operationalized, the liability of generator

(i.e. DVC) for payment of transmission charges as per the provisions of BPTA and Sharing Regulations is irrefutable.

h) DVC argues that the mere fact that the Petitioner constructed its infrastructure for DVC's benefit cannot be a basis to impose liability on DVC to pay transmission charges, as this runs contrary to the terms of the PPA and this Commission's holding in Order No.L-1/44/2010-CERC dated 29.6.2011. If this argument is accepted, the Petitioner would be left in a position where the effort undertaken by it in constructing the transmission infrastructure would be set at naught and it would not be able to recover any transmission charges only because of the disputes between the DVC and its beneficiaries inter se. Further, this would also render the Petitioner's right to recover transmission charges for the infrastructure constructed by it contingent upon the whims and fancies of beneficiaries. In any event, it is submitted that the Petitioner cannot remain altogether unpaid for approximately 6 years after the LTA has been operationalized.

BYPL did not pay the bills raised by the Petitioner for the period between October 2012 and August 2013 in time. However, it made the payment under protest only after a regulatory action on BYPL was undertaken by the Petitioner. Since BYPL claimed to have surrendered the capacity allocated to it, DVC became liable to pay transmission charges for 119.19 MW. In this regard, it is pertinent to mention that BYPL has placed heavy reliance on a communication dated 14.12.2016, which was addressed to BYPL by DVC. Vide the said communication, DVC has allegedly accepted the request of BYPL for surrendering the power from Unit 8 of Mejia TPS, which would be effective from the Commercial Operations Date ("COD") of the said Unit. If the same is to be relied upon, DVC has itself accepted the liability of Transmission charges for the LTA capacity of 119.19 MW. However, DVC appears to suggest that such a surrender of power is related to the capacity contracted under the PPA between BYPL and DVC. As such, it does not absolve or exempt BYPL of its liabilities in lieu of the LTA, which is an independent arrangement, and such liabilities cannot be understood to have been transferred upon DVC by way of such a communication. It is clear from the above that the parties are merely trying to shift the blame onto each other. At such a juncture, when it has been more than 7 years since the operationalisation of the LTA capacity and the parties are shifting the liabilities on each other, the Petitioner cannot be allowed to suffer.

46. DVC, in its written submission dated 30.6.2019 has submitted as under:
- a) DVC is neither the Applicant for LTA Applicant nor the beneficiary of the power. Therefore, the dispute, if any, is between the Petitioner i.e. PGCIL and the LTA Applicant/ Recipient i.e., BYPL. It is an admitted position that BYPL vide letter dated 28.03.2012 had applied for LTA of 119.19 MW from Mejia TPS Unit # 7. PGCIL vide letter dated 19.04.2012 had granted the LTA of 238.38 MW to BYPL from Mejia TPS Units 7 & 8. LTA was granted for 119.19 MW from Mejia TPS Unit 7 with immediate effect and 119.19 MW from Mejia TPS Unit # 8 after COD of Mejia TPS Unit 8. Therefore, at no point in time DVC was involved in applying or receiving LTA from PGCIL.
  - b) Right from the inception, PGCIL was aware that the LTA applicant in the present case is BYPL and transmission charges, if any, is liable to be paid only by BYPL and not by DVC. The grant of said LTA by the PGCIL was premised upon the assurance given by BYPL in the meeting held on 06.02.2012 read with Article 4 of the PPA dated 24.08.2006. Since DVC itself is not a beneficiary/ Applicant of LTA, therefore, the Regulations, Orders and Agreements cannot be perversely interpreted to saddle DVC with the liability of payment of Transmission Charges.
  - c) The PPA executed between DVC and DTL (BYPL is unbundled from DTL) on 24.08.2006 (which is even prior to the captioned line being conceptualized) is legally valid till date and stood statutorily assigned to BYPL vide Order dated 31.03.2007 passed by of DERC.
  - d) As per Article 4.3 read with Article 4.4 of the PPA dated 24.8.2006 between DVC and DTL (which has been statutorily assigned to BYPL), DVC cannot be held responsible for default of payment of transmission charges of BYPL as it was the contractual obligation of DTL to coordinate with PGCIL for implementation of transmission system for evacuation of power.
  - e) PGCIL while issuing the LTA dated 19.04.2012 itself has recognized that in any case BYPL would be the signatory to the Model TSA even if it chooses not to sign the same. Hence, the PGCIL and BYPL cannot now be permitted to rescind from their contractual obligations and saddle DVC with the onus of payment of the transmission charges.

f) The Commission in a catena of judgements has held that it is incumbent upon the beneficiaries to perform their part of the contractual obligations and pay the transmission charges especially in the case of Central Government Generating Stations i.e. DVC. The Commission has further held beneficiaries on their *whims and fancies* cannot abandon the PPA and its consequent obligation of payment of transmission charges.

g) In terms of Commission's earlier orders a beneficiary at its will cannot abandon a PPA and its consequent obligation to pay transmission charges if the said obligation is casted through allocation or through Agreements. Hence, refusal of payment by BYPL against the bill raised by PGCIL is a dispute between PGCIL and BYPL. DVC in no manner can be held responsible for the same as DVC is not an LTA Applicant and, therefore, DVC is not liable to pay transmission charges.

h) The thrust of PGCIL's argument is that since BYPL has refused to honour the LTA granted to it, therefore, DVC would be made accountable as it is a case akin to case where LTA has been granted without identifying beneficiary. The said contention of the PGCIL is perverse and is liable to be rejected as PGCIL is not seeking to saddle responsibility upon DVC as a clever device to overcome its own shortcomings. For such a transfer for obligation can only culminate from either the Agreement or the Regulations framed by the Commission. However, in the present case, PGCIL has failed to demonstrate any provision of the Sharing Regulations or agreements signed by DVC which permit such a transposition/ transfer of obligation to pay transmission charges upon DVC.

i) From the very definition of 'Target Region' it is seen that it applies to generators who have obtained Long Term Access. In the present case, even as per the admission of PGCIL no such access was obtained by DVC. Therefore, Regulation 8(6) by its very inherent nature does not get attracted. Further, it is a settled principle of law that while fastening monetary liability, a Statute has to be given a strict interpretation and such liability cannot be imposed by a hypothetical interpretation.

j) The interpretation of Regulation 8(6) of the Sharing Regulations cannot be altered/ twisted to suit the convenience of PGCIL and the same ought to be given a literal meaning. Therefore, the contention of PGCIL that DVC is to be treated as

generating company without having an identified beneficiary is baseless and only made to misguide this Commission and illegally saddle DVC with the liability of transmission charges.

k) PGCIL's reliance upon Connectivity Regulations is entirely misplaced as the regulations framed by the Commission require an applicant seeking LTA must apply through affidavit before PGCIL. It is again stated that DVC has never applied for LTA on behalf of any of its beneficiary for evacuation of power from its generating stations. PGCIL cannot make any generator or beneficiaries entitled for availing LTA unless and until the Application for LTA is made before PGCIL in conformity with Connectivity Regulations. Moreover, the PPA was signed with DTL on 24.8.2006 much prior to the first Minutes of the Meeting held on 17.11.2006 wherein it was made aware to all stakeholders that the power would be supplied to Delhi DISCOMs. Hence, it cannot be anyone's case that at any point in time, the beneficiaries from DVC generating station were not identified.

l) BYPL failed to relinquish its LTA in terms of the Connectivity Regulations of this Commission and PGCIL also did not carry out any of the punitive and coercive action for failure on the part of BYPL to make payment of transmission charges. Further, PGCIL failed to appreciate that PGCIL did not grant LTA to DVC, rather LTA was granted to BYPL. Mere refusal of payment by BYPL does not mean that permission of LTA which was granted to BYPL will automatically get transferred to DVC along with all the consequences and incidental costs.

m) The grant of LTA is based on the PPA and MoM dated 06.02.2012 but at the same time it is an independent arrangement/ contract for which consequences under Connectivity Regulations and under Sharing Regulations must follow in case the LTA to be surrendered by BYPL. Therefore, the said Letter in no manner can be interpreted to shift the liability of BYPL upon DVC which has been statutorily approved by the Delhi Electricity Regulatory Commission in its Order dated 31.3.2007.

n) The PPA dated 24.08.2006 was signed between DVC and DTL, which obligated DTL under Article 4.3 read with Article 4.4 that all the transmission charges beyond delivery point would be borne by DTL. This PPA subsequently stood assigned to BYPL vide DERC order dated 31.03.2007. The said order

remains unchallenged and has attained finality. Therefore, admittedly the primary obligation of payment of transmission charges beyond delivery point of Mejia TPS (Unit 7&8) till date is casted upon BYPL.

o) PGCIL has referred to Clause 9.2 of the BPTA that provides that in case the beneficiary has not been identified, the obligation to pay the transmission charges have to be borne by DVC. However, in the case in hand, since the beneficiaries of the power generated by DVC had been identified from the inception, therefore, under no circumstances DVC is obligated to bear or pay the transmission charges.

p) In terms of Sharing Regulations, after the commercial operation of generator (i.e. DVC in present case), it is the responsibility of Long-Term Customer i.e. BYPL to pay the transmission charges based on their share of capacity in such generating station. In the instant matter, after grant of LTA of 119.19 MW by PGCIL to BYPL from MTPS Unit # 8 (i.e. on 19.04.2012) and subsequent commercial operation of MTPS # 8 declared on 16.08.2012, the finality regarding sharing/ sharing mechanism of the Bulk Power Beneficiaries has been achieved.

q) BYPL also understood its obligation and honored it for a considerable point in time that is up to March 2013. Today the entire case of BYPL is premised on the argument that its application for LTA was not made for Mejia Unit 8. However, this fact was not at all agitated when PGCIL granted the LTA on 19.04.2012.

r) The transmission line was built to augment capacity from Eastern Region to Northern Region. The lines in no manner were specifically built for DVC, which is evident from the fact that out of 875 MW allocated/ contracted with DTL, LTA for only 238.38 MW was granted to BYPL. The balance capacity of other DISCOMs namely BRPL and TPDDL was also surrendered in the MoM dated 6.2.2012. However, till date PGCIL has not levied a single Rupee of Transmission Charges either on DVC or on other DISCOMs such as BRPL and TPDDL for the surrendered quantum of power from MTPS 7 & 8. Hence, clearly the lines so built were for overall augmentation and in no manner can be held to be specifically made to cater to the requirement of DVC only.

47. BYPL in its written submission dated 9.7.2019 has submitted as under:

- a) There is no prayer against BYPL at all. The Petitioner has reiterated its claim qua DVC even in its written submissions dated 30.06.2019. During the hearing before this Commission, the Petitioner even orally made a claim only qua DVC alone. Accordingly, no cause of action arises to claim transmission charges qua BYPL.
- b) It is clearly the obligation of DVC to pay transmission charges in case of any ambiguity as regards the beneficiaries to whom power is to be supplied. Clause 9.2 of the BPTA read with Regulation 8(6) of the Sharing Regulations, cast the liability on the generator to pay transmission charges.
- c) The fact that BYPL is not a beneficiary is clearly borne out and confirmed by letter dated 14.12.2016 by DVC to BYPL indicating its confirmation of surrender of power by BYPL from Unit No.8 effective from the commercial operation date of the said Unit. Hence, BYPL is neither in law nor in fact a beneficiary of supply from the said unit from whom liability of payment of transmission charges could ever be claimed. Therefore, squarely in terms of BPTA dated 26.7.2008, Regulation 8(6) read with Regulation 11(9) of the Sharing Regulations, liability is cast on DVC to bear transmission charges as BYPL is not a beneficiary of Unit 8.
- d) There is nothing in law that can authorise the levy of transmission charges on BYPL due to:
- (i) The absence of any application by BYPL seeking LTA for Mejia no.8; and
  - (ii) Acceptance of surrender of power by DVC in terms of the said letter dated 14.12.2016.
- e) As per settled legal principles, no liability can be cast on BYPL only for the reason that BYPL had made payments towards transmission charges. In point of fact, BYPL was forced to pay transmission charges under coercion of Regulation of Power by PGCIL. BYPL has protested and objected for the payments that it had to make towards the transmission charges. Furthermore, if no LTA has been applied for by BYPL and when DVC has accepted the surrender of power from BYPL, BYPL cannot be held liable in any manner whatsoever.
- f) DERC in its order dated 31.3 2007 and the PPA dated 24.8.2006 between DVC and Delhi Transco Ltd., cannot create any obligation on BYPL for the payment of transmission charges to PGCIL. In the light of the surrender of power with effect from the date of the Commissioning of the Unit, there can be no question of relying

upon the said Order dated 31<sup>st</sup> March 2007 and that too for the payment of transmission charges. It is also importantly submitted that the aforesaid order dated 31<sup>st</sup> March 2007 of the DERC as well as the PPA dated 24<sup>th</sup> August 2006 between DVC and Delhi Transco Ltd., does not and cannot amount to open access/ long-term open access by the Petitioner to BYPL for availing power supplies from DVC'S Mejia Unit No.8.

g) The signing of the TSA does not make BYPL liable to pay transmission charges unless the user has been provided open access to the transmission system of the Petitioner for use. In other words, if the CTU has not provided open access to its transmission system for use by BYPL, then the signing of the TSA will not ipso facto make BYPL liable to payment of transmission charges.

h) The detail of Transmission lines mentioned in Schedule-II (which includes 400 kV Maithon – Mejia D/C Line) of TSA are applicable to all the Designated ISTS Customers (DIC's) and not only to BYPL. The Petitioner has advanced an untenable contention that the scheme of grant of LTA and recovery of charges is that once the Inter-State Transmission System (ISTS) has been developed, it has to be serviced. However, the scheme of the Act and Commission's regulations stipulate that the transmission charges can be levied only in the cases where open access is applied for and availed of (excluding MoP allocations) and the cases where generator or beneficiaries specifically accept and accordingly sign the agreement with CTU for payment of transmission charges, in the absence of which, the transmission charges cannot be levied.

i) The entire basis of applicability of the above Regulation is contained in the words "availing supplies". If BYPL is not availing supplies from inter-State generating stations viz. DVC Mejia Unit No. 8, then the charges payable by such generators for such Long Term supply ought not to be billed directly to BYPL.

j) In the Minutes of Meeting held on 30.11.2011 in the Office of member (PS), CEA in regard to the connectivity agreement for the upcoming DVC generation projects, it was noted that the day the Petitioner would grant access, DVC has to bear transmission charges as per POC regime.

## **Analysis and Decision**

48. We have heard the learned counsels for the Petitioner, DVC and BYPL and also the representative of POSOCO and perused the documents available on record. The Petitioner has filed the present petition seeking a direction to DVC to pay the transmission charges for LTA quantum of 119.19 MW from Unit 8 of MTPS as BYPL refused to pay the transmission charges for the said LTA. The Petitioner had not initially made BYPL and POSOCO as respondents in this Petition. Subsequently, as per the directions of the Commission, both BYPL and POSOCO were impleaded as parties to the Petition. Both DVC and BYPL have prayed that they are not liable to pay the transmission charges for the LTA of 119.19 MW from Unit 8 of MTPS. Additionally, BYPL has raised the issue of maintainability of the petition qua BYPL. POSOCO has made its submission on a generic issue that all generators should be made liable to take LTA for their entire capacity and wherever beneficiaries have been identified, the liability should pass on to the beneficiaries to the extent of capacity contracted with such beneficiaries and the generator shall be liable to pay the transmission charges for LTA for the balance capacity.

49. After hearing the submission of the Petitioner and the Respondents, the following issues arise for our consideration:

- a) **Issue No.1:** Whether the Petition is maintainable qua BYPL?
- b) **Issue No.2:** What shall be the treatment of LTA of 119.19 MW for MTPS Unit 8 of DVC?

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

50. BYPL has submitted that the petition is not maintainable as the Petitioner has not prayed for any relief against BYPL. Further, it has submitted that the surrender of power by BYPL has purportedly not been accepted by DVC and, therefore, the matter needs to

be decided by the Appropriate Commission. In the absence of a petition by DVC claiming charges from BYPL, the issue arising in the present petition cannot be effectively adjudicated.

51. The Petitioner had filed the instant petition with DVC as the sole respondent and had tried to make out a case that since BYPL refused to pay the transmission charges for 119.19 MW of Unit 8 of MTPS. The Petitioner had submitted that in the present case, DVC should be considered as a “generator without identified beneficiary” and transmission charges should be payable by DVC in terms of proviso to Regulation 11(9) of the Sharing Regulations. The Commission directed the Petitioner to implead BYPL as respondent as it was considered a necessary party for adjudication of the dispute.

52. Order 1, Rule 10(2) of Civil procedure Code, 1908 vests powers in a court to delete or add any party as plaintiff or respondent. Rule 10 (2) of Order 1 of CPC, 1908 reads as under:

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

53. A bare perusal of sub-rule (2) of Order 1 Rule 10 of the CPC indicates that power has been conferred on the Court to strike out the name of any party improperly joined whether as plaintiff or defendant and also when the name of any person ought to have been joined as plaintiff or defendant or in a case where a person whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit.

54. Therefore, it is the discretion of the Court to add any party as the respondent if in the view of the court it is necessary to effectually and completely adjudicate upon and settle all questions involved in the suit. The Commission has considered BYPL as the necessary party for adjudication of the dispute raised in the Petition and accordingly, directed BYPL to be impleaded as respondent. This decision was taken by the Commission since the Petitioner had granted LTA for 119.19 MW from MTPS Unit 8 in favour of BYPL and had initially billed BYPL. BYPL has admittedly made payment of the transmission charges from October 2012 till March 2013 to the Petitioner, though BYPL has claimed that the charges for these months were paid on the assurance of the Petitioner that the matter would be resolved within one month. Since the LTA was issued in favour of BYPL and it paid the transmission charges for about six months and subsequently refused to pay the transmission charges, BYPL has been considered a necessary party for adjudication of dispute between the Petitioner and DVC where the issue involved is whether it is DVC or BYPL that has the liability to pay the transmission charges for LTA of 119.19 MW from MTPS Unit 8. Therefore, we reject this submission of BYPL that the petition qua BYPL is not maintainable on the plea that no prayer has been made by the Petitioner against BYPL.

55. BYPL has contested maintainability of this Petition on another ground also and submitted that since the surrender of power of 119.19 MW by BYPL has purportedly not been accepted by DVC and that DVC in turn is putting obligations for transmission charges on BYPL, the matter needs to be necessarily decided by the Appropriate Commission between DVC and BYPL. BYPL has submitted that in the absence of a petition for claiming the charges from BYPL, the issues arising in the present petition cannot be effectively adjudicated by the Commission and for this reason, the petition is not maintainable. DVC in its written submission has submitted that BYPL vide its letter dated 11.10.2012 wanted to surrender 119.19 MW of power from Mejia Unit 8 but DVC vide its

reply dated 15.10.2012 did not accept the proposal of BYPL to surrender power. Accordingly, BYPL is bound to honour its obligations under the PPA dated 24.8.2006 as well as the confirmation through the MoM dated 6.2.2012 till such time DVC could reallocate the surrendered power to some other long term customer. The Petitioner has submitted that in view of the dispute between DVC and BYPL regarding the surrender of power of 119.19 MW from MTPS Unit 8, the Petitioner is being made to suffer even though it had put in place the transmission system for transfer of 119.19 MW from Mejia Unit 8. We have considered the submissions of the BYPL, DVC and the Petitioner. We find that BYPL has surrendered the power of 119.19 MW from MTPS Unit 8 despite categorically stating in the MoM dated 6.2.2012 to retain the said power from MTPS Unit 8. DVC has not accepted the unilateral surrender and has conveyed to BYPL its decision not to accept the unilateral surrender of power till it finds other customer to reallocate the power. BYPL is an aggrieved party after rejection of its unilateral surrender of power by DVC and despite being an aggrieved party, it was equally open for BYPL to approach the Commission for resolution of dispute with regard to surrender of power. Therefore, BYPL cannot take the stand that unless DVC files a petition for resolution of the dispute regarding its claim of payment of charges BYPL, the present petition for payment of transmission charges for LTA to the Petitioner cannot be maintained. In any case, BYPL has been made a party in the petition and the submissions of DVC, BYPL and the Petitioner would be taken into account while deciding the liability for transmission charges. Accordingly, we reject this objection of BYPL with regard to maintainability of the Petition.

**Issue No.2: What shall be the treatment of LTA of 119.19 MW for MTPS Unit 8 of DVC?**

56. The crux of the dispute between the parties is that while BYPL has claimed that it applied for LTA of only 119.19 MW from MTPS Unit 7, PGCIL has granted LTA of 238.38 MW to BYPL based on the Minutes of the Meeting dated 6.2.2012 submitted by DVC.

BYPL is disputing its liability to pay for differential LTA of 119.19 MW on the ground that it had never applied for such quantum of LTA. Subsequent to denial to pay transmission charges for this quantum of 119.19 MW of LTA against MTPS Unit 8, PGCIL raised bills on DVC for the said capacity on the ground that it had granted LTA to DVC and consequent to refusal of BYPL to pay the bills, the said capacity shall be considered as LTA to target region without identified beneficiaries and in terms of Proviso to Regulation 11(9) of the Sharing Regulations, DVC is liable to pay the LTA charges for 119.19 MW. The Petitioner has submitted that since DVC is also disputing its liability to pay the transmission charges, the present petition has been filed seeking a direction to DVC for payment of transmission charges.

57. In order to appreciate the dispute in correct perspective, it is necessary to recapitulate the background of transmission planning of ISTS, with particular reference to the transmission planning for evacuation of power from the generating station of DVC.

58. DVC is a Central Generating Company governed in terms of the DVC Act, 1948 and for the purpose of tariff, it is subject to the regulatory jurisdiction of the Commission under Section 79(1)(a) of the Act. DVC planned a generation addition program for 4700 MW for Koderma TPS (1,000 MW), Bokaro A TPS (500 MW), Mejia B TPS (1,000 MW), Durgapur TPS (1,000 MW) and Raghunathpur TPS (1,200 MW). Its proposed tie-up/allocations to the beneficiaries were with Delhi, Punjab, Madhya Pradesh, Haryana, West Bengal and DVC (Distribution). DVC entered into a PPA dated 24.8.2006 with DTL for supply of power up to 2500 MW progressively from its generating stations as and when they achieved COD from the dates of COD for a period of 25 years. DVC also signed PPAs with Punjab and Haryana for 700 MW and 200 MW respectively. Subsequently, the transmission systems for evacuation from the generation additions of DVC were planned by CEA in consultation with CTU and DVC. The first such meeting was held on 17.11.2006 under the aegis of Member (PS), CEA wherein the options for development of

the transmission systems based on the system studies carried out by CEA was discussed and decided. The scheme was placed before Standing Committee on Power System Planning of Northern Region in the 22<sup>nd</sup> meeting held on 12.3.2007, Standing Committee on Power System Planning of Eastern Region held on 5.5.2007 and 30.7.2007 and 22<sup>nd</sup> Meeting of the Standing Committee on Power System Planning of Northern Region held on 3.7.2007. In these meetings, the revised power systems planned by the CEA were discussed and approved. Though originally the transmission systems for evacuation of power from DVC generation were identified for implementation by private sector, DVC requested for execution of the transmission systems by PGCIL in view of the critical timelines of commissioning of the generation projects. The implementation of the transmission projects was entrusted to PGCIL by MoP based on recommendations of CEA. From the above narration of facts, it remains beyond doubt that the transmission systems for evacuation of power from the expansion projects of DVC were taken up by PGCIL on the basis of the coordinated transmission planning by CEA.

59. In the 6<sup>th</sup> Meeting of the Technical Coordination Committee of Eastern Region Power Committee held on 11.6.2008, the Petitioner furnished the details of proposed tie-up/ allocation from DVC projects to the beneficiaries. As per the details (quoted in para 8 of this order), Delhi's share was indicated as 2,100 MW including 875 MW from Mejia B TPS. PGCIL's suggestion for considering the transmission systems as part of main BPTA (signed by PGCIL with all constituents of each region) was not agreed to and it was decided that separate BPTAs would be signed by the beneficiaries of the generation project. Therefore, DTL or its successors are required to sign BPTA for evacuation of their shares in the DVC generation projects.

60. The PPA between DVC and DTL dated 24.8.2006 provides as under:

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

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

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

61. It is apparent from the provisions of the PPA between DVC and DTL that it is the responsibility of the DTL to make applications for availing access to intra-regional and inter-regional transmission systems of CTU for transfer of power from the periphery of DVC and to pay the transmission charges. Further, DTL has the responsibility to coordinate with CTU or any other transmission licensee for implementation of the transmission system. DERC vide its letter dated 31.3.2007 reassigned the PPA between DVC and DTL among the distribution licensees in Delhi. As per the said order, the additional capacity which may be available from DVC would be allocated to NDPL, BRPL and BYPL in the ratio of 29.18%, 43.58% and 27.24% respectively. Therefore, in terms of the PPA dated 24.8.2006 read with the DERC's order dated 31.3.2007, it is the responsibility of NDPL, BRPL and BYPL to make arrangement for evacuation of power from the DVC periphery and to pay the transmission charges.

62. We have perused Long term open access to NDPL, BRPL and BYPL vide PGCIL letter dated 25.9.2007 where reference to DTL application dated 28.8.2006 seeking LTOA has been made and its discussion during LTOA meeting of constituents held on 3.11.2006 has also been made. Vide the minutes of meeting of long term open access held on 3.11.2006, it is observed that DTL applied for LTOA for 100 MW-2500 MW power commencing from Dec'06 to April'11 onwards. During the meeting, it was decided to grant

LTOA to DTL for 100 MW/ 230 MW after commissioning of Kahalgaon-II transmission system. It was also decided that for transfer of 400 MW and above beyond November 2007, detailed study was needed to be carried out separately for identifying transmission strengthening requirement. This implies that out of 2,500 MW LTOA sought by DTL from April'2011 onwards, only 100 MW/ 230 MW was agreed to be granted to DTL. Further vide LTOA grant letter dated 25.9.2007, PGCIL has stated as follows:

*“While processing the signing of BPTA, DTL informed that matter regarding signing of the BPTA be taken directly with the DISCOMs, since per the Electricity Act 2003 under Sections 39 and 41, DTL is a wire company w.e.f. 01/04/2007 and its function is restricted to wheeling of the power within Delhi.*

*In this regard it was informed to DTL that as per the terms of CERC regulations para 6 clause (xvi), it may be observed that “once open access has been granted, the long term customer or the short term customer shall not be replaced by any other person on account of a subsequent request received from such other person” and it was suggested that DISCOMs may apply for Long Term Open Access directly to POWERGRID. Accordingly, we have received the Long Term Open Access Application from the three DISCOMs of Delhi (copy of the applications is enclosed) for transfer of power from DVC projects as per the details given below:*

<b>Name of DISCOM</b>	<b>Quantum of power</b>	<b>Date from when LTOA sought</b>
NDPL	67 MW	October 1,2007
BRPL	100 MW	October 1,2007
BYPL	63 MW	October 1,2007
<b>TOTAL</b>	<b>230 MW</b>	

*From the above it may be seen that the Long Term Open Access to DTL had already been granted for transfer of 230 MW from DVC projects from 1<sup>st</sup> October 2007 onwards for 25 years and the application from the DISCOMs is for the same power. The application from DISCOMs is primarily due to the direction from DERC and as per the terms of CERC regulation on Long Term Open Access. Accordingly, we are granting Long Term Open Access to NDPL, BRPL and BYPL for the above mentioned quantum of power subject to the signing of the agreement for payment of the transmission charges.”*

63. Along with the grant letter, Applications dated 18.9.2007 of BRPL, dated 18.9.2007 of BYPL and dated 3.9.2007 of NDPL are also attached totaling to 230 MW. Hence it can be concluded that Delhi Discoms had specifically applied for such LTOA quantum and were granted LTOA as applied for.

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

65. DVC and the Petitioner executed a BPTA dated 26.7.2008 in which DTL, Haryana and DVC were recognized as beneficiaries in respect of their respective shares in Mejia Unit 7 & 8 (2x500 MW) i.e. DTL: 850 MW, Haryana: 100 MW and DVC:25 MW. The relevant para of the BPTA is reproduced below:

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

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

66. Though clause 9.1 states that it would be the responsibility of the bulk power beneficiaries to proportionately share and pay the transmission charges in accordance with the sharing mechanism indicated in Annexure B of the said BPTA or as decided by the Commission from time to time, clause 9.2 indicates that full transmission charges shall be borne by DVC till the finality of the sharing or sharing mechanism by the bulk power beneficiaries.

67. In the meeting taken by Member (PS) CEA on 30.11.2011 to discuss the issues regarding connectivity agreement for the upcoming DVC generation projects and related issues, the representative of DVC gave the information as quoted in para 10 of this order. Briefly, it has been stated that out of 2x500 MW of Mejia Units 7 & 8, there is firm beneficiary only for 100 MW for which PPA has been signed with Haryana. As regards the balance 900 MW, the position of DVC and the decision of Member (PS) CEA were recorded as under:

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

68. As per the above statement, DVC has accepted that despite the PPA dated 24.8.2006 being in existence which included supply of 875 MW from Mejia 7 & 8 to DTL, DVC would consume 900 MW (including 25 MW for its own consumption) in its system on account of proposal of DTL not to draw this power. Member (PS) indicated that in that event, DVC would be required to pay the ISTS charges for 900 MW. In the said meeting, DVC assured to furnish the requisite details with regard to unit-wise CoDs and the

prospective long term beneficiaries of unallocated power. Member (PS) clarified that PGCIL would grant access for ISTS to DVC and DVC would be required to pay the transmission charges as per PoC regime. Therefore, DVC accepted the liability to pay the transmission charges for the entire quantum of 875 MW from Mejia 7 & 8 which was earlier included in the PPA dated 24.8.2006 except to the extent DVC is able to firm up the beneficiaries.

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

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

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

Gen Strn/ Units	Delhi Discom's Share (MW) as per agreement	Share at individual Discom		
		NDPL (MW)	BRPL (MW)	BYPL (MW)
MTPS U#6 (250 MW), COD-24.9.2008	100	29.18	43.58	27.24
CTPS U#8 (250 MW), COD-15.7.2011	150	43.77	65.37	40.86
CTPS U#7 (250 MW), COD-2.11.2011	150	43.77	65.37	40.86
MTPS U#7 (500 MW), COD-31.8.2011	437.5	127.66	190.66	119.18
MTPS U#8 (500 MW)	437.5	127.66	190.66	119.18
DSTPS U#1 (500 MW)	225	66.56	98.05	61.29
DSTPS U#2 (500 MW)	225	66.56	98.05	61.29
KTPS U#1 (500 MW)	387.5	113.07	168.87	105.56
KTPS U#2 (500 MW)	387.5	113.07	168.87	105.56
Total	2500	729.5	1089.50	681.02

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

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

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

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

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

Gen Stn/ Units	Delhi Discom's Share (MW) as per agreement	Share at Individual Discoms		
		NDPL (MW)	BRPL (MW)	BYPL (MW)
MTPS U#6 (250 MW), COD-24.9.2008	100	29.18	43.58	27.24
CTPS U#8 (250 MW), COD-15.7.2011	150	43.77	65.37	40.86
CTPS U#7 (250 MW), COD-2.11.2011	150	43.77	65.37	40.86
MTPS U#7 (500 MW), COD-31.8.2011	437.5	Nil	NIL	119.18
MTPS U#8 (500 MW)	437.5	Nil	Nil	119.18
DSTPS U#1 (500 MW)	225	Nil	Nil	61.29
DSTPS U#2 (500 MW)	225	Nil	Nil	61.29
KTPS U#1 (500 MW)	387.5	Nil	Nil	105.56
KTPS U#2 (500 MW)	387.5	Nil	Nil	105.56
Total	2500	116.72	174.32	681.02

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

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

*In case of surrender by NDPL, it is also agreed that NDPL will bear the fixed charges till the surrender of power accepted by DVC immediately.*

*5. NDPL also agreed to enhance LC commensurate with their allocated share of power as per the revised agreement/ as per the declared capacity ensured by DVC from MTPS-6 and CTPS Unit# 7 &*

*6. BRPL and BYPL agreed to start the process of liquidation of dues and establishing the requisite LC once the disbursement of loan by IDBI to them is firmed up.*

*7. BYPL asked to clarify the consideration of the sinking funding the tariff petition for MTPS 7 & 8 while the same has not been considered for the tariff petition in respect of CTPS U# 7 & 8 and DSTPS Unit 1 & 2. DVC indicated that the tariff petition of the said generating stations already submitted before CERC based on certified audited accounts of DVC. However, any further clarification is needed on the issue, the same will be complied by DVC on receipt of written queries from BYPL.*

*8. DVC requested all the Discoms to make payment of power supply bills and any other disputed amount immediately in terms of provision of subsisting PPA executed on 24.8.2012 with DTL which is still in force.*

*9. The three Discoms of Delhi requested the following to DVC for scheduling by them:*

- a) DVC, SLDC should come out with declared capacity (DC) on day-ahead basis to each of three Discoms in proportion to their share out of these three generating stations.*
- b) Though as on date, Delhi Discoms has obtained LTA grant for 230 MW from CTU, it is their responsibility to make necessary arrangement i.e. either STOA mode/ LTA mode for remaining Power from DVC.*
- c) The issue of scheduling of power will be addressed separately by CE (CLD) in terms of CERC Regulation and IEGC Code.*
- d) DVC agreed to issue monthly bills/ any commercial calculations or commercial related issues/letter to the following Address as requested by them:*

*i. BSES Yamuna Power Ltd., 2ndFloor, B-Block, Shakti Kiran Building, Karkardooma, New Delhi-110032. Kind attn.. Shri Sunil Kumar Kakkar, (As VP, PMG), Contact No. 01-39992035/2002, Fax No. 011-39992076.*



*ii. Tata Power Delhi Distribution Ltd., (Formerly NDPL), NDPL House, 3rdFloor, Hudson Lines, Kingsway Camp, Delhi-110009-Kind Attn. Ashish Kumar Dutta, AGM (PMG).*

*iii. BSES Rajdhani Power Ltd., BSES Bhawan, 2ndFloor, B-Block, Nehru Place, New Delhi-110019-Kind Attn. Sanjay Srivastav, Assistant Vice President (PMG), Fax No. 011-39999454, 39999037*

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

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

*The meeting ended with thanks.”*

70. Perusal of the above minutes of meeting dated 6.2.2012 shows that the parties to the PPA dated 24.8.2006, namely, DVC and the three distribution licensees of Delhi (being the successors of the PPA dated 24.8.2006 as per the order dated 31.3.2007 issued by DERC) discussed about revisiting the provisions of the PPA dated 24.8.2006 and agreed about reallocation of capacities among the distribution companies of Delhi. As per the PPA dated 24.8.2006, Delhi's allocation was for 2500 MW (NDPL: 729.50 MW, BRPL: 1089.50 MW and BYPL: 681.02 MW). After the discussion, the allocation was agreed as NDPL: 116.72 MW, BRPL: 174.32 MW and BYPL: 681.02 MW. While NDPL and BRPL expressed their intention to surrender their shares from MTPS Units 7& 8 and DSTPS Units 1 & 2, BYPL confirmed that “they will not surrender any power out of their share as indicated above”. It has also been agreed upon by BRPL and BYPL that they will bear the fixed charges from the date of COD as per the declared capacity scheduled by DVC-SLDC as per CERC regulations and IEGC for scheduling till finalizations of surrender of power by them after getting clearance from their Board/ State Commission and also the

acceptance of the same by DVC. In case of surrender by NDPL, it is also agreed that NDPL will bear the fixed charges till the surrender of power accepted by DVC immediately. There is nothing on record to show that any of the parties has repudiated the minutes of the meeting or challenged the said decision in the meeting. However, BYPL has approached DVC for surrender of 119.19 MW from Mejia Unit 8.

71. As per the para 3 of the Minutes of the Meeting dated 6.2.2012, Delhi Discoms had taken LTA for 230 MW and were required to take necessary action for LTA formalities for another 170 MW for taking total power of 400 MW from MTPS Unit 6 (100 MW) and CTPS Units 7 & 8 (300 MW). But the Delhi Discoms agreed to take scheduled power from DVC beyond 230 MW by paying STOA charges. Further, as per Para 9(b) of the said minutes, it was the responsibility of Delhi Discoms to make necessary arrangement i.e. either STOA mode/ LTA mode for the remaining power from DVC (beyond 230 MW for which LTA had been granted vide letter dated 25.9.2007 and 170 MW for which Delhi Discoms were to complete the LTA formalities). Therefore, if the Delhi Discoms do not avail the LTA beyond 400 MW and intend to evacuate the power through STOA arrangement, then LTA charges becomes the liability of DVC in terms of the BPTA dated 26.7.2008 between PGCIL and DVC.

72. Based on the decision as recorded in the minutes of meeting dated 6.2.2012, BYPL vide its letter dated 28.3.2012 made an application for LTA for 119.19 MW from Mejia Unit 7, but no application was made for LTA of 119.19 MW from Mejia Unit 8. It is also noted that along with the LTA application, BYPL also forwarded the notes of discussion held on 6.2.2012. Consequently, PGCIL after considering the application of BYPL and minutes of the Meeting dated 6.2.2012 has issued letter dated 19.4.2012 as reproduced below:

“ .....

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

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

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

Sl.	Generation Unit	Date of commencement of power to long term beneficiaries	Share of power to respective beneficiaries		
			BYPL	Haryana	DVC
1.	Unit-I : 500MW	With immediate effect	119.19 MW	50 MW	12.5 MW
.	Unit-II : 500MW	To match with date of its commercial operation	119.19 MW	50 MW	12.5 MW

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

It may be recalled that the transmission system for evacuation of power from DVC generation projects (including Maithon RB TPS-JV with Tata Power) was evolved as an ISTS line in line with the central sector generating stations and therefore no separate long term agreement was envisaged and hence not signed. However, DVC and BYPL need to sign the Transmission Service Agreement (TSA). In this connection reference is invited to para 16 of the CERC order dated 25.01.2012 in Petition No. 213/MP/2011 which states as follows:

“ .....

We also take this opportunity to clarify that the TSA has been issued as a model agreement under the provisions of the Sharing Regulations for ensuring uniformity. While the genuine grievances of the DICs will be looked into, there is no reason why the signing of the TSAs should be delayed. In any case, as per clause (5) of the Regulation 13 of the Sharing Regulations, the notified model Transmission Service Agreement shall be the

*default transmission agreement and shall mandatorily apply to all DICs. In other words, till the TSAs are signed by the DICs, they will be bound by the model TSA.”*

*In view of the above order of CERC, DVC and BYPL, both are deemed signatory of Model TSA. Notwithstanding the above, DVC and BYPL are however requested to sign the TSA by 30.4.2012. In this regard, these agencies are requested to contact Executive Director (Commercial), POWERGRID. It is hereby also clarified that the applicable POC charges in line with RTA issued by ERPC/NRPC, RLDC fee and Charges, ULDC charges etc shall be payable by beneficiaries/generating agency as per the prevailing CERC regulations.”*

73. BYPL vide its affidavit dated 25.7.2014 has stated that Petitioner has wrongly granted LTA of 238.38 MW (119.19 MW from Unit#7 & 119.19 MW from Unit#8 of Mejia-B) to BYPL vide its letter dated 19.4.2012. Petitioner has enclosed its letter to DVC dated 11.7.2013 whereby it has stated that LTA of 119.19 MW was granted to DVC.

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

75. We have perused letter dated 19.4.2012 of PGCIL as quoted above. We observe that letter dated 19.4.2012 is not clear as to whether LTA has been granted through this letter and to whom it has been granted. BYPL had made LTA application as per Connectivity Regulations along with requisite application fees. The LTA has to be granted as per Format LTA-3 under the said regulations. However, Petitioner did not grant LTA to BYPL as per Format LTA-3, rather acknowledged its LTA Application in letter dated 19.4.2012. The subject of Letter dated 19.4.2012 is “Transfer of power to Long term beneficiaries from generation projects of DVC (Mejia-TPS, 2X500 MW).

76. We observe that Petitioner chose to consider letter dated 19.4.2012 as grant to BYPL at one point of time and part to DVC at another point of time.

77. Petitioner has referred to minutes of the Meeting dated 6.2.2012 in its letter dated 19.4.2012. We observe that meeting dated 6.2.2012 nowhere discusses that LTA for Mejia Unit#7,8 shall be considered for BYPL, though it has discussions on surrender of power related to Mejia Unit#7 and 8. With respect to transmission, following is also recorded in minutes dated 6.2.2012:

*9) The three Discoms of Delhi requested the following to DVC for scheduling by them.*

- a) DVC, SLDC should come out with declared capacity (DC) on day – ahead basis to each of three Discoms in proportion their share out of these three generating stations.*
- b) Though as on date, Delhi Discoms has obtained LTA grant for 230 MW from CTU, it is their responsibility to make necessary arrangement i.e. either STOA mode/ LTA mode for remaining power from DVC.*
- c) The issue of scheduling power will be addressed separately by CE (LD) in terms of CERC regulation and IGEC code.*
- d) DVC agreed to issue monthly bills/ any commercial calculations or commercial related issues/ letter to the following address as requested by them.....”*

78. As per Para 9(b) of the said minutes, it was decided that for the remaining power, Delhi Discoms would make necessary arrangement either through LTA or through STOA. In other words, as per the decision in the meeting dated 6.2.2012, it was not mandatory for the Delhi Discoms to apply for LTA for evacuation of power from DVC beyond 400 MW. BYPL applied for LTA for only 119.19 MW from Unit 7 of Mejia TPS.

79. 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. We observe that there is no allocation of power by Gol for Mejia-B Unit #7 or 8. In case of sale of power based on contractual arrangement by a central generating company like DVC, it is necessary for the DVC or its beneficiaries to apply for LTA.

80. It is noted that right from the beginning, Delhi Discoms have been granted LTA by PGCIL vide its letter dated 25.9.2007 based on the LTA applications by DTL/ Delhi Discoms. Therefore, we are of the view that for 119.19 MW from Mejia Unit#8, there is no LTA Application and no Allocation of power by MoP, and hence there is no Long term customer as per Connectivity Regulations. In the absence of Long term customer, no corresponding contractual obligation arises for the LTA capacity which was never applied for such LTA.

81. We have also observed in our order dated 16.3.2017 in Petition No. 306/MP/2015 that the LTA quantum should be granted as sought in the LTA application. The relevant extracts of the said order is extracted as under:

*“17. In our view, the Petitioner had applied for LTOA for 273 MW after deducting the auxiliary consumption from the installed capacity of 300 MW of Pathadi TPS of LAPL which was overlooked at the time of granting LTOA. Since the Petitioner could inject power into ISTS for the capacity net of the auxiliary consumption, the Petitioner has been burdened with the transmission charges for the capacity corresponding to auxiliary consumption. We direct that the LTOA/LTA of the Petitioner be reduced from 300 MW to 273 MW.”*

82. We are, therefore, of the view that PGCIL should not have considered LTA of 119.19 MW towards Mejia-B, Unit#8 without any LTA application for the same and therefore, no corresponding liability arises for the payment of transmission charges either for BYPL or for DVC. Hence, Petitioner's prayer to direct DVC to make payment of transmission charges to CTU for the LTA of 119.19 MW power from Mejia Unit#8 (DVC) since Oct'12 along with surcharge for the delayed payment is rejected. We direct that such LTA of 119.19.MW shall be considered as void ab initio. The bills already raised towards such LTA

shall be adjusted from the amount collected through Short Term Open Access within a period of 3 months from the issue of the order.

83. The Petitioner has also filed I.A No.43/2019 seeking the following prayer:

a) *Admit the instant Application and list the same for urgent hearing;*

b) *Pass appropriate direction permitting the applicant to treat the subject LTA that LTA as relinquished subject to payment of relinquishment charges in accordance with the decision of this Hon'ble Commission in Petition No. 92/MP/2015 from the party ultimately held liable for the subject LTA in the captioned petition; and*

c) *Pass such further order or orders as this Hon'ble Commission may deem just and proper in the circumstance of the case.*

Considering the decision to consider LTA of 119.19 MW towards Mejia Unit-8 as void ab-initio, prayer of I.A has become infructuous.

84. The Petition No. 85/MP/2014 along with I.A No. 43/2019 are disposed of in terms of the above.

**Sd/-**  
**(I. S. Jha)**  
**Member**

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

**Sd/-**  
**(P. K. Pujari)**  
**Chairperson**