

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 92/MP/2015

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

Date of Order : 8th of March, 2019

In the matter of

Petition seeking directions with regard to difficulties in implementing some of the directions given in the order dated 16.2.2015 in Petition Nos. 92/MP/2014 along with IA Nos. 43/2014, 51/2014, 52/2014, 54/2014, 56/2014 and 59/2014, Petition No. 376/MP/2014, Petition No. 382/MP/2014, Petition No.393/MP/2014 and Review Petition No. 25/RP/2014

And

In the matter of

Power Grid Corporation of India Limited
Saudamini, Plot No. 2, Sector 29,
Gurgaon, Haryana-122 001

....Petitioner

Versus

1. Kerala State Electricity Board,
Vydyuthi Bhavan, Pattom,
Trivandrum – 695 004
Kerala
2. PTC India Limited,
2nd Floor, NBCC Tower,
15 Bhikaji Cama Place,
New Delhi-110066
3. NTPC Vidyut Vyapar Nigam Limited,
NTPC Bhawan, Core-7,
Scope Complex, 7 Institutional Area,
Lodhi Road
New Delhi-110003
4. DB Power Limited,
Office Block IA, 5th Floor, Corporate Block,
DB City Park, DB City, Arera Hills, Opp MP Nagar,
Zone-I, Bhopal-462 016

5. EMCO Energy Limited.
IBC Knowledge Park,
4/1, Bannerghatta Road,
Bangalore-560 029
6. KSK Mahanadi Power Company Limited
8-2/293/82/A/431A, Road No. 22,
Jubilee Hills, Hyderabad-500 033
7. Jindal Power Limited
Plot No. 2, Tower-B, Sector-32,
Gurgaon, Haryana-122 001
8. Karnataka Power Transmission Company Limited
Cauvery Bhawan, K.G. Road,
Bangalore-560009, Karnataka
9. Tamil Nadu Generation and Distribution Corporation Limited,
NPKRR Maaligai, 144, Anna Salai,
Chennai-600 002
10. Essar Power Limited,
Equinox Business Park, Off. Bandra Kurla Complex,
LBS Marg, Kurla (West), Mumbai-400 070
11. National Load Despatch Centre
B-9, Qutab Institutional Area, Katwaria Sarai,
New Delhi-110 016
12. Western Regional Load Despatch Centre,
F-3, M.I.D.C. Area, Marole,
Andheri (East), Mumbai-400 093
13. Central Electricity Authority,
Sewa Bhawan, R.K. Puram,
New Delhi-110 066
14. Bharat Aluminum Company Limited
Aluminium Sadan, Core-6, Scope Office Complex
Lodhi Road, New Delhi 110 003
15. Ind-Barath Energy (Utkal) Limited
Plot No. 30-A, Road No. 1 Film Nagar,
Jubilee Hills
Hyderabad-500 033
16. Dhariwal Infrastructure Limited
CESC House, Chowringhee Square,
Kolkata- 700 001

17. Adhunik Power and Natural Resources Limited
701, 7th Floor, World Trade Tower
Barakhamba Lane
New Delhi-110001
18. MB Power (Madhya Pradesh) Limited
239, Okhla Industrial Estate, Phase III
New Delhi-110020
19. Jhabua Power Limited
Avantha Power & Infrastructure Limited,
6th & 7th Floor, Vatika City Point,
M.G. Road, Gurgaon-122002
20. Jindal India Thermal Power Limited
Plot No. 12, Local Shopping Complex Sector B-1,
Vasant Kunj New Delhi-110070
21. GMR Kamalanga Energy Limited
Plot No. 29, Satya Nagar Bhubaneswar,
Odisha-751007
22. Monnet Ispat and Energy Limited Mohta Building,
3rd Floor 4, Bhikaji Cama Place,
New Delhi-110066
23. Jal Power Corporation Limited
A-102, Secor-65 Noida-201307
24. Essar Power (Jharkhand) Limited (EPJL)
Essar Power Complex, Kanchan Nagri,
Chandwa District-Latehar,
Jharkhand-829203
25. Lanco Babandh Power Private Limited
Plot No. 397, Phase-III Udyog Vihar,
Gurgaon-122016
26. TRN Energy Private Limited
7th Floor, Ambience Office Block Ambience Mall,
NH-8 Gurgaon, Haryana-122001
27. Maruti Clean Coal & Power Limited
Hira Arcade, Ground Floor New Bus Stand Pandri,
Raipur-492001, Chhattisgarh
28. Jaiprakash Power Ventures Limited
Sector-U8, Noida-201304

....Respondents

Following were present:

1. Ms. Suparna Srivastava, Advocate, PGCIL
2. Shri Tushar Mathur, Advocate, PGCIL
3. Shri R. Verma, PGCIL
4. Shri Pratyush Singh, PGCIL
5. Shri Manish Ranjan, PGCIL
6. Shri Dilip Rozekar, PGCIL
7. Ms. Jyoti Prasad, PGCIL
8. Shri Swapnil Verma, PGCIL
9. Shri Sanjay Sen, Senior Advocate, JITPL, Vedanta and Coastal Energen
10. Shri Matrugupta Mishra, Advocate, JITPL, IL&FS, Vedanta, Maruti Clean Coal Limited, SKS Power Limited, GMR Kamalanga, Simhapuri Energy, Coastal Energen Limited
11. Shri Nishant Kumar, Advocate, JITPL, ILFS, Vedanta Limited, Maruti Clean Coal Limited, SKS Power Limited, KMR Kamalanga Ltd, Simhapuri Energy Ltd., Coastal Energen Limited
12. Shri M.G. Ramachandran, Advocate, GUVNL
13. Ms. Anushree Bardhan, Advocate, GUVNL
14. Shri S.K. Nair, GUVNL
15. Shri Amit Kapur, Advocate, WBSEDCL
16. Shri Janmali M., Advocate, WBSEDCL
17. Shri Tabrez Malawat, Advocate, WBSEDCL
18. Ms. Divya Chaturvedi, Advocate, JPL & DIL
19. Shri Prateek Gupta, Advocate, JPL & DIL
20. Shri Ravi Shankar, JPL
21. Shri Ravi Kishore, Advocate, PTC India
22. Shri Deepak Khurana, Advocate, DB Power
23. Shri Vikas Adhia, DB Power
24. Shri Hemant Sahai, Advocate, EPMP& MB Power(MP) Limited
25. Shri Aniket Prasoon, Advocate, EPMP & MB Power(MP) Limited
26. Shri Abhishek Kumar, Advocate, EPMP & MB Power(MP) Limited
27. Ms. Shruti Verma, Advocate, EPMP
28. Shri Abhishek Gupta, MB Power
29. Ms. Swapna Seshadri, Advocate, KSK Mahanadi, PEL Power Limited
30. Shri S. Vallinayagam, Advocate, TANGEDCO
31. Shri Aveek Chatterjee, DIL
32. Shri Anil R. Sah, ILFSTNPL
33. Shri Sanjiv K. Goel, JPVL
34. Shri G.M. Gupta, GMR
35. Shri Manoj Rastogi, TRN Energy & MCCPL
36. Shri Praveen Kataria, TRN Energy & MCCPL
37. Shri Mohit Shinghal, Coastal Energen

ORDER

The Petitioner, Power Grid Corporation of India Limited (hereinafter referred as the Petitioner” or “the CTU”) has filed the present petition seeking certain

clarifications and highlighting difficulties arising in implementation of the directions passed by the Commission vide order dated 16.2.2015 in Petition No. 92/MP/2014 and related Petitions (hereinafter referred as 'impugned order') wherein the Commission directed the Petitioner to determine and levy the relinquishment charges in accordance with Regulation 18 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 as "Connectivity Regulations").

2. The Petitioner has been notified as the Central Transmission Utility (CTU) under Section 38 of the Electricity Act, 2003 (hereinafter referred to as "the Act") and discharges functions of coordination and planning for the inter-State transmission of electricity and is also the nodal agency for processing applications received for grant of connectivity, long term access and medium term open access to the Inter-State Transmission System (ISTS) under the Connectivity Regulations. Respondent Nos. 1 to 10 and 14 to 28 are the generating companies, trading licensees and distribution licensees who have been granted the Long Term Access (LTA) by the CTU in terms of the Connectivity Regulations. These generating companies, trading licensees and distribution licensees have entered into the Bulk Power Transmission Agreement (BPTA) or Long Term Access Agreements with the CTU. Respondent Nos. 11 and 12 are National Load Dispatch Centre (NLDC) and Western Regional Load Dispatch Centre (WRLDC) respectively and are responsible for power system operation. Respondent No.13 namely, Central Electricity Authority (CEA) is a technical body which discharges various functions as vested under of Section 73 of the Act.

BACKGROUND

3. Para 5.3 of the National Electricity Policy notified under Section 3 of the Act vide Ministry of Power, Government of India Resolution No. 23/40/2004-R&R (Vol.II) dated 12.2.2005 provided as under:

“5.3 Network expansion should be planned and implemented keeping in view the anticipated transmission needs that would be incident on the system in the open access regime. Prior agreement with the beneficiaries would not be a precondition for network expansion. CTU/STU should undertake network expansion after identifying the requirements in consultation with stakeholders and taking up the execution after due regulatory approvals.”

Further, Para 7.1.4 of the Tariff Policy notified vide Govt. of India Ministry of Power Resolution No. No.23/2/2005-R&R (Vol.III) dated 6.1.2006 reiterates the need for network expansion after obtaining regulatory approval as under:

“7.14 In view of the approach laid down by the NEP, prior agreement with the beneficiaries would not be a pre-condition for network expansion. CTU/STU should undertake network expansion after identifying the requirements in consonance with the National Electricity Plan and in consultation with stakeholders, and taking up the execution after due regulatory approvals.”

As per the mandate of the National Electricity Policy and Tariff Policy as quoted above, the CTU, in the absence of prior agreement with beneficiaries, can undertake planned network expansion after taking regulatory approval if the requirement for network expansion has been identified in consonance with the National Electricity Plan and in consultation with the stakeholders.

4. The Petitioner which is discharging the functions of CTU approached the Commission through Petition No.233/2009 seeking regulatory approval for taking up identified transmission systems for evacuation of power from the generation projects being developed by Independent Power Producers (IPPs). The Petitioner had submitted a Project Inception Report covering 9 Nos. of High Capacity Power Transmission Corridors (HCPTC) for 48 Nos. of IPPs with description/justification of

each of the corridors alongwith with tentative cost estimates and the minutes of the forums where these corridors were deliberated.

5. The Commission after considering the submissions of CTU, the IPPs and the distribution licensees accorded regulatory approval to CTU for execution of the 9 Nos. of HCPTC vide order dated 31.5.2010 in Petition No.233/2009. Relevant paras of the said order are extracted as under:

“39. We have examined all these aspects in general and have also gone into the corridor-wise requirement of the proposed transmission network. We have taken note of the fact that the proposed transmission corridors have been evolved, planned and finalized by the CTU in line with the perspective plans developed by the CEA after holding extensive deliberations with the stakeholders, consultations with CEA at forums including LTOA Meetings, Standing Committee Meetings of CEA for Power System Planning and in the respective Regional Power Committee meetings. We are of the view that these transmission systems need to be implemented matching with the commissioning schedules of the IPPs.

40. As already stated, Central Transmission Utility is required to discharge all functions of planning and coordination relating to inter-state transmission system as provided for in section 38 (2) (b) of the Act. Transmission planning involves system studies to be conducted by CTU taking into account the scenarios for the nine transmission corridors under consideration. Therefore, it is presumed that CTU would have conducted these studies to ensure coordinated planning. At this stage we wish to make it clear that the Commission has not gone into the depth of optimum system planning since that is the function of CEA U/s 73 of the Electricity Act 2003 and since consultations on the planning have taken place in the standing committee of CEA on transmission planning., it is assumed that CEA has taken care of this aspect. The Commission has only checked the feasibility of the proposed nine corridors based on likelihood of IPPs coming up, based on physical progress and whether the payment security mechanism is in place. CTU has claimed that the estimated cost for development of the HPCTC is based on the latest 3rd quarter 2009 price level. The cost aspect has not been examined by the Commission in detail. The same shall be vetted at the time of approving tariff after prudence check in accordance with the prevalent regulations on terms and conditions of tariff.

41. Based on the affidavits submitted by the project developers of IPPs and on the spot assessment by CTU, the progress of IPPs at different stages of implementation is satisfactory and utilization level of proposed HCPTC at the time of their progressive commissioning is expected to be sufficient. Moreover, the project developers of IPPs have signed and submitted Bank guarantee in many cases. Hence, we accord regulatory approval for execution of the nine nos. of HCPTCs proposed by CTU as per the project scope as mentioned in Annexures -I to IX of this order. As for HCPTC-VIII for IPPs in Srikakulam area, we direct that the work on the corridor may be initiated only after signing the BPTA and submission of BG by the IPPs.

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

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

6. CTU executed the HCPTCs in terms of the regulatory approval and after signing the Bulk Power Transmission Agreement or Long Term Access Agreements with the IPPs, and in some cases with the electricity traders acting on behalf of the IPPs and after taking the Bank Guarantee as per the provisions of the Connectivity Regulations.

7. Kerala State Electricity Board filed Petition No.92/MP/2014 alleging arbitrary denial of Medium Term Open Access. The Commission after hearing the parties and going into the aspects of grant of LTA and MTOA in interim order dated 8.8.2014 directed the CTU to process the applications for MTOA received in the month of June 2013 in accordance with the Connectivity Regulations and Detailed Procedure. CTU processed MTOA applications received during the month of June, 2013 and granted the Medium Term Open Access vide its letter dated 22.9.2014. CTU also considered the applications for Long Term Access (LTA) received during the month of November, 2013 for transfer of power from NEW Grid to SR Grid and granted LTA to some of the IPPs vide its letter dated 22.9.2014. The grant of LTA and MTOA was challenged by some of the aggrieved parties by filing IAs in Petition No.92/MP/2014 and independent Petitions. The Commission framed several issues including the

issue with regard to priority allocation of corridor in case of allocation of power by Ministry of Power, Government of India out of the unallocated quota, declaration of Total Transfer Capacity and Available Transfer Capacity, process for considering the applications for MTOA and LTA, payment of relinquishment charges in case of change of regions. The Commission decided all the issues and passed directions on all issues framed in the said order. On the issue whether the applicant which seeks change of region is required to pay the relinquishment charges for the LTA of the target region, the Commission in para 135 of the said Order stated as under:

"135. As per the above provision, LTA can be relinquished by paying the compensation for the stranded capacity. CTU has expressed difficulty in assessing stranded capacity on account of the meshed network of the inter-State transmission system. Whenever a LTA customer seeks change of region, there is a corresponding reduction in the LTA in the region from which change is sought. **The issue remains as to how the stranded capacity shall be assessed. As CTU has expressed difficulty in deciding the stranded capacity** on account of surrender of LTA or reduction of LTA on account of change in region, CEA is directed to suggest methodology to work out stranded capacity and the formula for calculating corresponding relinquishment charges of LTA keeping in view the load generation scenario and power flows considered at the time of planning and changes subsequent to proposed relinquishment. **Till a decision is taken based on the recommendations of CEA, CTU shall continue to take the relinquishment charges in accordance with Regulation 18 of the Connectivity Regulations.**"

8. Faced with certain difficulties in implementation of the directions in order dated 16.2.2015 in Petition No.92/MP/2014, the Petitioner has filed the present petition highlighting the following issues:

- (a) Priority of allocation by Ministry of Power vis-a-vis the MTOA/LTA applications under consideration with CTU.
- (b) Declaration of ATC/TTC on a month-wise basis, specifically for the year 2015-16 within the stipulated period (i.e. by 15.3.2015).

(c) Operationalization of Online MTOA/LTA Applications and Payment through RTGS/NEFT.

(d) Procedure for determination of relinquishment charges in terms of the Connectivity Regulations.

(e) Subsequent developments with respect to processing of LTA/MTOA applications from the month of November 2013 onwards.

(f) Subsequent developments with respect to grant of MTOA to PTC in terms of the Order dated 16.2.2015 in Petition No. 92/MP/2014.

9. With regard to the procedure for determination of relinquishment charges, the Petitioner has submitted that as per Regulation 18 of the Connectivity Regulations, a Long Term Access customer may relinquish the LTA rights fully or partly before the expiry of full term of LTA by making payment of compensation for stranded capacity equivalent to 66% of the net present value of transmission charges for a period falling short of 12 years. In other words, the compensation amount shall entirely depend on the elements of transmission system that are likely to be "stranded" consequent to the relinquishment of LTA. The "Stranded Capacity" in the Connectivity Regulations has been defined as "the transmission capacity in the inter-State transmission system which is likely to remain unutilized due to relinquishment of access rights by a long-term customer." Thus, the determination of compensation amount shall depend on first identifying which elements of integrated meshed network shall remain un-utilized for a period falling short of 12 years. The identification of utilization/non-utilization of transmission elements in a meshed network for a long period is not possible except for dedicated transmission lines which can be readily said to be remaining unutilized in case of the associated generation project

not getting commissioned. The utilization/non-utilization of various elements of the grid depends on large number of factors like generation dispatches, seasonal load variations, market mechanisms etc. In market scenario, the utilization of ISTS network is taking place in a very un-predictive and un-precedented manner. There are numerous instances where States are backing-down their own generation and procuring cheaper power from other sources due to economic considerations. In a meshed network, there shall always be some power flow on parallel sections. Under such situations, it is subjective as to how much loading, say on a normal 400 kV line, shall qualify as un-utilized. Further, identification of percentage of stranded capacity for the prospective period of 12 years can only be achieved through load flow studies simulating the network condition corresponding to time frame of about 12 years down the line. The load flow studies, as is known, are based on large number of assumptions pertaining to load generation and network configuration and the assumptions are always open to disputes. Accordingly, the Petitioner has proposed to implement Regulation 18 of the Connectivity Regulations through use of PoC charges that are published on a quarterly basis for determination of relinquishment. In 'Annexure 4' of the petition, the Petitioner had proposed the following methodology for computation of relinquishment charges, pending the receipt of the suggestions from CEA with regard to methodology for calculation of stranded capacity and formulation of corresponding relinquishment charges for LTA as directed in the order dated 16.2.2015:

“The formula for computation of relinquishment charges in case the LTA applicant changes the region owing to which there is a change in Injection as well as Drawal points

$$\frac{\text{Relinquishment Charges}}{(1+\text{rate})^j} = 66\% \text{ of } \sum_{i=1}^Y \{(\text{Inj. PoC} * X) + (\text{Drawal PoC} * X)\}$$

Where,

X = Quantum of LTA to be reduced in MW

- Y = Period falling short of 12 years of LTA from the month of receipt of request plus notice period falling short of 12 months, in years.
- Inj. PoC = Published PoC notice rates for the months of receipt of request at the point of injection (if generation is existing) or of the Injection zone (if generation is yet to be commissioned)
- Drawl PoC = Published Minimum of PoC rates for the month of receipt of request for target region (If the relinquished capacity is based on target region) or PoC rates of drawl zone (If the relinquished capacity is based on firm PPA)

In case of change of only drawl region, the injection point remains the same, hence the compensation shall be calculated on the basis of PoC charges of the drawl region only.

The compensation as per regulation 18 of the Connectivity Regulations is equal to 66% of the estimated transmission charges (NPV) for the period falling short of 12 years of access rights.

In the present cases, the access for the LTA customers has not commenced, therefore, the period of twelve years shall have to be considered to be remaining stranded.

$$\text{Compensation} = 66\% \text{ of } \sum_{i=1}^Y [(\text{Drawl PoC} * X) / (1+\text{rate})^i]$$

Where,

X = Quantum of LTA to be reduced in MW

Y = Period falling short of 12 years of LTA from the month of receipt of request plus notice period falling short of 12 months, in years.

Drawl PoC=Published Minimum of PoC rates for the month of receipt of request for target region (If the relinquished capacity is based on target region) or PoC rates of drawl zone (If the relinquished capacity is based on firm PPA)

Discount rate for NPV= Published discounting rate from CERC "Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees".

10. The Petitioner has made the following prayers in the present petition:

"(a) It is humbly prayed that the Hon'ble Commission may issue necessary directions for priority of MOP allocation with respect to LTA/MTOA applications already submitted/under process with CTU;

(b) It is thus humbly prayed that the deadline of 15.3.2015 to publish month-wise ATC for the year 2015-16 may be extended by a time period of four weeks from receipt of data/inputs from CEA;

(c) It is humbly prayed that till such time that CEA is able to suggest a methodology to workout stranded capacity and the formulation for calculating corresponding relinquishment charges of LTA, directions may be issued for determination of relinquishment charges as detailed in 'Annexure 4' to this petition;

(d) The deadline of 15.3.2015 for processing the LTA/MTOA applications received from the month of November, 2013 onwards may be extended till such time the impact of order of the Hon`ble Madras High Court can be examined;

(e) It is humbly prayed that extension of one month may be granted for effectiveness of online mechanism for LTA/MTOA applications from 1.4.2015 in terms of Para 74 of the order dated 16.2.2015 to 1.5.2015; and

(f) Any other relief that the Hon`ble Commission deems fit in the facts and circumstances of the case.”

11. The Petition was heard on 12.3.2015. The Commission in its Order dated 20.3.2015 issued clarification in respect of 5 issues out of 6 issues [as mentioned in para 8(a), (b), (c), (e) and (f) of this Order]. In respect of the issue relating to relinquishment [para 8(d) of this Order], the Commission issued the following directions:

“4.
(d) As regards the procedure for determination of relinquishment charges, CTU has suggested a mechanism as per Annexure-4 regarding determination of the relinquishment charges till a decision is taken by the Commission in the light of the recommendations of CEA which are awaited. It is noted that all applicants who are seeking LTA to a new region by surrendering their LTA in the existing regions shall be affected. Accordingly, we direct issue of notice to all such LTA applicants who are likely to be affected if the suggested mechanism is accepted. CTU is directed to make all the affected LTA applicants parties to this petition. Since, CTU is in the process of granting the LTA based on the applications received in the month of November, 2013 and afterwards, we direct that the LTA intimations to the LTA applicants shall contain a provision that the grant of LTA shall be subject to the payment of relinquishment charges as may be decided by the Commission in this petition.”

The Commission also issued notices to all respondents in Petition No.92/MP/2015 to file their replies with reference to para 8(d), i.e. Procedure for determination of relinquishment charges in terms of the Connectivity Regulations.

12. In compliance with the directions of the Commission, the Petitioner impleaded the following as Respondents by amending the memo of parties:

- (i) DB Power Limited
- (ii) EMCO Energy Limited
- (iii) KSK Mahanadi Power Co. Limited
- (iv) Jindal Power Limited
- (v) Essar Power MP Limited
- (vi) Bharat Aluminium Company Limited
- vii) Ind-Bharat Energy (Utkal) Limited
- viii) Dhariwal Infrastructure Limited
- (ix) Adhunik Power and Natural Resources Limited
- (x) MB Power (Madhya Pradesh) Limited
- (xi) Jhabua Power Limited Avanta Power & Infrastructure Limited
- (xii) Jindal India Thermal Power Limited
- (xiii) GMR Kamalanga Energy Limited
- (xiv) Jal Power Corporation Limited
- (xv) Essar Power (Jharkhand) Limited
- (xvi) Lanco Babandh Power Pvt. Limited
- (xvii) TRN Energy Pvt. Limited
- (xviii) Jaiprakash Power Ventures Limited
- (xix) Maruti Clean Coal & Power Limited

13. Petition No.92/MP/2015 was heard alongwith Petition No.99/MP/2015 filed by DB Power Limited and IAs filed by EMCO Energy Limited and TRN Energy Private Limited. The Commission framed and dealt with various issues vide order dated

3.7.2015 with regard to inter-se priority of allocation by Ministry of Power vis-a-vis LTA and MTOA applicants, calculation of TTC and ATC etc. As regards relinquishment charges, the Commission observed as under:

“52. We have not dealt with the issue of relinquishment charges in this order. A separate order will be issued on the said issue. Any affected party who intends to file its views with regard to relinquishment charges may do so by 15.7.2015. Petition No. 92/MP/2015 on the issue of relinquishment charges shall be heard on 21.7.2015 at 1430 hrs.”

14. Replies to the Petition were filed by DB Power Limited (Respondent No.4), Emco Energy Limited (Respondent No.5), KSK Mahanadi Power Limited (Respondent No.6), Jindal Power Limited (Respondent No.7), Essar Power (MP) Limited (Respondent No.10), Ind-Bharat (Utkal) Limited, (Respondent No.15), Dhariwal Infrastructure Limited (Respondent No.16), MB Power (MP) Limited (Respondent No.18), GMR Kamalanga Energy Limited (Respondent No.21) and TRN Energy Limited (Respondent No.26).

15. The gist of the submissions of the above generators received in response to the proposal of the Petitioner for relinquishment charges have been noted by the Commission in para 5 of the order dated 28.8.2015 in Petition No.92/MP/2015 which are not repeated for the sake of brevity. After considering the submissions of the Petitioner and the Respondents, the Commission decided to appoint a Committee to go into various aspects of the issues and invited suggestions for framing the terms of reference. Suggestions were received from several IPPs on the terms of reference. The Commission after considering the provisions of the Connectivity Regulations and the suggestions received decided the terms of reference of the Committee as mentioned in para 8 of the order dated 28.8.2015. The Commission also appointed a

Committee under the chairmanship of Shri Pravin Bhai Patel, Ex-Chairperson, GERC as mentioned in para 9 of the said order with the following terms of reference:

- (a) Identify the events/circumstances which are likely to result in relinquishment of long term access right by an LTA customer in terms of the provisions of the Connectivity Regulations.
- (b) Suggest the methodology (ies) for assessment/determination of the stranded capacity in case of relinquishment of long term access right by a long term customer, keeping in view the meshed network of the inter-State transmission system.
- (c) Alternative methodology for computation of relinquishment charges.
- (d) The manner and mode of recovery of the relinquishment charges.
- (e) Any other suggestion that the Committee considers appropriate in the light of the suggested terms of reference by the parties as per Appendix B to this order.
- (f) Suggest changes, if any, required to be made to the existing provisions of the Connectivity Regulations to make the process of relinquishment of long term access right and calculation of compensation therefor simple, fair and equitable keeping in view the need for expansion of ISTS network.

16. The Committee submitted its report to the Commission in July 2016 which was posted on the Commission's website on 26.9.2016. The Commission in the Record of Proceedings for the hearing dated 2.7.2017 decided not to consider the

report of the Committee for determination of relinquishment charges in the following terms:

“At the outset, the Commission clarified that the Committee appointed for determination of stranded capacity and relinquishment charges submitted its report which was posted on the website of the Commission. The Commission further clarified that the report is not of any assistance to the Commission to decide the issues of stranded capacity and relinquishment charges and accordingly, the Commission has not accepted the report. The Commission observed that the issues of stranded capacity and relinquishment charges would be decided after hearing all concerned parties.”

17. The Commission decided vide Record of Proceedings dated 2.5.2017 that the hearing on relinquishment charges would be done on the following terms of reference (TOR) and directed the petitioner, the respondents and all affected parties to file their views/comments on the said terms of reference.:

- (a) On relinquishment of part or full LTA, will there be stranded transmission capacity under the following cases? If yes, how and if no, why not?
 - (i) LTA grant with augmentation of transmission system;
 - (ii) LTA grant without augmentation.
- (b) What should be the approach to determine the stranded transmission capacity in the meshed network of the inter-State transmission system?
- (c) For the purpose of computation of compensation, what should be effective date of relinquishment for the following cases:
 - (i) Relinquishment sought prior to schedule date of LTA operationalization;

(ii) Relinquishment sought after the schedule /actual date of LTA operationalization.

(d) What should be the approach for the computation of compensation against the stranded transmission capacity?

18. The Petitioner and the following Respondents have submitted their Preliminary Submissions, responses to terms of references, reply to petitioner's submissions and additional submissions:

- 1) Kerala State Electricity Board- Respondent No.1
- 2) DB Power Limited -Respondent No. 4
- 3) KSK Mahanadi Power Limited-Respondent No.6
- 4) Jindal Power Limited-Respondent No.7
- 5) Tamil Nadu Generation and Distribution Corporation Limited – RespondentNo.9
- 6) Essar Power (Madhya Pradesh) Limited-Respondent No.10
- 7) NLDC – Respondent No. 11
- 8) WRLDC –Respondent No. 12
- 9) Dhariwal Infrastructure Limited- Respondent No.16
- 10) MB Power (Madhya Pradesh) Limited- Respondent No.18
- 11) Jindal India Thermal Power Limited - Respondent No.20
- 12) GMR Kamalanga Energy Limited-Respondent No. 21
- 13) TRN Energy Private Limited - Respondent No. 26
- 14) Maruti Clean coal Power Limited - Respondent No.27

In addition, comments/views have also been filed from other stakeholders as under:

- 15) IL&FS Tamil Nadu Power Company Limited
- 16) POSOCO
- 17) Coastal Energen Private Limited
- 18) IL & FS Tamil Nadu Power Company Limited
- 19) SKS Power Generation(Chhattisgarh) Limited

- 20) GMR Warora Energy Limited
- 21) Vedanta Limited
- 22) PEL POWER Limited
- 23) Gujarat Urja Vikas Nigam Limited
- 24) SKS Power Generation
- 25) Simhapuri Energy Limited
- 26) West Bengal State Electricity Distribution Company Limited

19. The matter was heard on 6.7.2017, 25.7.2017 and 21.11.2017. The Petitioner, Respondents and other interested parties made extensive arguments on various aspects of relinquishment charges which have been recorded in the Record of Proceedings of the relevant dates and are not being repeated for the sake of brevity and will be referred to in the later part of this Order. The Petition was heard by a Coram consisting of the Chairperson and three Members. Since the order could not be issued prior to the demitting of office by the then Chairperson, the matter was listed before the Commission comprising of Chairperson and one Member on 18.9.2018 for further hearing. Learned counsels for the parties present submitted that since detailed arguments have been recorded in the ROPs, there is no requirement for further arguments and order may be passed based on the documents available on record and the submissions already made.

20. In the above background, we are proceeding to deal with the various aspects of relinquishment of LTA under the Connectivity Regulations based on the documents available on record and the submissions of the parties. The Petitioner and Respondents have raised certain preliminary issues and have also made submissions on merit with regard to the relinquishment charges. Accordingly, the preliminary issues and submissions on merit have been dealt with in the Order.

PRELIMINARY SUBMISSIONS BY THE PETITIONER

21. The Petitioner, vide affidavit dated 8.9.2017 has flagged certain issues for addressing the terms of reference and adjudicating the central issue of determination of stranded capacity and relinquishment charges in the context of large scale relinquishment of long term access granted in the inter-State transmission system. At the outset, the Petitioner has expounded the statutory and regulatory scheme relevant to open access into the inter-State transmission system (ISTS) by referring to the provisions of section 2(47) of the Act (definition of open access); Section 38(2)(d) of the Act (responsibility of the CTU to provide non-discriminatory open access); Section 10(3) of the Act (obligations of the generating companies to coordinate with the CTU for transmission of electricity); the provisions of Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2004 (hereinafter referred to as the 2004 Open Access Regulations);, Staff Paper dated 17.7.2008 on “Arranging Transmission for New Generating Stations, Captive Power Plants and Buyers of Electricity”; and the provisions of Connectivity Regulations. The Petitioner has submitted that consistent with the approach adopted in the 2004 Open Access Regulations, the transmission system planning under the Connectivity Regulations was envisaged primarily for transmission of electricity on long term basis and accordingly, transmission system was required to be augmented for power flow under long term access in accordance with the plans made by Central Electricity Authority and power flow under the medium-term open access was to be accommodated in the available margins only. Further, under the Connectivity Regulations, the Petitioner as the CTU was designated as the Nodal Agency for grant of connectivity, long-term access and medium-term open access to the ISTS. An applicant to whom long-term access was

granted was required to sign a Long-Term Access Agreement with the CTU for availing access into the ISTS and for payment of transmission charges for such access. CTU is obligated to carry out system studies and consultations with all the stakeholders and only after all the ground-work and required consultations are undertaken and commitments made with the concurrence of all stakeholders, the work of laying of transmission system begins. The Central Electricity Regulatory Commission (Sharing of inter-State transmission charges and losses) Regulations, 2010 (hereinafter referred to as "the Sharing Regulations") stipulate for recovery of fixed cost of transmission assets comprising the ISTS which is to be computed on annual basis as per the notified norms and recovered on monthly basis as transmission charges from users who are required to share these charges in the manner specified in the Sharing Regulations. This sharing of transmission charges was applicable for all long-term customers irrespective of their having been granted long-term access with or without augmentation. The Petitioner has submitted that the rationale for the scheme of sharing is that in a heavily meshed network as that of ISTS, the identification as to which portion was being used by a particular user cannot be made. However, what can be said with certainty are the point of injection and the point of drawl of power. The transmission of power from point of injection upto the point of drawl takes place following the principle of displacement through various parallel transmission links based on their relative impedances.

22. The Petitioner has submitted that Regulation 18 of the Connectivity Regulations provides that a long term customer may relinquish the long term access rights fully or partly before expiry of the full term of long term access by making payment of compensation for stranded capacity as per the formula given under the said regulation. Relinquishment of long-term access under the Connectivity

Regulations does not require any prior approval from the Commission. Further, the long-term customer can relinquish the same either in full or in part before expiry of the term of long-term access by paying compensation for stranded capacity. Relinquishment, like in the 2004 Open Access Regulations, thus entails payment of a “compensation”, except that under the Connectivity Regulations, this compensation is payable for “stranded capacity”. As per Regulation 18(3), the compensation recovered is to be utilized for reducing transmission charges payable by other long-term customers and medium-term customers. The Petitioner has submitted that the compensation for relinquishment is in effect the transmission charges which the relinquishing long-term customer would have paid, had he continued to remain such long-term customer of ISTS under the access rights availed by it. The Petitioner has further submitted that the relinquishment compensation, commonly referred to as relinquishment charges, is thus not a “charge” separate and distinct from transmission charges for open access. Since relinquishment is a statutory option made available under the Connectivity Regulations itself, relinquishment charge is also not a penalty or damage and rather is an accelerated payment of the share of transmission charges by the exiting long-term customers to service the transmission assets comprised in the ISTS. According to the Petitioner, recovery of relinquishment charges under Regulation 18 of the Connectivity Regulations is not de hors the provisions of or beyond the mandate of Section 38(2)(d)(i) of the Act which provides for open access on payment of transmission charges. Further, as per Regulation 18 of the Connectivity Regulations, the relinquishment amount is to be equal to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of 12 (twelve) years of access rights and to be paid for period of usage less than 12 years. A notice of at least one year is required to

be given by the relinquishing long-term customer and if the same is of less than one year, then an amount equal to 66% of the estimated transmission charges (net present value) for the period falling short of a notice period of one (1) year is also to be payable. According to the Petitioner, the provision for levy of 66% of the NPV of the estimated charges of the period falling short by 12 years creates adequate balance of equity in favour of the relinquishing long term customer. Therefore, the concession of 33% of NPV should not be lost sight of while deciding the quantum of relinquishment charges as this provision actually reduces the transmission charges period from 12 years to approximately 5 years.

23. The Petitioner has submitted that there is a correlation between the operationalization of HCPTC corridors and relinquishment of LTAs. Subsequent to the operationalization of LTAs and issuance of letters for opening of LC, most of the IPPs relinquished their entire LTAs by stating a number of reasons. The incidence of relinquishment is both sudden and at a high rate in those transmission corridors nearing to be completed. The Petitioner has submitted that about 56.8% of LTA is relinquished by the long-term customers which cannot be serviced without the recovery of the relinquishment charges. A closer scrutiny of all the relinquishment Petitions/requests indicates that even though the long-term agreements have been entered into for a period of about 20-25 years, temporary force majeure issues or commercial hardships have been alleged as permanent force majeure and regardless of the outcome of adjudication on force majeure, certain exits from LTA arrangement have been made. In most of the relinquishment cases, the so-called "exit" is indeed "artificial" as the relinquishing long-term customers continue to remain connected with ISTS and transact through shorter forms of open access using the very same transmission elements that have originally been planned and

implemented for evacuating their power under LTA. The differential in tariff recovery is passed on to the non-benefitted beneficiaries in the PoC pool. The Petitioner has submitted that on account of practical exigencies, mandatory relinquishment compensation should be imposed in all cases of relinquishment of LTA.

PRELIMINARY SUBMISSIONS BY RESPONDENTS AND STAKEHOLDERS

24. The respondents, namely, Jindal India Thermal Power Limited (Respondent No. 20), GMR Kamalanga Energy Limited (Respondent No.21), TRN Energy Limited (Respondent No. 26), Maruti Clean Coal Power Limited (Respondent No. 27), Coastal Energen Private Limited, Simhapuri Energy Limited, Vedanta Limited, SKS Power Generation (Chhattisgarh) Limited and IL&FS Tamil Nadu Power Company Limited have made the following preliminary objections:

- (a) Regulation 18 of the Connectivity Regulations is unworkable with respect to imposition of relinquishment charges for several reasons. Firstly, no relinquishment charges can be imposed unless it is conclusively demonstrated that there would be a continued stranded capacity for a period of 12 years starting from the date of operationalization of LTA, specifically attributable to the exit of a generator. Since long term/medium term/short term power is flowing in the system in the capacity vacated by an LTA customer, there would be no "stranded capacity". In such a scenario, there would be no question of any adverse financial impact on other existing customers of transmission system as CTU would be collecting transmission charges from such other long term/medium term/short term users. Secondly, where relinquishment charges are imposed and collected by CTU for relinquishment of LTA by a generator, there is no mechanism for refund of such

relinquishment charges in the event a fresh beneficiary comes forward and applies for LTA before the expiry of 12 years from the date of operationalization of the LTA of the generator who has relinquished the transmission capacity. Thirdly, there is no clarity as to how the relinquishment charges will be applied in the case of reallocation of entitlement of DICs by the Ministry of Power, Government of India (MoP) for which the Commission's intervention is required in clarifying/considering as to what is the treatment to be provided to the reallocation of entitlement of DICs by MoP. Fourthly, the Commission vide Order dated 21.2.2014 in Petition No. 63/MP/2013 had observed that there would not be any question of payment of relinquishment charges where no system strengthening has taken place. Therefore, in cases where no augmentation has been made, any levy of relinquishment charges will be contrary to Order in Petition No. 63/MP/2013. Fifthly, CTU and the Expert committee appointed by the Commission have expressed their inability to determine the stranded capacity and in the absence of conclusive determination of stranded capacity, no relinquishment charges can be imposed. Therefore, the following pre-requisites need to be ascertained before any levy of relinquishment charges:

- a. Scheduled and actual Date of Commercial Operation (DOCOC) of ISTS, and extensions granted for projects (if any) and year-wise YTC of transmission system of each project, where application for relinquishment is received.
- b. Date of allocation, quantum and the status of corridor by CTU and other relevant details of relinquished capacity in each case including MOP reallocation.

c. What are the charges recovered through POC (LTA, MTOA & STOA) for the transmission elements from DOCO.

d. The effect on injection charges (POC) of relevant zones after taking into account the relinquished capacity (Month-wise from the date of relinquishment).

(b) Regulation 18 has to be ignored since the same is beyond the mandate of the Electricity Act, 2003. Firstly, the Act does not mandate/sanction levy of relinquishment charges as the charges leviable for open access to the transmission system are expressly specified in sections 38 and 40 of the Electricity Act, 2003 and there is no provision for recovery of fixed cost for stranded transmission assets unlike the case of stranded distribution assets under Sections 42(2) and (4) of the Act. Secondly, the Act only recognizes recovery of transmission charges for utilization of the transmission asset and does not recognize recovery of stranded capacity charges or relinquishment charges in relation to non-utilization of the transmission asset. As per the judgment of Hon'ble Supreme Court in Bharathidasan University & Anr. Vs. All India Council for Technical Education & Ors., reported in [(2001) 8 SCC 676] and the judgment of the Hon'ble Appellate Tribunal for Electricity in Damodar Valley Corporation vs. Central Electricity Regulatory Commission & Ors. [Judgement dated Appeal Nos. 271, 272, 273, 275 of 2006 & 8 of 2007], if a regulation/subordinate legislation is contrary to statute, the Regulatory Commission or any other appropriate forum can ignore the applicability of such regulation. Thirdly, CTU executes BPTAs with the

beneficiaries/generating companies and upon execution of the said BPTA, the Petitioner/CTU subjects all its rights and obligations as per the above Regulations to the said BPTA. In the event of occurrence of a situation which is beyond the control of a generating company as per Clause 9 of the BPTA, the same becomes a force majeure event which discharges the aggrieved contracting party from the various obligations mentioned in the said BPTA, including liability for payment of any relinquishment charges.

- (c) The mandate of Section 38 of the Act has not been fulfilled by the Petitioner-CTU on account of several reasons. Firstly, Section 38 of the Electricity Act, 2003 provides that for the purposes of granting LTA, CTU is mandated to coordinate with various entities, including the Central Electricity Authority (CEA), licensees and the generating companies. CTU failed to develop the transmission system in an efficacious or purposeful manner commensurate with the requirements namely, actual power demand scenario in the target regions, long-term power procurement processes initiated by the respective Discoms in the said target regions, and the actual long term PPAs executed by the generating companies. Secondly, CTU has to take into account the actual ground realities and undertake system studies qua initiation of long term power procurement processes by Discoms, power demand scenario and execution of long term PPAs as otherwise the transmission system would be left stranded and become uneconomical, which would be against the mandate of Section 38 of the Act. Generators opted for LTAs in particular regions, depending upon the electric power survey conducted by the CEA with respect to power demand scenario in future in various regions in consultation with CTU and the distribution licensees. Since CEA has done a downward revision

in the recent survey reports, which demonstrates that CEA did a course correction based upon the actual ground realities, CTU was also required to follow suit with respect to the LTAs granted to the various beneficiaries, as per Section 38 of the Act.

(d) Suggested method of determination of relinquishment charges does not require determination of stranded capacity and proceeds on the basis that whatever capacity is relinquished, the compensation/relinquishment charges shall be equivalent to the transmission charges of such relinquished capacity reduced by an NPV formula which constitute a variation/deviation Regulation 18 of the Connectivity Regulations. Further, all transactions that result in utilization of the system and realization of revenue from such asset have to be considered/taken into account and only thereafter, if there is any capacity that is stranded or deemed to be stranded on account of relinquishment, then only relinquishment charges as envisaged under the regulations can be imposed. The Commission has to also take into consideration the change in the procurement behavior of distribution licensees who find it more profitable to buy power in the medium term, short term and from power exchanges on a day ahead basis rather than entering into capacity contracts on a long term basis, which commits them to pay fixed charges whether power is scheduled or not. Simultaneously, the benefits to the consumers owing to the growth of short term/ day-ahead market have to be factored in any claim for compensation made on behalf of the consumers.

(e) The statement of objects and reasons (SOR) supporting Regulation 18 recognizes that the relinquishment charges are being imposed to incentivize a

person to surrender capacity if he is not utilizing the capacity granted to him. The principle to incentivize as recorded in the statement of objects and reasons cannot now be reversed to make the process burdensome or harsh. Therefore, the principle of recompense as is enshrined in the regulation cannot be dispensed with and the loss that is suffered on account of relinquishment needs to be evaluated and brought on record.

- (f) The present transmission capacity created by the CTU will be required and utilised to support the growth of renewable energy such as solar and wind generation that is coming up across the country. In this context, the various documents available with the CEA and this Commission relating to projections to wind and solar energy generation and its consequent utilisation of the inter-State transmission system has to be factored while determining the stranded transmission capacity and consequential relinquishment charges based thereon, in terms provided in Regulation 18.
- (g) The issue of interpretation of Regulation 18 was conclusively decided by this Commission in Petition No. 118/MP/2012, in **Lanco Babandh Power Ltd. v. Power Grid Corporation of India Ltd.** and Another, where the Commission held that if there is no stranded capacity, no relinquishment charge is payable. This position was largely supported by the CTU who has also accepted the final order, with no appeal being filed. Having taken that stand, both the Commission and the CTU cannot interpret and/or apply the regulation in a manner different from how it had applied the same regulation in the aforementioned Lanco case. Application of law will not change with passage

of time. One fundamental fact that is similar with the Lanco case and the present batch is that there is no determination of stranded capacity.

(h) The Hon'ble Supreme Court recently held in the case of Gujarat Urja Vikas Nigam Limited Versus Solar Semiconductor Power Company (India) Private Limited and Others [reported in 2017 SCC Online SC 1248] that the Commission does not have any inherent power when the matter is covered by provisions of a law/regulation. Once the regulations occupy the field and have the force of statute, the Commission is denuded of any inherent power to come up with a formulation for determination of relinquishment charges *dehors* the regulations. Therefore, unless a reasonable methodology is adopted for determination of stranded capacity consistent with terms of the regulation, the CTU will not be in a position to claim any relinquishment charges from the generator against relinquishment of LTA.

25. The Respondents namely, Essar Power Madhya Pradesh Limited (EPMPL) (Respondent No.10), MB Power (Madhya Pradesh) Limited (MBPMPL) (Respondent No.18) and GMR Warora Energy Limited (GMRWEL) have made following preliminary Submissions:

(a) Payment of relinquishment charges is meant to compensate for the stranded capacity created on account of relinquishment of transmission capacity and, therefore, determination of the stranded capacity is *sine qua non* for imposition of relinquishment charges. This effectively means that the stranded capacity is required to be determined first and then the relinquishment charges are to be computed on the basis of the same.

(b) The basic premise of Regulation 18 is very closely linked to the settled principle of contract laws i.e. Section 73 and 74 of the Indian Contract Act, 1872 governing payment of compensation by the defaulting party to another party in a contractual arrangement to recompense for the actual losses suffered by the non-defaulting party on account of failure of the defaulting party to adhere to terms of contract. Arguing further, the Respondents have submitted that the damages, by its meaning and definition, is compensation for loss caused and the settled position is that losses have to be pleaded and proved by a party claiming it. However, in the instant petition, the Petitioner has argued that there is no need to plead or prove that loss has been caused or occasioned by the breach of contract. In this context, it is submitted that assumption of losses in form of the stranded capacity on account of relinquishment of LTA, militates against reason and said interpretation would render Regulation 18 of the Connectivity Regulations, unconscionable.

(c) The transmission planning and execution is a statutory responsibility of the CTU, to be carried out in consideration of the power demand-supply dynamics of the various regions of the country. The planning of such network requires identification of potential load and generation centres and to develop the necessary network to handle transmission requirement of such areas irrespective of any arrangement/agreement with any utility. The CTU in discharge of such statutory functions is required to act objectively based solely on considerations of network development and strengthening. Such requirement of transmission planning is envisaged under the Electricity Act, 2003, Para 5.3.2 of the National Electricity Policy, 2005 as well Para 7.1 (4) of the Tariff Policy, 2016.

(d) The Petitioner's role as CTU is in conflict with the commercial interests of the Petitioner as a transmission utility which proceeds with network development based on LTA applications by generating companies. Therefore, as a commercial entity, Petitioner's network development activity is based on considerations of revenue maximization. As a result, the CTU is working on a bottom up approach where its network planning is guided by LTA requirements of utilities to secure its investment instead of adopting a top down approach of objectively planning out network development based on load growth projections; and trying to de-risk its own Investment by passing on all business risks including those related to its statutory functions on generating companies.

(e) As per the Connectivity Regulations and the procedure followed by CTU for grant of LTA, end to end timelines between making LTA application by Independent Power Producer (IPP) till operationalization of LTA by CTU are significantly high (4-5 Yrs). However, after signing long term PPA, it is the obligation of the IPP to arrange for LTA and commence the supply of power under PPA within 1-2 Yrs of signing of PPA, failing which liquidated damages are imposed on IPP. Hence, there is a grave asymmetry between these timelines. As such IPPs have no option but to apply for LTA in advance (on Target Region basis) in anticipation of signing of long term PPA in such regions which are projected to be power deficit. These projections are made by the statutory agencies like CEA, CTU etc, which form the basis of LTA Applications made by IPPs on Target Region basis. Over the years, these projections have gone awry and limited long term PPAs have been concluded in last 4-5 years on account of very few Case 1 bids being floated by the

utilities. As such the IPPs, for no fault on their part, have not been able to utilize the LTA granted on Target Region basis. Consequently, they had two options i.e. to make hefty monthly payments against the monthly bills raised by the Petitioner for the LTA granted on Target Region without any utilization of such LTA by these applicant IPPs; or to relinquish the LTA and apply afresh once the long term PPA is signed. Therefore, the relinquishment of LTA granted on Target Region by IPPs is not out of choice but is a forced decision in view of the external factors beyond control and as such, relinquishment of LTA granted on Target Region by IPPs does not warrant that any penalty/compensation be made incidental on such IPPs.

(f) There is a need to discriminate between the LTA getting relinquished by non-operational generation projects which have got abandoned/delayed/deferred i.e. LTA Relinquishment directly attributable to IPPs and LTA getting relinquished by fully operational generation projects, wherein relinquishment of LTA granted on Target Region basis has been on account of external reasons beyond control of such IPPs. like no/limited long term power sale tie-up on account of dearth of power sale opportunities/bids in the market. Relinquishment of LTA by the generation projects which have got delayed/abandoned is significantly different from the fully operational IPPs who are compelled to relinquish LTA previously granted on Target Region basis due to lack of power tie-up opportunities. In such a scenario, relinquishment of LTA granted on Target Region by the fully operational IPPs ought not to be viewed as "relinquishment" perse and should not invite any relinquishment charges. If any relinquishment charges are to be levied, then in such cases, payments made by IPPs against the monthly bills raised by CTU for un-utilized LTA are

to be offset against the relinquishment charges/compensation so computed/determined.

(g) Where transmission capacity of a generating company is stranded due to delay in commissioning/ strengthening of the associated transmission by CTU resulting in delay in operationalization of LTA by CTU, matching compensation charge on the lines of relinquishment charges may be levied on CTU.

26. The Respondents namely, DB Power Limited (Respondent No. 4), Jindal Power Limited (Respondent No. 7) and Dhariwal Infrastructure Limited (Respondent No. 16) have made following preliminary submissions:

(a) The proposal of the Petitioner to consider entire quantum of LTA for recovery on account of relinquishment in case of change of target region, is legally untenable as the Petitioner's power to levy relinquishment charge is dependent on the determination of stranded capacity. Thus, the Petitioner's proposal is *de hors* the regulations and accordingly, fallacious on both legal and factual counts.

(b) In the case of **Ashok Leyland vs. State of Tamil Nadu and Another (2004) 3 SCC 1**, a three judge bench of the Hon'ble Supreme Court held that the word '*determination*' *must be given its full effect, which pre-supposes application of mind and expression of conclusion. It connotes the official determination, and not a mere opinion or finding.* Therefore, CTU's proposal to levy relinquishment charges in absence of determination of the standard capacity is untenable.

(c) It is a settled position of law that any financial imposition can only be levied on the basis of due computation and cannot be based on assumptions/conjectures and surmises. In this regard, reliance has been placed on the judgments of Hon'ble Supreme Court in (i) **Ahmedabad Urban Development Authority vs. Sharadkumar Jayantikumar Pasawalla** [(1992) 3 SCC 285] and (ii) **Vodafone International Holdings BV vs. Union of India**, [(2012) 6 SCC 613]. Therefore, any law which has financial implication has to be strictly construed and cannot be based on some assumptions which are factually erroneous. Relinquishment charges may be levied only if there is a positive determination of stranding of transmission capacity and such determination should be made on case to case basis.

(d) No transmission elements were planned to be created under common system for sole use of individual LTA customers and instead the same was planned under the meshed network. Therefore, assuming that shift in drawl point would create stranded capacity is not correct. In case of LTA granted on the basis of Target Region, it simply cannot be assumed that the entire system which was contemplated to be utilized is rendered stranded in case of change in Target Region.

(e) The Commission in its order dated 28.10.2016 in Petition No. 84/MP/2016, (Chhattisgarh State Power Trading Company Limited Vs Central Transmission Utility and Ors.) has acknowledged that the CTU has not taken appropriate action for mid-course correction in the planning of the transmission system. As a result, there is a mismatch between the transmission corridor availability and the demand received from the LTA

applicants. Therefore, poor planning by the CTU has resulted in such huge relinquishment of the LTA and the consequent issue of stranded transmission capacity. In a meshed network, the determinable financial burden should be borne by all the stakeholders and, therefore, there is a need for socialisation of transmission charges as there is no proved stranded capacity in transmission network and thus, claim for any recovery of relinquishment charges does not arise.

(f) The relinquishment charges may be levied only if there is a positive determination of stranding of transmission capacity and such determination should be made on case to case basis, and it is for CTU to establish that there was stranded capacity, and if so, to what extent. Further, it should be demonstrated that there was no congestion in the system and there was capacity available for transferring the power. In case the transmission system is being utilized either by LTA, MTOA or STOA customers, then no occasion arises for such system to be stranded to the extent of such use.

27. Jindal Power Limited (JPL) in its affidavit dated 24.11.2017 has made the following additional submissions:

(a) By way of the Connectivity Regulations, MTOA was introduced for utilization of the 'existing transmission system' and thus, MTOA was envisaged for full/optimum utilization of grid. therefore, Petitioner's submission that utilization of open access by MTOA should not be allowed to set off the stranded capacity under LTA is misconceived and contrary to regulatory intent as envisaged under the Connectivity Regulations.

(b) Relinquishment charges proposed under the Connectivity Regulations are compensatory in nature and the same are to be collected in order to compensate for the investments made by the Petitioner in developing the transmission system. Therefore, the petitioner must demonstrate and quantify the loss that has been suffered by it on account of such relinquishment for levying the relinquishment charges. Since, the Petitioner has failed to demonstrate and quantify the loss, levy of relinquishment charges on notional basis characterize the relinquishment charges as penalty/damage, being contrary to the Connectivity Regulations. Further, in the context of a contractual relationship, Section 73 of the Indian Contract Act, 1872 provides for compensation provided the claimant is able to demonstrate, quantify and prove its losses. In this regard, the Petitioner has been unable to demonstrate or quantify or prove the stranded capacity and the resulting losses and as a result thereof, the claims for relinquishment charges are penal and not compensatory.

(c) The generators have invested huge sums in creating a robust generation capacity but are financially not in great shape due to lack of long term PPAs. Therefore, any further financial burden by way or arbitrarily determined relinquishment charges proposed to be collected by the CTU at the time of relinquishment, will create possibilities of liquidation for such generators even though the Petitioner is insisting on collection of relinquishment charges on notional basis i.e. without determining the stranded capacity. There is a huge mismatch of allocation of risks in the proposed mechanism of recovery of relinquishment charges as suggested by the Petitioner. The scheme for the Petitioner earning 15% ROE for every asset even if the same is non-performing is

subject to the market dynamics and CEA forecast, for which neither generators nor beneficiaries are responsible.

(d) In the event the Commission considers to devise a methodology to determine the stranded capacity, the case of the generators who have relinquished LTA in one region but has availed LTA in another region, wherein it is still using a part of the same transmission corridor for which it is paying the relinquishment charges on one hand and transmission charges on the other hand, has to be considered as a special case, otherwise it will tantamount to double charging.

28. DBPL in its affidavit dated 27.11.2017 has made additional submission as under:

(a) There is a fundamental distinction between LTA customers seeking change in beneficiary region and LTA customers who have surrendered their LTA i.e. no reduction in LTA capacity in the former case as against absolute reduction in LTA capacity in the latter. For the purpose of levy of relinquishment charges, the entire inter-State transmission system is to be considered as the whole system and the grid cannot be divided into regions. Therefore, merely a change of region of beneficiary will not constitute relinquishment for the purpose of Regulation 18 and, therefore, would not attract any relinquishment charges. Further, in order to constitute relinquishment, there has to be voluntary and intentional surrender of capacity.

(b) From the perspective of relinquishment, LTA granted with the target beneficiary stands on a different footing than a firm beneficiary. Target, by the very meaning of the expression means tentative or uncertain. Thus, there is an inbuilt right available with the generator to change the region without attracting any liability or additional cost.

(c) As per the Central Electricity Regulatory Commission (Sharing of inter-State transmission charges and losses) (Third Amendment) Regulations, 2015, the Commission allows for set-off of the transmission charges paid under MTOA/STOA granted with beneficiary in a particular region against unused LTA with target beneficiary in another region which means that the Commission considers only the quantum of power injected into grid by power plant irrespective of the Target Region to which power is supplied, to calculate the transmission charge liability. Therefore, applying the same principle, it is more logical to set-off the transmission charges paid for LTA used for one region against the unused LTA for the original target region and not to levy any additional charges in the form of relinquishment charges.

(d) Unless the Petitioner proves beyond reasonable doubt that the capacity is stranded directly as a result of change in region by the relinquishing LTA customer, the question of paying any compensation does not arise. Further, the Petitioner needs to show that the capacity will be stranded for a period of 12 years to be entitled to compensation for 12 years as per Regulation 18. Further, there is no provision in the Connectivity Regulations for imposing relinquishment charges in case of change of region.

29. Kerala State Electricity Board Limited (KSEBL) has made following preliminary submissions:

(a) The issue of computation of the charges for relinquishment of access is complex in the meshed network. Detailed load flow studies based on load generation balance of the entire State including the capacity addition, transmission system planned etc. will reveal the extent of stranded capacity in the coming years.

(b) The capacity utilization after a period of operation may be different for the system from that initially envisaged. Further, the stranded capacity may exist only for some period and a generalization of procedure may not be possible. The cost of dedicated transmission system can be fully realized while calculating relinquishment charges.

(c) When LTA is availed in the already available margins, relinquishment charges shall be levied from such customers at the rate of opportunity cost of others who might have been denied the LTA. However, such relinquishment charges may be applicable only for dedicated or radial system and if creation of 'stranded capacity' is established. However, levying relinquishment charges can be stopped as soon as the system is being used by others either through MTOA or STOA.

SUBMISSIONS ON TERMS OF REFERENCE

30. **The first Term of Reference: On relinquishment of full or part LTA, will there be stranded transmission capacity under the following cases? If yes,**

how? If, no, why not? (i) LTA grant with augmentation; and (ii) LTA grant without augmentation.

31. The Petitioner has submitted that the LTAs are granted by CTU with or without system augmentation on an incremental basis. The system specified in the LTA grant(s) is over and above the ISTS system already under operation or implementation. Accordingly, for the purposes of ascertaining compensatory liability towards payment of relinquishment charges, no differentiation between long-term customers granted LTA whether with or without system augmentation can be allowed. Further, under the provisions of the Sharing Regulations, the DICs are required to share the transmission charges for all the elements of ISTS irrespective of whether it is catering to an LTA granted with system augmentation or without it. In terms of Regulation 18(3), the interests of remaining 'long-term' and 'medium-term' customers who are required to be compensated by the amount recovered from levy of relinquishment charges is independent of whether the departing long-term customer had been granted long-term access with or without system augmentation. On the issue of stranded capacity upon relinquishment of LTA by any long-term customer either for full or part LTA quantum, the Petitioner has submitted that exit of any DIC causes the equivalent burden towards transmission charges on the remaining DICs that the relinquishing LTA customer was supposed to bear. Therefore, in terms of servicing of transmission charges, the stranded capacity is Rs./MW that the relinquishing LTA customer would henceforth stop bearing and would now be borne by the balance DICs.

32. The Respondents CEPL, IL&FS, TNPCL, Vedanta, GMRKEL, MCCPL, SEL, JITPL, TRNEPL have commonly responded on the first term of reference as under:

(a) As regards LTA grant with augmentation of transmission assets, the Respondents have submitted that in the event LTA for a customer is operationalized on the existing transmission system, the same means that capacity was available in the margins which signifies that the said capacity or the system was built for higher capacity and was developed/ augmented for some other LTA customer, upon whose exit or inability to use the said capacity, the same was allocated to another customer, and in such an event no relinquishment charges can be levied upon the LTA customer for whom no system augmentation has been done.

(b) As regards the Petitioner's submission that the stranded capacity is nothing but such capacity in Rs./MW that the relinquishing LTA customer would henceforth stop bearing and now be borne by the remaining DICs, the Respondents have submitted that the intent of the provision in the Connectivity Regulations is not to determine the stranded transmission capacity in monetary terms but rather to ascertain the actual transmission capacity which shall remain unutilized for a period of 12 years from the date of operationalization of the LTA or for such period falling short of the period of 12 years from the date of operationalization of the LTA, due to relinquishment by LTA customer. In the event the relinquished capacity does not remain stranded for the period contemplated in the said Regulation on account of the same being used under STOA/MTOA/LTA by any other user, either PGCIL or the existing DICs would be in a better monetary position upon relinquishment of LTA, which is clearly not the intent of Regulation 18 as the said Regulation talks about compensation for actual loss. Therefore, the stranded transmission

capacity can never be ascertained in terms of Rs./ MW in place of first determining the actual unutilized LTA quantum on account of relinquishment.

(c) With reference to CEA's efforts to ensure a stable and reliable grid and resultant movement from 'N-1' contingency to 'N-1-1' contingency, as evident from the Report on Advance National Transmission Plan for 2021-22, even if there is a stranded transmission capacity upon relinquishment by an LTA customer, then the same would in any case help the Petitioner in not constructing the infrastructure to the extent of such stranded capacity when preparing the system for N-1-1 contingency and the additional expenditure to that extent would be saved for moving to N-1-1 contingency. Hence, the computation of stranded capacity under Regulation 18(1)(b) has to factor in the fact that such stranded capacity may not remain stranded once the system moves to N-1-1 contingency.

33. The respondents MBP(MP)L, GWEL, EP(MP)L have commonly responded as under:

(a) In a meshed network, it cannot be said with certainty that on relinquishment of part or full LTA, there indeed will be stranded capacity even where LTA grant is made pursuant to augmentation of transmission system. During the course of meetings of the Committee constituted by the Commission to deal with the instant issue, CTU itself has acknowledged that determination of stranded capacity in a meshed network on account of relinquishment of LTA is almost impossible. Therefore, till the time, it is established that 'stranded capacity' has been created on account of

relinquishment of full or part LTA by the LTA holders, no relinquishment charges can be levied.

(b) No relinquishment charges should be required to be paid under the following scenarios:

- (i) Where system strengthening is required but the works have not been started or completed; and
- (ii) Where system strengthening has been completed but quantum of remaining LTA after relinquishment is more than the added capacity.

(c) In case of LTA grant without augmentation, there cannot be any stranded capacity if LTA is granted without augmentation. If the LTA is granted to a generating company without augmenting the transmission system i.e. on the basis of the margin already available in the system, then there would not be any stranded capacity on account of relinquishment of full or part LTA. In such a scenario, there cannot and should not be any question of levying relinquishment charges. This approach has been adopted by the Central Commission in 63/MP/2013 in the matter of **LancoKondapalli Power Limited** where the petitioner had prayed for relinquishment of LTA of 250 MW to Nil without payment of any relinquishment charges. The Commission as per its order dated 21.2.2014 permitted the petitioner to relinquish LTA without any payment.

34. The Respondents JPL, DIL, DBPL have submitted that the stranded capacity refers to a transmission capacity or a part thereof, which is developed and

shall remain unused subsequent to a relinquishment of LTA by a LTA Customer. In case of a meshed transmission network, the exact demarcation of a stranded capacity will not be possible, as the transmission system will continue to be used by other LTA Customer(s). In this regard, following situations/scenarios are likely to arise in case of relinquishment by a LTA Customer:

(a) LTA grant with augmentation of transmission system:

(i) The query posed by the Commission relates to a situation where a LTA Customer relinquishes LTA from the ISTS where augmentation was carried out for the grant of LTA and also, the relinquished capacity could not be further utilized under Medium-term or Short-term Open Access routes, such system is likely to remain unused. In case of a dedicated transmission system meant only for the use of LTA Customer, such capacity shall remain unused in case of relinquishment of LTA and shall be the stranded capacity.

(ii) The determination of stranded capacity is directly linked to the recovery of the capital investment made by the CTU for system augmentation. A group of LTA customers using a transmission system requiring augmentation, shares the payment obligation for this capital investment through monthly transmission charges. If a LTA customer of such group relinquishes its LTA, the transmission charges corresponding to such proportion of capital investment remains unrecovered. In order to avoid increase of obligation of transmission charges to the balance users of the group, relinquishment charges are to be paid by the LTA customers relinquishing its access rights as per the Connectivity Regulations. Subsequently, in case of new LTA Customer(s) being granted LTA in the relinquished capacity of the same

transmission network, obligation of payment of transmission charges by each LTA Customer will tend to decrease as the relinquishment charges earlier paid by the LTA Customer already resulted into recovery of proportionate capital investment of the CTU.

(iii) The liability of a relinquishing LTA Customer should be charged on annual basis, and should be limited to the capital investment left unrealised corresponding to the actual stranded capacity after accommodating for the transmission charges to be paid by the new LTA Customer.

(b) LTA grant without augmentation

In case no new augmentation was carried out while granting LTA, there will be no stranded capacity in case of an LTA relinquishment sought from a system. The transmission system in which LTA was granted without augmentation was already commercially operational and “in use” even before the LTA grant to the LTA customers. Therefore, relinquishment by a LTA customer in case of LTA grant without transmission augmentation will never result in creation of new stranded capacity.

35. The Respondents KMPL and PEL have submitted that on relinquishment of Long Term Access there will be no stranded transmission capacity under following cases:

(a) LTA granted with augmentation of transmission system

(i) In cases where LTA is granted with augmentation of transmission system, there will not be any stranded capacity if there are pending LTA applications in queue seeking LTA for the same corridor for which LTA is being relinquished.

Further, there will be no stranded capacity where after relinquishment, the transmission system can be allotted for use under STOA/MTOA till it is also allocated to another LTA applicant.

(ii) The stranded capacity in the transmission system, if any, after the relinquishment of LTA by the generator can be determined by carrying out system studies to find out the loadings on the transmission system so added and any difference in flows on the system so added be calculated prior to and after relinquishment of LTA and if any difference is observed in flows on the system, the same may be treated as stranded capacity.

(iii) While Bank guarantee for construction of the system is Rs.5 lakhs per MW, the penalty for relinquishment is ten times i.e. about Rs.50 lakhs per MW. Hence, if the project is abandoned altogether, then the penalty on the developer is only 10% (by encashment of Bank guarantee) of what is charged if the project actually comes up and relinquishes LTA. Therefore, the aim of the Petitioner seems to earn profit out of the levy of relinquishment charges.

(iv) By putting onerous charges on LTA applicants - by way of encashment of BGs and high relinquishment charges - the Regulations are being sought to be read to penalize and discourage the very/sole segment of the power sector that is facilitating construction of transmission capacity. A number of power plants have come-up without LTA for full capacity.

(v) There is a requirement for the Petitioner to demonstrate the likely idling or stranding of its resource. Even if it shows that its line is temporarily unutilized, it gets benefit of compensation for stranded capacity for life i.e.12 years.

Generally, no network will lie idle for such a long period of time. On the other hand, the current dispensation presumes that the lines would remain idle for 12 years and charges are being proposed to be levied accordingly.

(vi) It is well known that the reliability and robustness of a transmission network is dependent on the degree of redundancy. Even a so-called stranded capacity may become a vital link in the future. Further, there is no method of refund/compensation for the generator who has already paid relinquishment charges for the whole life.

(vii) The current proposal of the CTU does not consider the case of a generator which commissions its plant but is unable to get customers in the Target Region as indicated at the time of system planning rather gets customers in some other region. Ultra Mega Power Plants and other State-owned utilities have not been charged any penalties for change of region for abandoning of projects. Infact, Public Sector companies like NTPC, NHPC etc. do not even have to give bank guarantees for their transmission systems.

(b) LTA granted without augmentation of transmission system

(i) In cases where LTA is granted without augmentation of transmission system, there will not be any stranded capacity as no system augmentation was done for the party who had applied for LTA and has subsequently relinquished the LTA since the existing transmission system was capable of carrying the power of the LTA Applicant at the time of making application. In other words, the system was already in place based on the needs of the then

existing beneficiaries and the same beneficiaries should bear the costs once the LTA is relinquished.

(ii) Though no compensation is warranted to the Petitioner as the margins are already available in the existing lines, a small penalty may be charged on the applicants in such cases in order to discourage irresponsible applications that could result in blocking of capacity.

36. TANGEDCO has submitted its response under the two scenarios as under:

(a) LTA grant with augmentation of transmission system

(i) In case of LTA grant with augmentation, there will be stranded transmission capacity. Even though the transmission system cannot be designed to exactly match with the generation capacity addition/system strengthening requirement, the planners design the system based on the LTA quantum with little margin to meet the eventualities so that there will not be any redundant transmission capacity which would make the system uneconomical. The onus is on the CTU/Developer to carefully design the system so as to send economic pricing signals to the beneficiaries/network users for availing cheaper power. In this process, as mandated in the Act and the Sharing Regulations, the investment on transmission system should be fully and exactly recovered while ensuring that the interest of the consumers is not compromised. Since the Discoms are not parties to the LTAs between the generators and PGCIL, any eventuality resulting in financial loss to the system developer should not be passed on to the Discoms by bringing the assets 'not under beneficial use of the Discoms' under POC under the pretext of "system strengthening". Proper accountability should be fixed on the generation

developer and the system developer taking into account the peculiar facts and circumstances of each case.

(ii) The voltage level, capacity and extent of augmentation of the transmission system largely depends on the generator capacity, requirements of LTA customers, point of injection, point of inter-connection and point of drawal in the grid. Since the system is developed to meet the requirement of a single generator/beneficiary or a group of generators/ beneficiaries, the generators/ beneficiaries are legitimately accountable for recovery of cost of transmission assets. The other DICs, who have no beneficial use of the augmentation but are connected to the system should not be made accountable for payment.

(iii) The argument that there will not be any stranded capacity in a meshed network due to relinquishment of part/full LTA by any of the LTA customers is illogical. Even though there would be power flow in the newly connected/ augmented system once integrated to the network due to the physical properties of electricity, there will definitely be un-utilized capacity attributed to the customers who opted for the relinquishment. The relinquishment would also cause circular flow in the system which is not highlighted in conventional power flow studies. Irrespective of whether it is dedicated/radial or connected to the mainstream meshed network, there will be stranded/un-utilised capacity due to relinquishment of the LTA. The core issue is to quantify the stranded capacity and mode of recovery of charges from the LTA customer responsible for creation of such capacity. It is illegal to shift the financial burden of such stranded capacities on utilities not responsible for the stranded capacity.

(iv) The Commission in its Order dated 12.07.2016 in petition No.315/MP/2013 has held PGCIL responsible for not reviewing the generation development status and re-planning the transmission system implementation. Hence, the responsibility lies with the developer of both generation and transmission projects and also firmed up beneficiaries which cannot be mixed with other DICs. The concept of POC mechanism does not envisage such wrongful inclusion of stranded capacities where the DICs are not responsible for creation of such stranded capacity. It is open to PGCIL to explore other legal remedies against the entity which is responsible for creation of such stranded capacity. It is not equitable to burden the DICs for the defaults on the part of parties to a contract, where the DICs are not party to the contract.

Case (b) LTA grant without augmentation

(i) LTA is granted based on the quantum and tenure of LTA and the ATC. If the ATC is not adequate to cater to the additional demand, the transmission capacity is augmented to grant LTA. Even though the LTA is granted without augmentation, the capacity blocked by the LTA customer could not be availed by other customers who intend to avail LTA. Hence, there will be stranded capacity and the capacity stranded could be assessed duly considering the number and quantum of LTA applications rejected after grant of LTA to the customer who wants to relinquish the access. The charges would be levied based on the opportunity cost.

37. WBSEDCL has submitted its response on the term of reference as under:

Case (a) LTA grant with augmentation of transmission system:

(a) A co-joint reading of Regulation 18 and Regulation 2 (1) (v) of the Connectivity Regulations leads to the conclusion that the relinquishment charges are levied if there is non-utilization of transmission asset due to relinquishment of access rights. Therefore, before imposition of relinquishment charges, the factors such as (i) the demand for transmission capacity in the line; (ii) Whether the capacity would remain unutilized for a period of 12 years?; (iii) Estimation of the loss suffered by PGCIL on account of the relinquishment; and (iv) Phased payment of relinquishment charges corresponding to the actual period for which the capacity remains unutilized, need to be considered.

(b) Given the present scenario, it is unlikely that capacity would remain unutilized for the entire duration of 12 years. Since PGCIL is recovering on cost plus tariff, recovery of 12 years' charges against capacity which may be put to use is patently unfair and may lead to unjust pecuniary benefits to PGCIL and other beneficiaries of the network.

(c) The circumstances in which relinquishment has been sought should also be considered before imposing relinquishment charges. The beneficiary might be surrendering the LTA grant on account of force majeure event or any ancillary circumstances relating to macro-economic factors of the country having impact on demand and supply of the power. Therefore, the Petitioner should analyze the reasons for which the surrender of LTA grant has been sought. Further, the Petitioner is discharging statutory functions on behalf of the State. It is a revenue neutral entity. Therefore, any penalty should be measured against the actual loss

being suffered by PGCIL. Further, in any case, the Petitioner is earning Return on Equity. Thus, penalty on account of stranded capacity may amount to unjust pecuniary benefit to the PGCIL.

(d) In any event, additional transmission capacity in transmission system may be beneficial to ensure stability and reliability. Otherwise, the grid itself would collapse. In this respect, the National Tariff Policy, 2016 also aims to provide adequate margin in the transmission network.

(e) The transmission systems are not augmented on the basis of the LTA grant and instead they are augmented on the basis of several factors including system studies and demand projections. The transmission system is augmented on the basis of overall planning and coordination of the Central Transmission Utility with various other agencies and stakeholders. Therefore, it would be incorrect to hold that relinquishment charges should be levied on surrendering of LTA grant in all cases where the system has been augmented. The NEP also provides that prior agreements are not pre-conditions for network expansion. In this context, Section 38 of the Electricity Act, 2003 has entrusted several functions on the PGCIL to ensure development of an efficient, co-ordinated and economical system of inter-State transmission system for smooth flow of electricity from generating stations to the load centres. The discharge of statutory function cannot be subjected to bilateral transactions nor can be guided or controlled by stipulations of Bulk Power Transmission Agreement ("BPTA"). PGCIL, in any case, due to its statutory obligations has to build network in terms of its own planning and coordination in efficient and economical

manner. Therefore, notwithstanding the fact that LTA has been granted with system augmentation, relinquishment charges ought not to be levied for the reasons summarized hereunder:-

- (i) In terms of Regulation 18 and Regulation 2(1)(v) of the Connectivity Regulations, the relinquishment charges should not be levied unless it is conclusively demonstrated that there would be a continued non-utilization of transmission asset for a period falling short of 12 years specifically attributable to beneficiary.
- (ii) The system is unlikely to remain stranded.
- (iii) The recovery of relinquishment charges shall amount to unjust pecuniary benefits to the PGCIL.
- (iv) In terms of Para. 7 of the NTP, additional margins in transmission system are always required for its stability and reliability.
- (v) Transmission systems are not simply augmented on basis of the LTA grant.
- (vi) In terms of Para. 7.1 (4) of the NEP, prior agreements are not pre-condition for network expansion.
- (vii) The discharge of statutory functions cannot be subjected to bilateral transaction between PGCIL and beneficiaries.

Case (b) LTA grant without augmentation of transmission system

WBSEDCL has submitted that in case of LTA grant without augmentation, the beneficiary ought not to be made liable to pay relinquishment charges as the system was already in existence. In this regard, the Commission in its Order dated 21.02.2014 in **Petition No.63/MP/2013, LancoKondapalli Power**

Limited vs. PGCIL & Ors, has held that relinquishment charges are not payable when LTA grant is without augmentation.

38. The Second Term of Reference: What should be the approach to determine the stranded transmission capacity in the meshed network of the inter-State transmission system?

39. The Petitioner has submitted as under:

(a) The approach of adopting load flow studies to determine isolated stranded transmission elements has not been successful and this view has also been endorsed by the Committee constituted by the Commission for determination of stranded capacity and relinquishment charges. However, the Petitioner has submitted that large quantum of LTA has been relinquished by various long-term customers and the effect of their exit from the LTA arrangement is reflected in the additional burden to be passed on to the remaining DICs who continue to contribute to the Yearly Transmission Charges.

(b) The determination of stranded transmission capacity is not an end in itself and is rather only a methodology to determine the additional burden passed on to the remaining DICs by the exit of a long-term customer. Accordingly, determination of stranded transmission capacity should be guided by a top-down approach of finding the rationale for levy of relinquishment charges and the desired application of relinquishment charges recovered, instead of bottom-up approach of finding isolated/stranded transmission elements for determination of relinquishment charges.

(c) The provisions of the Connectivity Regulations should be read with the provisions of the Sharing Regulations, particularly Regulation 5, to have a holistic construction of relinquishment of LTA and its incidence on the liability of others in payment of transmission charges. Thus, the determination of 'stranded transmission capacity' ought to be considered in terms of the quantum relinquished under LTA and the consequent effect of such relinquishment on the other DICs sharing the Yearly Transmission Charges in the PoC pool. The rationale of levying relinquishment charges is to recover the YTC fully and exactly and to apply the charges so recovered to reduce the additional burden on the other long-term and medium-term customers (DICs). The approach specified under Regulation 18(3) of the Connectivity Regulations for determination of relinquishment charges is in sync with the need for reasonable recovery of the shortfall in recovery of YTC. The compensation thus envisaged could be worked out on the basis of PoC injection charges based on the location of the generation, considered at 66% of the NPV of the estimated transmission charges for the stranded transmission capacity for the period falling short of 12 (twelve) years of access rights.

(d) In the alternative, based on the facts of the case, the relinquishment charges may be determined on a "fixed rate per MW" basis.

40. The respondents CEPL, IL&FS, TNPCL, Vedanta, GMRKEL, MCCPL, SEL, JITPL, TRNEPL have submitted as under:

(a) The Petitioner's contention that adopting load flow studies to determine isolated stranded transmission elements have not been successful would render Regulation 18 un-implementable due to the fact that the Regulation

contemplates that at first the isolated stranded transmission capacity qua an LTA customer relinquishing its LTA is to be determined and thereafter, only the consequential relinquishment compensation, if any, is to be computed. If CTU cannot arrive at any mechanism for determination of the stranded transmission capacity, which is a *sine qua non* for payment of relinquishment compensation, no such compensation shall be payable by the relinquishing LTA customer.

(b) Any entity which claims a compensation or liability to be imposed upon another on the basis of the loss and injury sustained by the entity due to action or inaction of the another person is under a statutory burden to prove the factum of loss and injury so sustained for imposition of liability. Likewise, in the present case, as per Regulation 18 of the Connectivity Regulations, the statutory burden is on the Petitioner to “first” ascertain stranded capacity for the entire period contemplated in Regulation 18(1)(b). Unless the said statutory burden is discharged, the question of computing and imposing relinquishment charges does not arise at all.

(c) As per Regulation 18, determination of stranded capacity, attributable to the entity relinquishing its LTA rights, is necessary for determination and imposition of relinquishment charges. If it is not possible to conclusively and scientifically determine the stranded capacity, no relinquishment charges can be imposed. Further, no attempt whatsoever can be made for levy of relinquishment compensation based upon any notional stranded capacity.

(d) The Petitioner has contended that large quantum of LTA has been relinquished by various long term customers and the effect of such exit from

the LTA arrangement is reflected in the additional burden passed on the remaining DICs who continue to contribute to the yearly transmission charges. However, such actual quantified burden has not been placed on record. Thus, the Petitioner has adopted reverse interpretation of Regulation 18 i.e. first financial impact is determined and then the stranded capacity is “assumed”. The said approach is fundamentally flawed as the Regulation 18 clearly contemplates that “first” the stranded capacity for the entire period contemplated under Regulation 18(1)(b) is to be conclusively determined, and only then the relinquishment compensation can be computed.

(e) All the relinquished capacities are supposed to be further allocated by PGCIL to the new LTA applicants. Accordingly, the transmission capacity made available on account of relinquishment is being utilised by the Petitioner to allow flow of power under MTOA and STOA. As per proviso to Regulation 9(2) of the Connectivity Regulations, for MTOA and STOA purpose, the CTU is not required to carry any system strengthening/augmentation. This indicates that the revenue collected under MTOA and STOA is nothing but the cost of transmission asset developed for facilitating power flow under LTA arrangement. Therefore, CTU being a revenue neutral entity is required to adjust any such amount i.e. Yearly Transmission Charges (YTC), collected under MTOA and STOA with the cost of transmission asset developed for LTA arrangement.

(f) The post-tax Return on Equity (RoE) to be generated by the Petitioner is expected to be 15.5%, whereas the return on equity generated by the CTU is 16.28% for the financial year 2016-17 which underlines the fact that the

Petitioner has not incurred any loss/injury due to any stranded transmission capacity on account of LTA relinquishment. Moreover, sustained appreciation in the share prices of the Petitioner Company in the capital market is contrary to the claimed loss/injury to the Petitioner on account of relinquishment of the huge quantum of approximately 40,000 MW of LTA rights.

(g) The capital expenditure of the Petitioner is not initiated as per the business needs and rather the same is driven by the targets set by the Government as part of the XIIth Plan. Therefore, any transmission capacity remaining unutilized in the corridor cannot be attributed to a relinquishing LTA customer as the Petitioner has not added the transmission capacity on the basis of the requirement of the generators, but for the purpose of achieving the targets set under the XIIth Plan. This fact is substantiated by Clause 5.3.2 of the National Electricity Policy, 2005 which provides that for the purposes of network expansion of transmission corridor, the Petitioner is not required to enter into an agreement with the LTA beneficiary. The factual position is in contrast with the Petitioner's contention that the transmission asset is constructed only as per the requirement of the generator/ beneficiary. Thus, the capacity addition by the Petitioner is not based on the requirements of the generator/ beneficiary and rather the same is based on commercial decisions taken by the CTU for which the relinquishing customer cannot be held liable.

(h) For the purpose of recovery of any shortfall in the YTC, the actual unutilized transmission capacity has to be determined first and any such recovery on notional or any other basis is not provisioned in the Regulations. Likewise, payment of relinquishment compensation as may be determined on

a “fixed rate per MW basis” do not find any mention in the extant regulatory regime as Regulation 18 clearly provides for relinquishment compensation payable towards “stranded transmission capacity” and not otherwise. Strict interpretation of Regulation 18 of the Connectivity Regulations may be adopted by the Commission so that relinquishment charges are imposed only where stranded capacity is determined. In this regard, reference to following Judgments of Hon'ble Supreme Court have been made where it is observed that strict interpretation is to be provided to statutes/regulations/law which deal with penal provisions/fiscal statute:

- (i) *KrishiUtpadhanMandiSamiti and Ors. Vs. PilibhitPantnagarBeej Ltd.* reported in(2004) 1 SCC 391.
- (ii) *Sakshi Vs. Union of India* reported in (2004) 5 SCC 518.
- (iii) *Virtual Soft Systems Ltd. Vs. Commissioner of Income Tax, Delhi I* reported in (2007) 9 SCC 665

(i) The Petitioner being the CTU cannot wriggle out of its own responsibility by resorting to terms and conditions enumerated in the standard form of contracts executed between CTU and the generator/beneficiary. Hence, the argument advanced by the Petitioner with regard to executing contract with generators which allegedly translated into developing transmission asset is without merit as the responsibility of the CTU cannot be constrained into a purely commercial contract.

41. The Respondents MBP(MP)L, GWEL, EP(MP)L have made the following submissions:

- (a) The extent of liability of relinquishment charges by an LTA customer is required to be worked out having regard to the stranded capacity which would

require clear identification of several factors such as what is to be treated as stranded capacity, the duration for which capacity is stranded, whose capacity is stranded and how much of the capacity remains stranded. Relinquishment charges should be recoverable/adjusted after having a complete accounting of the commercial usage and the revenue earned by the CTU for the transmission system. The determination of stranded capacity should be on case to case basis keeping into consideration the above mentioned factors and any other relevant factor in a specific case.

(b) Determination of stranded capacity in a meshed network on account of LTA relinquishment is an extremely challenging proposition, as has been acknowledged by the various members of the Committee constituted by the Commission to deal with the instant issue. It has been suggested that the best possible methodology which could be attempted/thought of for determination of the 'stranded capacity' is as under:

(i) Transmission capacity, in the context of LTA, is the capacity allocated out of the "available capacity of the associated meshed transmission network" (hereinafter "**ATC**"). Therefore, in the context of 'relinquishment of part or full LTA', "stranded transmission capacity" will essentially mean 'unutilised available capacity of the associated meshed transmission network' or 'unutilised ATC'.

(ii) Utilisation of ATC is on account of the allocations/transactions under LTA, MTOA & STOA in each time block of the day. Therefore 'unutilised ATC' shall mean that part of the ATC that has remained unutilised considering collective commercial transactions under LTA, MTOA and

STOA, in each time block of the day, which can be attributed to the quantum of the LTA that has been relinquished by a customer. It would, therefore, be fair to term such 'unutilised ATC' as 'stranded transmission capacity' on account of a particular relinquishment of LTA;

(iii) As the actual utilisation of ATC varies in each time block of the day, upfront/advance determination of stranded capacity arising due to relinquishment of LTA is not possible. The 'stranded transmission capacity' can only be determined post operationalization of the entire transmission system identified for such granted LTA. Further, such 'stranded transmission capacity' can only be determined based on the utilisation of the ATC under LTA, MTOA and STOA under each time block of the day, which can be subsequently aggregated on annual basis after having a complete accounting of the commercial usage.

(c) The Petitioner in case of each transmission system where LTA is proposed to be relinquished should undertake specific exercise to determine the stranded capacity. To start with, at the very basic level, the following information/details must be arranged and shared by the CTU with the relevant LTA holder who proposes to relinquish its part or full LTA:

(i) Actual capability in MW, average and peak load flow in MW, and utilization of the relevant transmission system in question for the period since when the said transmission system has become operational till the date from when LTA is proposed to be relinquished, on month to month basis under LTA, MTOA and STOA transactions or any other utilization for system strengthening;

- (ii) The quantum in MW of LTA, MTOA and STOA applications pending before PGCIL for the relevant transmission system; and
- (iii) After the request for relinquishment of full or part LTA is made by the concerned LTA holder, what capacity is granted for LTA, MTOA and STOA for power evacuation within the region where such transmission system is located (i.e., like western region or northern region) through already existing/under construction/commissioning transmission lines for the period since when the said transmission system has become operational till the date from when LTA is proposed to be relinquished.

42. The Respondents JPL, DIL, DBPL have responded on the following common lines:

- (a) In case of a meshed transmission network, the exact demarcation of a stranded capacity will not be possible, as the transmission system will continue to be used by other LTA Customers and over a period of time, there will be change in the usage of such transmission network. In case of a dedicated transmission system meant only for the use of LTA Customer, such capacity shall remain unused in case of relinquishment of LTA and shall be the stranded capacity. Notwithstanding the above, the approach to determine the stranded transmission capacity in the meshed network of the inter-State transmission system could be based on the load flow studies. For instance, based on the actual load flows in the meshed transmission network, the extent of the utilization of each line can be determined. In this regard, the Respondents have suggested the following two scenarios for consideration:

- (i) In the first scenario, the load flows on the lines/network elements (specifically built up for subject generation evacuation) can be determined by considering that the subject generation capacity has been installed.
- (ii) In the second scenario, the load flows on the lines/network elements (specifically built up for subject generation evacuation) can be determined by considering that the subject generation capacity is not installed. Based on the difference in load flow analysis of the two scenarios, the stranded capacity for each subject line may be calculated. Such determination of stranded capacity should be in the time frame of 12 months or less as the Commission may deem fit for considering the changes in the usage of the transmission system over a period of time.

However, such approach to determine the stranded capacity in a meshed transmission network may not be accurate and, therefore, it has been proposed that the Commission may like to mitigate the burden of relinquishing LTA Customers with more certainty by determining stranded capacity in a shorter time frame.

43. KMPL & PEL have, in response, submitted that the stranded transmission capacity in the meshed network of the inter-State transmission system can be determined only through Power Flow Analysis. In this approach, the stranded capacity can be determined carrying out two sets of studies, one with the said generation in service and second without the said generation in service. The difference in power flows would be the stranded capacity. Further, the stranding contemplated in Regulation 18 of the Connectivity Regulations is a physical stranding of the transmission asset and needs to be essentially established before any relinquishment charges can be levied.

44. TANGEDCO has submitted that irrespective of whether the system is dedicated/radial or connected to the mainstream meshed network, there will be stranded/unutilised capacity due to relinquishment of the LTA. This issue has to be approached in two stages i.e. the first stage being from grant of LTA upto operationalisation of LTA; and the second stage being beyond operationalisation of LTA. Once the LTA is granted and the establishment of the transmission system associated with the generation project has commenced, then the parties involved i.e. the TSP and the LTA customer (Generator) should follow the provisions of the Bulk Power Transmission Agreement or LTA agreement and also the Connectivity Regulations. The Detailed Procedure issued by the CTU under Regulation 27(1) of the Connectivity Regulations clearly provides the procedure to be followed in the event of default of the LTA customer. Since the planned system augmentation is undertaken based on the commitment given by the generators, the generators are liable/accountable/responsible to pay the transmission charges of the proposed system till they firm up with beneficiaries who take over the burden. Since the capacities created for power evacuation are huge, there will always be stranded capacity if the LTA customer backs out during the construction period and until such time they firm-up the beneficiaries/their generation project. It is the responsibility of the generators to keep the TSP indemnified against any loss whatsoever till the object intended under the LTA is achieved. If a group of generators are there in the pool and one or two generators opt out to exit during construction period, their LTA quantum shall be taken as stranded capacity until firming up of next LTA customer. Such generators, who opt out should be made liable to pay the financial implication of the stranded transmission capacity created due to such opting out. The generators who opt out and exit during the construction period are accountable for

the loss incurred by the Transmission Service Developer. The ex-ante load flow studies would not reveal the actual quantum stranded in the meshed network since there will be circular flow in the system under augmentation. In the second stage, if the LTA customer opts for exit, then the provisions of Regulation 18 of the Connectivity Regulations shall be followed to compensate the TSP. The Regulation provides that the LTA customer may relinquish before expiry of the full term duly compensating for the stranded capacity. This implies that since the entire capacity is created based on the requirement of the LTA customers(generator), the transmission charges on pro-rata basis being paid by the customer opting to exit, will be an unwarranted/un-reasonable burden under the POC on the DICs. In order to avoid this situation and protect the existing DICs against such unwarranted financial burden and also to protect the TSP against the financial loss, this compensation is levied. Clause 1(a) (i) of Regulation 18 exempting the customers from payment of compensation leads to an inequitable situation. This provision has to be modified in such a way that the LTA customers cannot induce the TSP to invest public money relying on the LTA and later relinquish such LTA, thereby shifting the financial burden on the public at large. The prevailing situation will compel all existing DICs to exit from the agreements based on the present market conditions and develop State-owned network which would be adequate to meet their requirements. Hence, determination of stranded capacity through load flow studies or any other method for the purpose of computation of compensation amount will not protect the existing DICs or the TSP rather will result in adverse effects.

45. WBSEDCL has submitted that it is unlikely that there will be stranded capacity in the present scenario. Further, PGCIL, CEA and Expert Committee have already taken a stand earlier that it is not possible to assess stranded capacity in meshed

network of the ISTS. Therefore, in absence of any methodology to conclusively assess stranded capacity, it shall be unjust to levy relinquishment charges only on basis of notional stranded capacity.

46. The Third Terms of Reference: For the purpose of computation of compensation, what should be effective date of relinquishment for the following cases:

(i) Relinquishment sought prior to schedule date of LTA operationalization;

(ii) Relinquishment sought after the schedule /actual date of LTA operationalization

47. The Petitioner has submitted that the effective date of relinquishment may be considered on a case to case basis. Further, the effective date of relinquishment must take into account the specified period of notice of one year as per Regulation 18 of the Connectivity Regulations. Moreover, the relinquishment of LTA ought to be considered only upon unequivocal submission in writing by the long-term customer to bear relinquishment charges before the CTU or by way of a petition before the Commission. This must be applicable to both the cases above i.e. whether the LTA is relinquished prior to or after the scheduled date of LTA operationalization.

48. The respondents CEPL, IL&FS TNPCL, Vedanta, GMRKEL, MCCPL, SEL, JITPL, TRNEPL have submitted as under:

(a) Regarding relinquishment sought prior to schedule date of LTA operationalization, it has been submitted that any usage of the ISTS can take place only upon operationalization of the LTA granted under a BPTA. In the

event, the LTA is relinquished before operationalization, the same means that the LTA has not been availed and accordingly, in such a case, Regulation 18, qua determination and imposition of relinquishment charges, will not trigger.

(b) As regards the relinquishment being sought after the scheduled date of LTA operationalization, it has been submitted that the inability of CEA to resolve the issue of mechanism to compute stranded capacity and the report of the Committee constituted by the Commission for the purpose remaining inconclusive establishes the fact that there is no mechanism to calculate any stranded capacity in the system as the entire transmission system is meshed and as a result, there cannot be any stranded capacity. In such a scenario, no compensation is payable for relinquishment of an LTA.

(b) For determination of the effective date of relinquishment, the Respondents have submitted that the intent of the generators surrendering the LTA has to be ascertained. The date on which the letter for surrender is issued by the generator should be considered as the effective date of relinquishment, taking into account the intention to surrender the LTA has been communicated by the said generator to CTU. Further, regarding the contention of the Petitioner that relinquishment should be considered from the date the generator provides an unequivocal submission to bear relinquishment charges, it has been submitted that the said condition is not contemplated by Regulation 18 and there is no set format/form provided under the said Regulation which is approved by the Commission.

49. The respondents MBP(MP)L, GWEL, EP(MP)L have submitted that the effective date of relinquishment in both the scenarios should be from the day when the LTA holder issues the notice for relinquishment.

50. The Respondents JPL, DIL, DBPL have submitted that in case of relinquishment sought prior to schedule date of LTA operationalization, there are two scenarios. In one scenario, the case of relinquishment of LTA of such generators may be considered who have relinquished prior to the scheduled date of LTA operationalization wherein augmentation of transmission network was carried out. In such case, effective date for relinquishment ought to be treated as the scheduled date of LTA operationalization, should there be no delay in commissioning of the augmented transmission system by the CTU. In case of delay in commissioning of the augmented transmission system, actual commissioning date of the augmented system should be considered as effective date for relinquishment. In the other scenario, the case of relinquishment of LTA of such generators is considered wherein no augmentation of transmission network was required. In such a case, no stranded capacity shall be actually created in case of LTA relinquishment by the LTA customer. Since the transmission system was commercially operational and “in use” even before the new LTA was granted, the relinquishment of this LTA cannot be made a ground to declare a transmission capacity or a part thereof, stranded. Therefore, in such cases where no augmentation of transmission network was required, there is no requirement to specify a relinquishment date, as the question of compensation of relinquishment charges does not arise in this case. As regards the relinquishment sought after the scheduled/actual date of LTA operationalization, there are two scenarios. In the first scenario, where LTA is not operationalized, actual date of relinquishment may be treated as effective date of relinquishment provided the transmission system whose capacity has been relinquished, is commissioned. In the second scenario, where there is a delay in commissioning of the transmission system from the scheduled date and the date of application for

relinquishment falls beyond the scheduled date of LTA operationalization, the actual date of commissioning of the transmission system may be considered as effective date of relinquishment. However, in both scenarios, relinquishment charges should be levied by the CTU only when determinable stranded capacity is proved to be actually created upon relinquishment of LTA by the LTA Customer. It has been further submitted that the time period of 12 years for calculation of compensation as mentioned in Regulation 18 of the Connectivity Regulations should be re-considered considering the current market scenario. Pending the grant of LTA of various applicants, it will take far less time for the CTU to replace a relinquishing LTA Customer by new LTA Customer. This is also important in view of the fact that the minimum tenure of the LTA has been defined in the 6th Amendment of the Connectivity Regulations dated 17.02.2017 as a period exceeding 7 years.

51. The Respondents KMPL and PEL have submitted that as regards the relinquishment sought prior to schedule date of LTA operationalization, there will not be any actual loss due to relinquishment. As such, when no loss is suffered by any entity upon relinquishment of LTA by any generator, the requirement of compensation does not arise. Therefore, the effective date for the purpose of computation of relinquishment charges should be the date from which the entity has suffered loss (If any) due to relinquishment of LTA. As regards the relinquishment sought after the scheduled/actual date of LTA operationalization, it has been submitted that even where relinquishment is sought after the schedule/actual date of operationalization, the effective date for the purpose of computation of compensation should be the date on which the concerned entity started suffering loss as the fundamental principle behind payment of compensation is that the person claiming compensation should have suffered a loss. Therefore, the effective date for the

purpose of computation should be the date from which the entity has suffered loss due to relinquishment of LTA.

52. TANGEDCO has submitted that in case of relinquishment sought prior to the scheduled date of LTA operationalisation, the provisions of Regulation 27(1) of the Connectivity Regulations should be followed without any excuse. Since creation of the stranded capacity/redundant assets will badly impact the financial status of the State distribution utilities/beneficiaries for no fault of theirs, the TSP and the generators should mutually indemnify through the implementation agreements. If any other LTA customer comes in place of the customer opting to exit, then they may be relieved off. Hence, relinquishment prior to scheduled date of LTA operationalisation is subject to the conditions stipulated in Regulation 27(1) and availability of substitute LTA customers. Regarding the relinquishment sought after the scheduled/actual date of LTA operationalization, the same should be dealt in accordance with Regulation 18 of the Connectivity Regulations since the financial burden will be cast on the existing DICs once the customer exits.

53. WBSEDCL has submitted that the date on which application/communication for relinquishment of LTA is issued by the beneficiaries to PGCIL should be considered as the effective date for relinquishment of the LTA in both cases. Further, transmission system is unlikely to have stranded capacity in present scenario as there would be some power flowing in the system. Therefore, LTA grant can be relinquished at any time and the same should not attract compensation for relinquishment. However, beneficiaries should relinquish LTA grant at the earliest so that PGCIL can take appropriate measures regarding the same. Further, the

beneficiary who is in queue for the grant of LTA can also get the opportunity to avail the same at the earliest.

54. The Fourth Terms of Reference: What should be the approach for the computation of compensation against the stranded transmission capacity?

55. The Petitioner has submitted that large quantum of LTA has been relinquished by various long-term customers and the effect of their exit from the LTA arrangement is reflected in the additional burden being passed on to the remaining DICs who continue to contribute to the Yearly Transmission Charges. The Petitioner has submitted that the determination of stranded transmission capacity is not an end in itself and is rather only a methodology to determine the additional burden to be passed on to the remaining DICs by the exit of a long-term customer. Accordingly, determination of stranded transmission capacity should be guided by a top-down approach of finding the rationale for levy of relinquishment charges and the desired application of relinquishment charges recovered, instead of bottom-up approach of finding isolated/stranded transmission elements for determination of relinquishment charges. PGCIL has submitted that the provisions of the Connectivity Regulations should be read with the provisions of the Sharing Regulations, particularly Regulation 5, to have a holistic construction of relinquishment of LTA and its incidence on the liability of others in payment of transmission charges. Thus, the Petitioner has submitted that the determination of 'stranded transmission capacity' ought to be considered in terms of the quantum relinquished under LTA and the consequent effect of such relinquishment on the other DICs sharing the Yearly Transmission Charges in the PoC pool. The rationale of levying relinquishment charges is to recover the YTC fully and exactly and to apply the charges so recovered to reduce

the additional burden on the other long-term and medium-term customers (DICs). The approach specified under Regulation 18(3) of the Connectivity Regulations for determination of relinquishment charges is in sync with the need for reasonable recovery of the shortfall in recovery of YTC. The compensation thus envisaged could be worked out on the basis of PoC injection charges based on the location of the generation, considered at 66% of the NPV of the estimated transmission charges for the stranded transmission capacity for the period falling short of 12 (twelve) years of access rights.

56. The Respondents CEPL, IL&FS, TNPCL, Vedanta, GMRKEL, MCCPL, SEL, JITPL, TRNEPL have submitted that the stranded capacity is not conclusively ascertainable so as to trigger Regulation 18 of the Connectivity Regulations. Further, the impact of relinquishment of LTA is marginal when considered for the entire ISTS as a whole. A holistic view of the entire sector should be taken including the reasons as to why generators, and other entities are being compelled to relinquish their respective LTAs. The said reasons range from policy gaps to coal issues and the lack of long term bids due to the change in the strategy of Discoms of moving from long term power procurement to short term power procurement. All these reasons, which are plaguing the entire electricity sector, have to be considered while deciding the issue if penalty in the nature of relinquishment charges has to be imposed. Further, it is submitted that the transmission business of CTU is entirely regulated and CTU is guaranteed that any entity which utilizes the said system for conveyance of electricity has to bear the transmission charges and as such, the cost of the transmission asset will be eventually realized by CTU. In this background, the generators should not be burdened with relinquishment charges which is essentially in the nature of penalty, especially when the concerned generators are already

suffering financially on account of the various sectoral issues related to policy gaps to coal issues and the lack of long term bids. Further, the generators who desire to exit from LTA, but still remain connected to the grid and supply power on STOA should not be saddled with any relinquishment charges as the said generator would eventually contribute its share of transmission charges. Also, there is no question of any stranded capacity, if an LTA has been surrendered by a generator and the same transmission system is allocated to any other generator, who has applied for availing MTOA or STOA as the charges recovered from other generators would in any case result in recovery of transmission charges by PGCIL.

57. The Respondents MBP(MP)L, GWEL, EP(MP)L have submitted that the usage of the term compensation itself establishes that the amount required to be paid as relinquishment charges should be such which only recompenses the actual loss created in form of stranded capacity and does not lead to unjust enrichment in any form. Therefore, it is to be ensured that the relinquishment charges, if any, are to be treated as compensation against any financial loss suffered by CTU/Petitioner and not as a penalty on IPPs. The position that losses have to be pleaded and proved to enable a party to seek compensation/damages is a settled law and this has time and again been so held by the Hon'ble Supreme Court, various High Courts and other judicial forums. A financial compensation has necessarily to be attributable and based on actual financial loss. In the present context, the same would represent the non-recovery of the transmission charges, in each time block, of the associated transmission network that can be attributed to the quantum of the LTA relinquished by a customer after accounting for the transmission charges recoverable, in each time block, on account of all actual transactions collectively under LTA, MTOA & STOA. Since the transmission charges are payable by the LTA customer only after

the actual date of operationalisation of the LTA, any stranded capacity and incidental financial compensation on account of relinquishment of LTA can be computed only after the actual date of operationalisation of the LTA. After implementation of PoC regime for calculation of transmission charges, the recovery of the returns on the transmission assets of the various Transmission Service Provider (TSPs) including PGCIL are secured and as such, there is not tangible loss suffered by TSPs. Since there is no financial loss, levying compensation on IPPs on account of relinquishment of LTA granted on Target Region for the operational generation Projects, which is beyond the control of IPPs, is completely unwarranted. The Respondents have also suggested that in case any compensation is to be levied for relinquishment of LTA (granted on Target Region) by the IPPs whose generation projects are fully operational, the following approach may be adopted:

- (i) The relinquishment charges/compensation may be calculated from the date of operationalization of such LTA by CTU on the basis of stranded capacity arrived on actual basis, after accounting for collective transactions;
- (ii) The payments against the monthly transmission bills raised by CTU for such un-utilized LTA (on Target Region) are to be aggregated; and
- (iii) Net compensation to be payable by such IPP should be arrived after deducting (ii) from (i).

58. The Respondents JPL, DIL, DBPL have submitted that as per Regulation 18 of the Connectivity Regulations, a relinquishing LTA Customer shall pay an amount equal to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of 12 years of access

rights. This approach considers estimated transmission charges for a time period of 12 years, as one-time payment of its equivalent net present value. This time period is too long given the frequency of transmission system planning by the CTU/CEA considering that the tenure of the LTA is defined in the 6th amendment of the Connectivity Regulations dated 17.02.2017 as a period exceeding 7 years. Further, subsequent to the relinquishment of LTA by an LTA Customer in a meshed transmission network, the capital investment by the CTU needs to be protected corresponding to the proportionate share of transmission charges payable against this quantum of LTA only when a determinable quantum of stranded capacity is actually proved to be created in the above network. A relinquishing LTA Customer shall pay the relinquishment charges to the CTU towards this end. Subsequent to the relinquishment of LTA, when a new LTA Customer is inducted into the same network, there is an additional stream of revenue for contribution towards recovery of the transmission charges based on the capital investment by the CTU, in addition to the transmission charges already being paid by the existing LTA customer. Therefore, a new LTA customer shall pay the transmission charges to CTU for the same capacity (or a part thereof) that has been relinquished by an existing LTA Customer. Therefore, the relinquishment charges earlier paid by an LTA customer should be accordingly adjusted and refunded by the CTU to the relinquishing LTA customer when a new LTA Customer is inducted into the said transmission system to the extent of the LTA capacity allotted to it. As per Regulation 18 of the Connectivity Regulations, a relinquishing LTA Customer is required to pay a one-time relinquishment charge equal to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of 12 years of access rights. However, during such time period of 12 years, multiple new

LTA customers may get their LTA approved in the same meshed transmission network and therefore, such stranded capacity is liable to be revised as and when the new LTA customers gets inducted in the meshed transmission network. Therefore, it does not appear to be justifiable for the CTU to recover the relinquishment charges at one go for a stranded capacity which will not remain the same and is likely to decrease for the said period with the induction of new LTA customers in the said meshed transmission network. Further, if the relinquishing LTA customer had originally been granted an LTA for less than 12 years by the CTU, the relinquishment charges to be recovered from such LTA customer should be in accordance with the definition of LTA in the 6th amendment of the Connectivity Regulations dated 17.02.2017. The Respondents have suggested that instead of recovering the entire relinquishment charges from a relinquishing LTA customer with a one-time payment, the relinquishment charges earlier paid by a relinquishing LTA Customer should be reconciled/adjusted by the CTU on an annual basis after incorporating the reduction in the liability of payment of the transmission charges on the existing LTA customer and relinquishing LTA customer due to induction of the new LTA customer in the meshed transmission network during last one year period, as finalized in coordination meetings of the CTU. Such commercial settlement may be formalized through an annual reconciliation process and the same should be clearly reflected in the Truing-up Petition filed by the CTU before the Commission seeking approval for its trued-up Annual Revenue Requirement (**“ARR”**) for the corresponding Tariff Period. The Respondents have further contended that there are instances when a developer applies for change in Target Region due to signing of long term PPAs in other regions. Such relinquishment of capacity in Target Region is to be done by the developers due to non-availability of suitable long-term tariff bids in

the Target regions and simultaneous availability of right bidding opportunities in other regions. In such cases, there should not be any levy of relinquishment charges on such developers relinquishing the LTA capacity for change in Target Region due to execution of a firm PPA in other region, as being an injecting entity, the transmission charges will continue to be paid on summated basis even after relinquishment in Target Region and availing equal capacity in other region where PPA could finally be concluded.

59. NLDC has submitted that there can be various scenarios under which computation of compensation against the stranded transmission capacity may be done. A few such scenarios would be: (a.) a generator relinquishing LTA but still remaining connected to the grid; (b) a generator relinquishing LTA as it could not get commissioned due to various reasons; (c) a generator seeking change in Target Region etc. For each case, the compensation amount may be collected in a graded fashion. It may also be ensured that before the transmission system is built, adequate financial security is available with the CTU in terms of the bank guarantees deposited by the generator or person seeking LTA. POSOCO has suggested the following:

- (i) Relinquishment charges should not be on case-to-case basis. There should be a fixed formula for the calculation of charges.
- (ii) Relinquishment charges should be known upfront i.e. ex-ante rather than post facto.
- (iii) There should be connectivity charge and reliability charge for connectivity quantum, which finds mention in the explanatory memorandum of CERC (Sharing of inter-State Transmission Charges & Losses) (Fifth Amendment) Regulations, 2016.

NLDC has further submitted that in case of relinquishment of Medium Term Open Access (MTOA), a maximum of 30 days payment is required to be made even though there is no 'stranded' capacity as MTOA is approved only on the margins. Therefore, LTA relinquishment charges need to be at least more than that of MTOA relinquishment.

60. The Respondents KMPL and PEL have submitted that the computation of compensation against the stranded transmission capacity should be on the basis of actual loss suffered by the entity. The fundamental principle behind payment of compensation is that the person claiming the compensation should have suffered a loss. The primary onus of claiming and proving damages is on the entity claiming compensation and no amount can be granted in the absence of proof of damages. In this regard, KMPL has referred to the following authorities:

- (a) **Kailash Nath Associates v. DDA, (2015) 4 SCC 136;**

43.6. The expression “whether or not actual damage or loss is proved to have been caused thereby” means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded.

- (b) **Munshi Ram v. Union of India, (1972) 3 SCC 866**

“16. It seems to us that this appeal can be disposed of on the ground that the extent of damages has not been proved in this case. The plaintiff came with a definite case that he had only taken delivery of 92 bags and left the remaining bags at the railway station. This has been negated by all the Courts and this finding is binding on us. Naturally after having pleaded that he only took 92 bags, no evidence could be led as to the price, if any, which was fetched by the sale of the remaining bags. We have, therefore, no information as to the exact damage.

- (c) **Balammal v. State of Madras, AIR 1968 SC 1425**

“...But there is no evidence on the record to which our attention was invited which supported the case of the appellants to compensation

under any of the clauses. There is nothing to prove that the owners had sustained any loss by reason of the severance of the land from their other lands, nor is there any evidence to prove that by reason of the acquisition the remaining lands were injuriously affected or the earnings of the owners were affected, nor is there any evidence to show that there was any damage resulting from diminution of the profits of the land between the time of the publication of the declaration and the time of taking possession of the land.....”

In addition, the Respondents have suggested that the Commission is seized of several cases wherein parties have invoked the Force Majeure clauses in their respective BPTAs. Whenever the Commission comes to the conclusion based on individual facts that there is a force majeure, there ought to be no question of levy of relinquishment charges.

61. TANGEDCO has submitted that in case of exit of generators/LTA customers during implementation period, the procedure under Regulation 27(1) and Regulation 18 of the Connectivity Regulations have to be followed. The TSP and the developer should indemnify against any loss due to back-out of any of the LTA customers. In case of exit after COD of the associated transmission assets, the Regulation 18 (1)(a)(i) has to be modified in such a way that the LTA customers are made liable to pay for the loss incurred by PGCIL due to the exit. Otherwise there is no need for a contract between PGCIL and LTA customer. TANGEDCO has further submitted that the argument of surplus transmission capacity to be useful for future expansions is not envisaged under the Regulations or the Act as this is against the financial interest of the DICs and against public interest.

62. WBSEDCL has submitted that in terms of legal principles, compensation can only be awarded against one party when there is a corresponding loss suffered by other party in terms of Section 73 of the Indian Contract Act, 1872. Since it is unlikely that there would be stranded capacity in the present scenario, the

imposition of relinquishment charges should be backed by a conclusive determination of stranded capacity and loss suffered on that account. Therefore, the relinquishment charges should be payable on an annual basis rather than a one-time compensation which has the following advantages:

- (i) In case the stranded capacity is put to use within the 12 year period, the entity which has surrendered capacity need not pay relinquishment charges.
- (ii) The financial impact is amortized over a period of time. This will benefit licensees especially State-owned distribution licensees.
- (iii) No prejudice would be caused to PGCIL since PGCIL would in any case recover this amount over a period of time had the relinquishment not occurred.
- (iv) Stranded capacity of the network may vary subsequently.

WBSEDCL has submitted that in order to receive compensation in terms of Section 73 of the Contract Act, 1872, a party must suffer actual loss or damages. Therefore, imposition of relinquishment charges in cases where PGCIL is not incurring any losses or damages is patently unfair and contrary to settled legal position. Further, the PGCIL is recovering cost plus tariff and any revenue over and above of Return on Equity shall amount to unjust pecuniary benefit to the PGCIL. Further, WBSEDCL has submitted that in any event, before allowing any compensation to PGCIL on account of relinquishment, PGCIL should be required to provide that (i) the system or part thereof was set up for the beneficiary; (ii) there are no beneficiaries who may utilize the stranded asset; and (iii) Relinquishment of LTA is causing financial loss to PGCIL. WBSEDCL has further submitted that Regulation 18 of the Connectivity Regulations does not provide mechanism for refund of such

relinquishment charges in the event a fresh beneficiary applies for LTA before the expiry of the period which was short of 12 years. Therefore, without prejudice to above submissions, if any compensation is granted to PGCIL, there should be mechanism for the refund of the same in event the fresh beneficiary applies for LTA before the expiry of the period which was short of 12 years. WBSEDCL has suggested that the Commission may also put into place a dispute resolution mechanism at the stage of computation of relinquishment charges enabling beneficiary of LTA and PGCIL to amicably determine applicable relinquishment charges.

63. GUVNL has submitted that the “Stranded Capacity” used in Regulation 18 has to be interpreted in a contextual and purposeful manner and not in a pedantic manner. Firstly, the term stranded capacity defined in Regulation 2(1)(V) has to be read with Regulation 18(a) of the Connectivity Regulations and as such, the stranded capacity has to be with reference to the date on which the relinquishment is made and the same cannot be on the basis that such capacity may be utilized in the ensuing period by any other LTA users or is being utilized in the meshed network. The applicant for relinquishment of Long Term Access should be directed to pay the surrender charges in terms of Regulation 18 of the Connectivity Regulations forthwith with interest and PGCIL should be directed to give adjustment for such amount to the other continuing Long Term Access entities(DICs) without utilizing the amount for other purposes. Secondly, the existing process of collecting the POC from the existing and continuing users of the transmission system to meet the revenue requirements of the Inter-State Transmission Licensees including on account of non-recovery of surrender charges from the persons who have relinquished the Long Term Access needs to be discontinued forthwith and all the persons who have relinquished the Long Term

Access should be directed to deposit the entire surrender charges as per the applicable Regulations. GUVNL has further submitted that the Inter-State Transmission Licensees including PGCIL should be held entitled to the surrender charges payable by the persons liable to pay the surrender charges as the full and complete consideration and should be held not entitled to recover any amount on account of such relinquishment from other existing and continuing open access users such as GUVNL. Thirdly, there is also a necessity to revisit the POC methodology and ensure that the users of transmission systems such as GUVNL are not being charged more than what they should be legitimately charged for the transmission capacity contracted by them, while including new transmission system, or up-gradation of the existing transmission system for giving open access to new applicants. The methodology for deciding the same should be whether the existing users can be serviced as before without the need to lay down or upgrade any transmission line and if so, there can be no extra liability fastened on such Existing users.

REPLY TO THE SUBMISSIONS OF THE PETITIONER DATED 8.9.2017

64. Respondents - CEPL, IL&FS, TNPCL, Vedanta, GMRKEL, MCCPL, SEL, JITPL, TRNEPL have submitted the following reply vide affidavit dated 16.11.2017. The Respondents have submitted that the reply filed by the Petitioner vide affidavit dated 8.9.2017 does not specifically deal with the stated terms of reference and instead seeks to establish that stranded capacity is nothing but such capacity in Rs./MW that the relinquishing LTA customers would henceforth stop bearing and would have to be borne by the balance DICs. The said understanding is fundamentally flawed on account of the following reasons:

a) Regulation 18 of the Connectivity Regulations imposes a statutory burden on PGCIL to “first” ascertain and demonstrate stranded capacity for the entire period contemplated in Regulation 18(1)(b), and unless the said statutory burden is discharged, the question of computing and imposing relinquishment charges does not arise at all.

b) The system has to remain stranded qua the capacity which has been relinquished, for the entire period contemplated in Regulation 18(1)(b) of the Connectivity Regulations.

c) Under the garb of Regulation 18, there cannot at all be double recovery for PGCIL, or double benefit to the existing DICs, in the event the relinquished capacity does not remain stranded, wholly or in part, for the period contemplated in the said Regulation either under STOA, MTOA or LTA. This would amount to unjust enrichment to either PGCIL or to the existing DICs which is not the intent of Regulation 18 as the said Regulation talks about compensation/ actual loss.

d) The Petitioner has sought to reverse calculate stranded capacity on the basis of the alleged impact upon the other existing DICs. Though Regulation 18 categorically provides to first demonstrate stranded capacity in the transmission system, but in the method proposed by the Petitioner, the said stranded capacity is determined on a “notional” basis and not determined on actual basis.

e) The Commission in order dated 08.08.2014 in Petition No. 92/MP/2014 inter-alia held that “...CTU neither conducted any system study nor indicated

anything or the ATC vague term while rejecting the MTOA application filed by traders like M/s NVVN and M/s PTC in the month of June 2013.” In view of the aforesaid, it is apparent that PGCIL has augmented the transmission system without undertaking any system studies. This implies that the system has been arbitrarily built, i.e. without adequate system studies, and the cost towards the same cannot be loaded onto the generators through any arbitrary relinquishment compensation mechanism.

f) Determination of Stranded Transmission Capacity is a sine qua non for payment of relinquishment charges and the same cannot be claimed by the CTU on notional grounds, meaning thereby that the basic obligation to show the stranded capacity due to relinquishment of LTA, is upon PGCIL/ CTU for the purposes of determining the quantum of compensation. By the instant petition, the Petitioner is seeking to collect the payment of relinquishment charges, without establishing stranded transmission capacity. However, the legislative mandate enshrined under the Connectivity Regulations provides that the relinquishment charges are to be levied only in case of any Stranded Capacity attributable to the LTA customer due to its relinquishment of LTA.

g) The Respondents have submitted that the Petitioner in its submissions dated 8.9.2017 has stated that the data corresponding to the month of January 2015 to May 2017 reveals that there had been increase in Monthly Transmission Charges (MTC) of ISTS from Rs. 1485 crore to Rs. 2390 crore i.e. an increase of 61%. But corresponding increase in LTA and MTOA has been from about 63,000 MW to about 84,700 MW i.e. an increase of only 34%. In this context, it is submitted that while making submissions with regard

to increase in MTC, the Petitioner has failed to take into account the revenue collected under STOA and MTOA which is being granted in the available margin in the transmission system. It is stated that the Petitioner has failed to take note of the fact that the available margin in the transmission system has increased due to relinquishment of LTA rights through which the CTU is allowing flow of power under STOA and MTOA. It is further submitted that under the regulations of the Commission, no system augmentation has to be carried out by the CTU for the purpose of allowing flow of power under STOA and MTOA. This implies that CTU can only allow flow of power under STOA and MTOA by utilizing the available margin in the transmission system. In this context, it is submitted that the available margin in the system has further increased due to relinquishment of LTA which has enabled the CTU to grant STOA and MTOA.

h) The Respondents have further submitted that the Commission had constituted a Committee under the Chairmanship of Shri Mata Prasad, power system expert to “study Staff Paper on Transmission Planning, Connectivity, Long Term Access, Medium Term Open Access and other related issues, to analyse the comments received in response to the above Staff Paper and to suggest an appropriate regulatory intervention with a draft regulation”. It is submitted that the said report concluded that the power utilities are not conducting long term power procurement and have instead moved towards short term power procurements. As such, the intent with which the LTAs were initially sought by the generators/ entities has undergone a sea change as now MTOA or STOA is a more sought-after access. In other words, the LTAs, without the long term PPAs being executed by various Discoms, have become

a liability which cannot be operationalized on account of the stipulations/ regulations/ procedures/ orders of the Commission which state that a long term PPA is a sine qua non for availing an LTA. In this reference, it is submitted that the Commission being a sector regulator has to take a holistic view of the entire sector, including the reasons as to why generators, and other entities, are being compelled to relinquish their respective LTAs. The said reasons range from policy gaps to coal issues and the lack of long term bids due to the change in the strategy of Discoms qua moving from long term power procurement to short term power procurement. All these reasons, which are plaguing the entire electricity sector, have to be considered while deciding the issue whether penalty in the nature of relinquishment charges has to be imposed.

i) The transmission business of CTU is entirely regulated and CTU is guaranteed that any entity which utilizes the said system for conveyance of electricity has to bear the transmission charges, and as such the cost of the transmission asset will be eventually realized by CTU. However, when recovery of tariff is guaranteed to CTU, it is immaterial whether the same happens qua an existing open access or through a future open access. In such a scenario, it would make no sense to burden generators with levy of penalty in the nature of relinquishment compensation when such generators are already suffering financially on account of numerous aforesaid issues. The regulatory intent, apart from safeguarding the grid, has to also make sure that the same is not at the expense of generation.

j) The Respondents have submitted that there should not be any relinquishment compensation in case of the generators who desire to exit from LTA, but still remain connected to the grid and supply power under STOA, as the said generator would eventually contribute its share of transmission charges. Also, there is no question of any stranded capacity, if an LTA has been surrendered by a generator and the same transmission system is allocated to any other generator, who has applied for availing MTOA or STOA. In such a case, the charges recovered from the generator availing MTOA or STOA would in any case result in recovery of transmission charges by CTU.

65. Respondents - MBP(MP)L, GWEL, EP(MP)L have submitted the following reply vide affidavit dated 18.11.2017:

a) The Respondents have submitted that the proposed methodology of the Petitioner is not only inconsistent with the express provisions of the statute, but also ignore the well settled and established legal principles relating to grant of compensation. Further, the present issue underlines a deeper and fundamental issue of the clear and unresolvable conflict between the role of CTU under Section 38(2) of the Electricity Act, 2003 and its commercial interest of de-risking its investments and to earn secured profits while operating the inter-State transmission system.

b) The present petition in effect seeks to alter/ amend the provisions of the prevailing regulations with the intent of imposing onerous penalty on generating companies to ensure its own profits. This cannot possibly be done by way of the present petition and will have to be done by following the due procedure of law.

c) The Respondents have submitted that the Petitioner's role as CTU is in conflict with the commercial interests of the Petitioner as a transmission utility which proceeds with network development based on LTA applications by generating companies. Therefore, as a commercial entity, Petitioner's network development activity is based on considerations of revenue maximization. As a result, the CTU is (i) working on a bottom up approach where its network planning is guided by LTA applications of utilities to secure its investment instead of adopting a top down approach of objectively planning network development based on load growth projections; and (ii) trying to de-risk its own Investment by passing on all business risks (including those related to its statutory functions) on generating companies.

d) The Respondents have drawn an analogy that when the situation demands scrapping LTA as the basis of planning, there cannot be any justification for slapping penalty for relinquishment of an unfructified Target LTA.

e) The Respondents have further pointed out that currently the CTU is making no distinction between:

- i. Relinquishment/ postponement of LTA on account of generation project getting abandoned/ delayed/ deferred due to force majeure conditions.
- ii. Relinquishment of LTA on account of change in Target Region due to signing of PPA(s) with beneficiary(ies) located in a different region vis-a-vis the Target Region speculated by the LTA Applicant at the time of making LTA application.

f) The Respondents have also raised the issue of accountability of the CTU to efficiently plan and develop the inter-State transmission system as the transmission system is suffering from shortage of inter-regional transmission capacity. This is particularly true in respect of the transfer of power from WR to SR and/or from WR to NR. Presently there are several generating stations located in WR who are otherwise ready in all respects to supply power to their beneficiaries in SR and/or NR, but are unfortunately unable to do so primarily on account of non-availability of inter-regional transmission capacity.

g) Further it is noted that while the Connectivity Regulations provide for a financial compensation in favour of the CTU towards 'Stranded Transmission capacity' in the form of "Relinquishment Charges", however a matching provision to financially compensate a generator in the event of its generating capacity being rendered "stranded" due to non-availability of transmission capacity for commercial transactions has not been provided.

h) The Respondents have submitted that presently, the relinquishment charges are recovered by the Petitioner as a matter of procedure without having regard to whether the relinquished transmission capacity remains stranded for a period of 12 years, or part thereof. Further, the relinquishment charges are purportedly utilized towards reducing the annual transmission charges of other beneficiaries, even in cases where the relinquished capacity is subsequently assigned to other LTA, MTOA or STOA applicants.

i) The objective of application/ recovery of the "Relinquishment Charges" for a pre-specified period of time provided for by the Commission is to provide for the loss of revenue on account of the surrender of the LTA customer thereby

causing the corresponding “transmission capacity” remaining unutilized and thus being “stranded”. It would be only fair to work out the relinquishment charges after considering the extent to which transmission capacity remains stranded and the period for which such capacity is stranded. Where relinquishment charges have been recovered at the rate specified under Regulation 18, the same should be credited back automatically to the LTA customer paying such “relinquishment charges” to the extent the relinquished capacity is utilized by some other user at any time within the period of twelve years. It would, however, not be fair for the Commission to allow the same to be credited/adjusted against the Total Annual Transmission charges receivable by the CTU. Such a provision inherently provides an unintended financial benefit to the entities, who are required to pay the transmission charges at that time, on account of no corresponding activity on their part to earn this unintended financial benefit. Further, non-refund of requisition charges to the concerned ex-LTA consumer where the relinquished capacity is commercially exploited subsequently by the Petitioner for any other user is clearly in violation of the law relating to compensation.

j) Relinquishment charges are in the nature of monetary restitution for any loss that may be caused to the Petitioner in terms of loss of revenue where the LTA user relinquishes the LTA capacity or seeks LTA for a different Target Region. It is therefore in the nature of damages. This is clear from the language of Regulation 18, which clearly terms it as “compensation”. The Petitioner in order to be so compensated for the relinquished capacity has to demonstrate

- (i) the legal injury caused i.e. the relinquishment must have led to some actual loss for which, the Petitioner would be restituted; and
 - (ii) the extent of loss actually suffered.
- k) The charges specified in Regulation 18 is only in the nature of an outer limit for relinquishment charges. Further, it is the duty of the Petitioner to take all possible steps to mitigate any potential loss caused on account of relinquishment of capacity. Where, as in the case of the Respondent, the Petitioner has proceeded to build and commission the transmission line despite knowledge of delay in the commissioning of the Respondent's plant, it has clearly and deliberately failed to mitigate its losses. To such extent, no compensation should be allowed to the Petitioner.
- l) The extent of liability of relinquishment charges by a LTA consumer has to be worked out having regard to the "stranded capacity" as defined under the Connectivity Regulations. This would require clear identification of several important factors namely, (i) what would be treated as stranded capacity, (ii) the duration for which capacity is stranded, (iii) whose capacity is stranded, (iv) when (v) and how much of the transmission capacity remains stranded.
- m) The extent of underutilization of the ISTS should be worked out based on the ISTS capacity available for commercial transactions and all commercial transactions including long term, medium term and short term commercial transactions whether projected or in actual occurrence on relinquishment of capacity.
- n) Further, the relinquishment charges should be recoverable/ adjusted on

an annual basis after having a complete accounting of the commercial usage and revenue earned by the CTU/ transmission licensee for the transmission system. There is little or no rationale for the Petitioner to insist on payment of the entire relinquishment charge for the period of 12 years or part thereof, as the case may be, without demonstrating the extent of utilization of the relinquished capacity. In the Indian context, it would be a rare situation where the relinquished capacity is not utilized at the earliest by some other entity, whether through LTA or otherwise. It is, therefore, unfair for the Petitioner to insist on the payment of relinquishment charges worked out for the period of 12 years. This period prescribed in Regulation 18 is the maximum or outer limit that may be considered for recovery of relinquishment charges and is not a normative period to be applied indiscriminately in all cases of relinquishment without considering the extent of alternate utilization of the relinquished capacity.

o) In any case, after the advent of the PoC regime, there is no scope for the Petitioner to now insist upon levy of relinquishment charges since the PoC regime aims at securing the annuity return of the transmission licensee through tariff for its entire costs and investments. The PoC rates vary from quarter to quarter. CTU, therefore, needs to elaborate as to how it proposes to estimate the PoC rates for every quarter for the pre-specified period of time (next 12 years).

p) In this regard, past data reveals that in real time no transmission capacity available for commercial transactions remains unutilized. In fact, but for exceptions, the entire transmission capacity available for commercial

transactions is utilized by long term, medium term and/or short term commercial transactions. Further, in the foreseeable future, due to high growth rate of demand of electricity and large additions to generating capacity, there is hardly any possibility of underutilization of the transmission capacity that is available for commercial transactions.

q) The Respondents have further submitted that the Petitioner's proposal contained in the Petition proposal to charge additional BG of Rs. 45 lakhs/MW from the existing LTA customers is unfair and should not be allowed by the Commission. The imposition of BG with retrospective effect would adversely affect the LTA customers and goes against the contractual terms already agreed between them and the petitioner. This is a clear case of abuse of dominant position by the petitioner as the largest transmission network operator in the Country by seeking to impose onerous terms on users of LTA service after having entered into contract with them.

r) The Petitioner proposes that if the generation project before the completion of 7 years of usage of ISTS seeks to relinquish LTA (either on account of change in target region pursuant to the signing of the PPA or for any other reason), it shall be asked to pay compensation amount computed @ Rs. 50 lakhs per MW of relinquishment. The Petitioner also proposes that between 7 and 12 years, the same maybe pro-rata reduced based on the number of months falling short of 5 years. In case of non-payment of compensation amount, the connectivity granted to LTA customer shall be revoked and consequently it shall not be permitted to avail any other form of access to ISTS grid viz MTOA, STOA or exchange.

PROCEEDINGS DURING HEARINGS

66. The learned counsel for the Petitioner, in response to the Terms of Reference framed by the Commission vide RoP for the hearing dated 2.5.2017 submitted that there is no dispute regarding the payment of relinquishment charges as it is a statutory mandate under Regulation 18 of the Connectivity Regulations which cannot be challenged. Learned counsel submitted that “Regulations” are a form of subordinate legislation permitted by the enabling Act to carry out the intent of the Act. Rules, Regulations, schemes, bye-laws, orders made under statutory power are all comprised in delegated legislation as delegated legislation permits utilization of experience and consultation with interests affected by the practical operation of statutes. If an instrument made in the exercise of delegated powers directs or forbids the doing of a particular thing, the result of breach thereof is, in the absence of provision to the contrary, the same as if the command or prohibition had been contained in the enabling statute itself. Therefore, relinquishment charges are part of transmission charges and if Regulation says that one must pay the relinquishment charges, it is the command of the Parent Act. In support of her contentions, learned counsel relied upon Hon’ble Supreme Court judgements in Sukhdev Singh & Others V. Bhagatram Sardar Singh Raghuvanshi & Anr. [(1975) SCC 421], St. Johns Teachers Training Institute V. Regional Director, National Council for Teacher Education & Other [(2003) 3 SCC 321]. The learned counsel further argued that the Hon’ble Supreme Court in Ramesh Mehta V. Sanwal Chand Singhvi & Others [(2004) 5 SCC 409], had observed that a subordinate or delegated legislation must be read in a meaningful manner so as to give effect to the provisions of the statute. However, if two constructions are possible to adopt, a meaning which would make the provision workable and in consonance with the statutory scheme should be preferred.

Therefore, if the Regulations are in conformity with the provisions of the Parent Act, then they have the same effect as if of the Parent Act itself which have to be followed.

67. The learned counsel further gave a brief account of the scheme for grant of open access starting from the 2004 Open Access Regulations. The learned counsel submitted that Regulation 12 of 2004 Open Access Regulations provided for “exit option” to long-term customer wherein long-term customer can relinquish its rights and obligations subject to the payment of compensation as whenever long-term access rights were relinquished it resulted in a loss of transmission charges. Under the 2004 Open Access Regulations, there was no quantification of the compensation to be paid. However, the meaning of compensation in the Connectivity Regulations of 2009 has changed as compared to the 2004 Open Access Regulations. As per the Connectivity Regulations, compensation is now related to stranded capacity which means that the compensation which was earlier being decided by the Commission on case to case basis, shall now be decided in the context of the stranded capacity under the Connectivity Regulations.

68. The learned counsel submitted that in the present petition, relinquishment involves three issues, namely, (i) what could be the relinquishment compensation in terms of the Regulations; (ii) what is the rationale behind the segregation of periods under Regulation 18; and (iii) how to calculate the actual quantum where the interest of all licensees and DICs are balanced. As per Regulation 18 of the Connectivity Regulations, a long-term customer may relinquish the long-term access rights fully or partly before the expiry of the full term of long-term access, by making payment of compensation for stranded capacity. Therefore, the recipient of the relinquishment

compensation were the other long-term customers and medium-term customers of ISTS, whose burden of additional transmission charges on account of relinquishment was required to be lessened.

69. The learned counsel submitted that “compensation” is neither a penalty nor damage whereas relinquishment compensation can be interpreted as the transmission charges which the relinquishing long-term customer would have paid had he continued to remain such long-term customer of ISTS under the access rights availed by it. Therefore, the relinquishment compensation was not a “charge” separate and distinct from transmission charges for open access but an accelerated payment of its share of transmission charges by the exiting long-term customer to service the transmission assets comprised in ISTS. Relinquishment compensation is a species of transmission charges as enumerated under Section 38(2)(d)(i) of the Electricity Act, 2003. In support of his contention, learned counsel relied upon the Hon’ble Supreme Court’s judgement in Reserve Bank of India V. Peerless General Finance & Investment Co. Ltd. & Others [(1987) 1 SCC 424]:

(a) As per Regulation 2(1)(v), a compensation was payable for stranded capacity in ISTS which was likely to remain unutilized due to relinquishment of access rights by a long-term customer. Whenever a long-term customer relinquished its access rights, it resulted in an unutilized capacity under long-term access till the same was subsequently allocated to another long-term customer. It was this capacity in ISTS which was “likely” to remain unutilized for long-term power flow which was to be considered as “stranded capacity”.

(b) With regard to quantum, the Commission in Statement of Reasons to the Connectivity Regulations agreed that there should be an incentive for the

long-term customer to surrender transmission capacity. However, Regulation 18 provides for an amount equal to 66% of the estimated transmission charges i.e. NPV for the stranded capacity for the period falling short of notice period of one year in addition to period falling short of 12 years of access rights as being payable. The provision for levy of 66% of the NPV of the estimated charges of the period falling short by 12 years creates adequate balance of equity in favour of the relinquishing long-term customer. Therefore, the said incentive was aimed at striking a balance between the interests of all users and stakeholders of ISTS i.e. the generators, the transmission licensees and the beneficiaries. Any further incentivization would disturb this balance. The concession of 33% of NPV should not be lost sight of while deciding the quantum of relinquishment charges as this provision actually reduces the transmission charges period from 12 years to approx. 5 years.

(c) There is a correlation between the operationalization of HCPTC corridors and relinquishment of LTAs. Subsequent to the operationalization of LTA and issuance of letter for opening of LC, most of the IPPs relinquished their entire LTAs by stating number of reasons. The incidence of relinquishment is both sudden and at a high rate in those transmission corridors nearing to be completed. Learned counsel submitted that out of 40607.95 of LTA only 17556.3 of LTA has been effective on HCPTC Corridor and about 56.8% of LTA is relinquished by the long-term customers which cannot be serviced without the recovery of the relinquishment charges.

70. Learned counsel for GUVNL submitted that on account of non-payment of surrender charges, there has been and there will be unintended and unjust financial

burden on GUVNL which needs to be avoided. Learned counsel for GUVNL further submitted as under:

(a) There are four categories of LTA namely, (i) dedicated transmission line i.e. the radial line from the generating station to inter-connection point, which if surrendered there is no use of it, (ii) when new line is constructed as a part of ISTS, (iii) when existing transmission system is upgraded and (iv) when in the existing system open access is given. In all these categories, the surrender charges are must and in terms of Regulation 18, long-term customers are required to pay the surrender charges in the event of relinquishment of long-term open access.

(b) As per the Connectivity Regulations, surrender charges are a quantum of compensation to be paid by the applicant who has taken a long-term access and seeking for relinquishment of the same. Accordingly, the amount is payable ipso facto without requiring any proof in regard to the extent of the adverse financial impact or otherwise the quantum of loss or damages that may be suffered on account of such surrender. If as a result of the relinquishment of the capacity by any long-term access user without payment of surrender charges, there is an increase in the charges payable by remaining other entities of long-term access, such increased charges payable by remaining other entities is a direct consequence of the relinquishment. Therefore, there is a stranded capacity to the extent of such increased charges.

(c) If there is no transmission constraint on the day on which the relinquishment is made and as on that date the entire capacity including the

capacity contracted by the person relinquishing is being fully transmitted, the act of relinquishment should be taken to result in “stranded capacity” within the meaning of Regulation 18(a) read with the definition in Regulation 2(1)(v). With regard to the payment of surrender charges, the long-term customers relinquishing the long-term access should be directed to pay the same in terms of Regulation 18 of the Connectivity Regulations alongwith interest and PGCIL should be directed to give adjustment for such amount to the other continuing long-term access entities (DICs) without utilizing the amount for other purposes.

71. Learned counsel for TANGEDCO supported the submissions made by learned counsel for GUVNL and submitted that Section 178 of the Electricity Act, 2003,empowered the Commission, by notifications, to make Regulations consistent with the Act and the Rules to carry out the provisions of the Act. With regard to the quantification, learned counsel for TANGEDCO submitted that Regulations can neither be challenged nor be questioned.

72. Learned counsel for Essar Power M.P. Limited (EPMPL) and MB Power submitted that there is no challenge to the application of Regulations as it is a law which should be followed. On a specific query of the Commission as to whether it is correct with EPMPL to not to pay the relinquishment charges and sell its power on STOA, learned counsel submitted that they have no other option as stranded capacity is unpredictable.

73. Learned senior counsel for Jindal India Thermal Power Limited (JITPL) and Vedanta submitted that whether it is LTA, MTOA or STOA, every generator is the

long-term user of the transmission system as it cannot sell the power without using the transmission system. Learned senior counsel further submitted as under:

(a) As per Regulation 18(3) of the Connectivity Regulations, the compensation paid by the long-term customer for the stranded capacity shall be used for reducing transmission charges payable by other long-term customers or medium-term customers in the year in which such compensation payment is due in the ratio of transmission charges payable for that year by such long-term and medium-term customers.

(b) The Commission vide order dated 8.6.2013 in Petition No.118/MP/2012 had observed that surrender of capacity by the Petitioner neither causes stranding of transmission capacity nor does it affect the liability of others for payment of PoC charges. It is the law which enforced the Petitioner to come up with stranded capacity for Regulation 18 to trigger and if it cannot, then it cannot take the benefit of the Regulations.

(c) Learned counsel placed reliance upon the Hon'ble Supreme Court judgment in Sukhdev Singh & Others V. Bhagatram Sardar Singh Raghuvanshi & Anr. [(1975) SCC 421] that rules and regulations of the Act are limitation of power and not the expansion of power. These are restrictions and condition to exercise the power to determine the liability under Regulation 18. Therefore, if stranded capacity is defined in the Regulation, it cannot be ignored as it's a restriction.

74. Learned counsel for WBSEDCL submitted that the question is if the fundamental principle is to compensate for a loss, is it possible to not to show the loss but compensate for it. Learned counsel further submitted as under:

(a) The Petitioner is collecting the relinquishment charges without there being any stranded capacity. However, the compensation can be claimed only upon the capacity remaining stranded. Therefore, the stranded asset must be demonstrated to have been stranded and must be read as stranded only in terms of long-term access even if utilized. But if it is not being utilized then there is stranding of the asset.

(b) In the dynamic reality where every 15-minute block data is recorded and the same is available, it is not difficult to envisage where the capacity is stranded. If the corridor is utilized, the question of notional stranded capacity does not arise. Therefore, if the data is available for every 15-minutes time-block, the Petitioner cannot be permitted to argue that they are not aware of whether any capacity is available or not or whether the transmission capacity is utilized or not.

(c) The co-joint reading of Regulation 18 and Regulation 2(1)(v) of the Connectivity Regulations connotes that the relinquishment charges are levied if there is non-utilization of transmission access due to relinquishment of access rights. Before levying of any compensation, the factors such as what was the existing demand at the time of relinquishment, what was the capacity which was stranded and the estimation of loss suffered by PGCIL should be taken into consideration.

75. Learned counsel for DB Power Limited (DBPL) submitted that in most of the cases, the relinquishment charges have been consequent upon the generator not coming up with the project or abandoning the project. However, in the cases where

there is only shift of target beneficiary or where there is only change of Target Region and not the change in LTA, the relinquishment charges should not be levied.

76. Learned counsel for Jindal Power Limited (JPL) and DIL submitted that JPL and DIL are using the power partly, whereas, double charges have been levied on them. However, as per Regulation 9 of the Connectivity Regulations, MTOA was introduced to take care of the remaining capacity i.e. existing capacity which comes from the stranded capacity. Learned counsel submitted that the transmission charges are being paid on yearly basis whereas compensation is being paid for 12 years.

77. Learned counsel for PEL Power Limited (PPL) submitted that even after informing the Petitioner in one year that LTA is not required, the Petitioner took the investment approval and went ahead with the construction of High Capacity Corridor. Learned counsel further submitted that the Petitioner created the asset fully knowing that the same is not required and therefore, such cases should be kept separate from the present order. The relinquishment charges cannot be levied in perpetuity. However, if the same asset is being utilized by the MTOA/ STOA customer and the charges are being recovered from these customers, the money should be paid back to the generator and when the LTA customer gets in and the compensatory payment should be stopped.

ANALYSIS & DECISION

78. The submissions of Petitioner, Respondents and all other stakeholders mentioned in paragraphs above have been considered with regard to determination

of stranded transmission capacity and relinquishment charges. The following issues arise for our consideration:-

(A) Preliminary issues;

(B) Basis for assessment of stranded capacity;

(C) Procedure for assessment of stranded capacity;

(D) Methodology for calculating relinquishment charges;

(E) Effective date of relinquishment sought prior to the scheduled date of LTA operationalization and after the scheduled/actual date of LTA operationalization;

(F) Treatment of specific cases;

(G) Manner of recovery and utilization of relinquishment charges collected.

(A) PRELIMINARY ISSUES

79. Respondents have taken preliminary objections mainly on the following grounds:

(a) Regulation 18 has to be ignored as the same is beyond the mandate of the Act.

(b) Regulation 18 is unworkable with respect to relinquishment charges for various reasons.

(c) Mandate of Section 38 of the Act has not been fulfilled by CTU.

(d) Relinquishment charge is a compensation and not penalty and that the losses have to be proved.

(a) Regulation 18 has to be ignored as the same is beyond the mandate of the Act.

80. With regard to the contention that the Regulation 18 should be ignored as it is beyond the mandate of the Act, some of the Respondents have submitted that the Act does not mandate or sanction levy of relinquishment charges. According to them, sections 38 and 40 of the Act allow for charges for availing open access to ISTS and there is no express provision for introducing the relinquishment charges through Regulation 18 of the Connectivity Regulations. The Respondents have also referred to section 42(2) and (4) of the Act and have submitted that the Act only provides for recovery of fixed costs of the distribution assets when such assets are stranded on account of grant of open access. Since there is no such provision in case of ISTS, the said regulation (i.e. Regulation 18) should be ignored. The Respondents have relied upon the judgement of the Hon'ble Supreme Court in Bharathidasan University & Anr. Vs. All India Council for Technical Education & Ors., reported in [(2001) 8 SCC 676] and the judgment of the Hon'ble Appellate Tribunal for Electricity in Damodar Valley Corporation vs. Central Electricity Regulatory Commission & Ors. [Judgement dated Appeal Nos. 271, 272, 273, 275 of 2006 & 8 of 2007]. The Petitioner on the other hand has submitted that the relinquishment charges are nothing but the usage charges which a long term customer would have paid but for its surrender of the LTA and therefore, are in the nature of transmission charges which a LTA customer is liable to pay in terms of section 38(2)(b) of the Act.

81. In Bharathidasan University & Another Vs All India Council for Technical Education & Another, the Hon'ble Supreme Court was considering whether AICTE

while making regulations under section 23 of the AICTE Act, 1987 can compel the Universities to seek for and obtain prior approval and not to start any new Department or course or programme in technical education and empower itself to withdraw such approval, in a given case of contravention of the regulations which are directly opposed to and inconsistent with the provisions of section 10(1)(k) of the AICTE Act. Section 10(1)(k) of the AICTE Act specifically confines the limits of such power of AICTE only to be exercised vis-a-vis technical institutions defined in the Act and not to the Universities established under the UGC Act, 1956. Hon'ble Supreme Court in the said judgement has held as under:

“The AICTE cannot, in our view, make any regulation in exercise of its powers under Section 23 of the Act, notwithstanding sub-section (1), which though no doubt enables such regulations being made generally to carry out the purposes of the Act, when such power is circumscribed by the specific limitation engrafted therein to ensure them to be not inconsistent with the provisions of the Act and the rules. So far as the question of granting approval, leave alone prior or post, Section 10 (1) (k) specifically confines the limits of such power of ACITE only to be exercised vis-à-vis technical institutions, as defined in the Act and not generally. When the language is specific, unambiguous and positive, the same cannot be over-looked to give an expansive meaning under the pretext of a purposive construction to perpetuate an ideological object and aim, which also, having regard to the Statement of Objects and Reasons for the AICTE Act, are not warranted or justified. Therefore, the regulation insofar as it compels the universities to seek for and obtain prior approval and not to start any new department or course or programme in technical education (Regulation 4) and empower itself to withdraw such approval, in a given case of contravention of the regulations (Regulation 12) are directly opposed to and inconsistent with the provisions of Section 10 (1) (k) of the Act and consequently void and unenforceable.

The fact that the regulations may have the force of law or when made have to be laid down before the legislature concerned do not confer any more sanctity or immunity as though they are statutory provisions themselves. Consequently, when the power to make regulations are confined to certain limits and made to flow in a well-defined canal within stipulated banks, those actually made or shown and found to be not made within its confines but outside them, the courts are bound to ignore them when the question of their enforcement arise and the mere fact that there was no specific relief sought for to strike down or declare them ultra vires, particularly when the party in sufferance is a respondent to the lis or proceedings cannot confer any further sanctity or authority and validity which it is shown and found to obviously and patently lack. It would, therefore, be a myth to state that regulations made under Section 23 of the Act have Constitutional and legal status, even unmindful of the fact that anyone or more of them are found to be not consistent with specific provisions of the Act itself. Thus, the regulations in question, which the AICTE could not have made so as to bind universities/UGC within the confines of the powers conferred upon it, cannot be enforced against or bind an University in the matter of any necessity to

seek prior approval to commence a new department or course and programme in technical education in any university or any of its departments and constituent institutions.”

Thus, the Hon’ble Supreme Court has held that the Regulation 4 and 12 cannot be made applicable to Universities as Section 10 of the AICTE Act confers powers on AICTE to be exercised vis-a v-vis technical institutions only.

82. In our view, the above judgement is not applicable in case of Regulation 18 of the Connectivity Regulations, which has been framed by the Commission after extensive stakeholders’ consultation by following the due procedure strictly in compliance with the provisions of the Act. Section 2 (47), which defines open access, provides as under:-

“2 (47) “open access” means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission.”

Section 178(2)(ze) of the Act confers powers on the Commission to make regulations on “any other matter which is to be or may be specified by regulations.” The Commission has been vested with the power to regulate inter-State transmission of electricity by Section 79(1)(c) of the Act. Section 38 (2) (d) of the Act which deals with the functions of CTU provides as under:-

“38 (2) The functions of the Central Transmission Utility shall be:

XX

- (d) to provide non-discriminatory open access to its transmission system for use by-
- (H) any licensee or generating company on payment of the transmission charges; or
- (ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of Section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission.”

Further, Section 40 (c) of the Act provides for open access to the transmission system of any licensee as under:-

“40 (c) to provide non-discriminatory open access to its transmission system for use by-

- (i) any licensee or generating company on payment of the transmission charges; or
- (ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of Section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission.”

83. The above provisions of the Act clearly provide that this Commission has the power to specify regulations for grant of non-discriminatory open access to ISTS for use by any licensee or generating company on payment of transmission charges. The Commission has classified the access into three categories, namely, long term access, medium term open access and short term open access depending on the duration for which open access is sought. In the original Connectivity Regulations, long term access has been defined as “the right to use the inter-State transmission system for a period exceeding 12 years and not exceeding 25 years.” Regulation 13 of the Connectivity Regulations provides as under:

“13. System Studies by the Nodal Agency

(1) On receipt of the application, the nodal agency shall, in consultation and through coordination with other agencies involved in inter-State transmission system to be used, including State Transmission Utility, if the State network is likely to be used, process the application and carry out the necessary system studies as expeditiously as possible so as to ensure that the decision to grant long-term access is arrived at within the timeframe specified in regulation 7:

Provided that in case the nodal agency faces any difficulty in the process of consultation or coordination, it may approach the Commission for appropriate directions.

(2) Based on the system studies, the nodal agency shall specify the inter-State transmission system that would be required to give long-term access. In case augmentation to the existing inter-State Transmission system is required, the same will be intimated to the applicant.”

84. Regulation 15 provides that the grantee of the long term access would be required to sign a long term access agreement with the CTU if LTA is granted by CTU. A tripartite long term access agreement is required to be signed with the CTU and inter-State transmission licensee where the long term access to the transmission system of the inter-State licensee is involved. Regulation 9 (2) provides that the medium term open access shall be granted if the resultant power flow can be accommodated in the existing transmission system or the transmission system under execution. Regulation 26 of the Connectivity Regulations provides that the transmission charges for the use of the inter-State transmission system shall be recovered from the long term customers and medium term customers in accordance with the terms and conditions of the tariff specified by the Commission from time to time. It is evident from the above that on receipt of the application for long term access, CTU is required to carry out a system study to ascertain the requirement for system augmentation. The long term access can be granted to the applicant either with the available transmission system or with such addition to the existing transmission system as is required. Further, the applicant who is granted long term access is required to pay the transmission charges for the use of the ISTS throughout the term of the long term access as either the existing transmission capacity is earmarked or the new capacity is augmented for the applicant. Whenever a long term transmission customer relinquishes the long term access rights and obligations, it ceases to pay the transmission charges for the use of the ISTS. Therefore, Regulation 18 requires that upon such relinquishment, the transmission charges at the specified rates are payable for servicing of the transmission assets. Relinquishment charges are therefore, in the nature of transmission charges which the relinquishing long term customer would have paid

had it continued as long term customer of ISTS under the access rights availed by it. The relinquishment charges in effect is an accelerated payment of the share of the transmission charges by the relinquishing long term customers to service the transmission assets of the ISTS. Therefore, Regulation 18 is in conformity with the provisions of Section 38 (2) (d) (i) and Section 40 (c) of the Act which categorically provides for non-discriminatory open access to the transmission system of CTU and other inter-State transmission licensees on payment of transmission charges. The contention of some of the respondents that Regulation 18 of the Connectivity Regulations is *de-hors* the provisions of Section 38 (2) (d) (i) and Section 40 (c) of the Act is clearly misplaced and is liable to be rejected.

85. Another contention which has been raised is that there is no provision for recovery of fixed cost for stranded transmission assets as in case of distribution assets under Section 42 (4) of the Act and, therefore, relinquishment charges which are in the nature of fixed cost for stranded capacity cannot be recovered in the absence of a corresponding provision in section 38(2)(d)(i) and Section 40(c) of the Act. Section 42(4) of the Act provides as under:-

“42(4) Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.”

86. The above provision has been made in the Act to facilitate a consumer or a class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply on payment of an additional surcharge on the charges for wheeling to meet the fixed cost of such distribution licensee arising out of his obligation to supply. Under Section 43 of the Act, every distribution licensee is under obligation to give supply of electricity to the owner or occupier of

any premises on receipt of application in this regard from such owner or occupier. In other words, the provision in Section 42(4) has been made to compensate a distribution licensee for meeting its obligation to supply should a consumer or a class of consumers within its area of supply seeks to receive supply of electricity from other sources. In our view, though there is no corresponding provision like Regulation 42 (4) in case of transmission system, Section 38(2)(1)(i) and 40(c) of the Act enjoin upon the CTU and inter-State transmission licensees to provide non-discriminatory open access to ISTS on payment of transmission charges and a person who has been granted access rights carries the liability to pay the transmission charges for the entire duration of the access and exiting the access carries with it some liability to pay the transmission charges for the remaining period of access rights. The relinquishment charges which are on account of exit of an LTA customer is in the nature of payment of transmission charges, and flows from the commitment of the LTA customer to use the ISTS on payment of transmission charges in terms of Section 38(2)(1)(i) and 40(c) of the Act.

87. In the light of the above discussion, we hold that Regulation 18 of the Connectivity Regulations is in conformity with the provisions of the Act and to advance the objects of the Act with regard to open access. We reject the contention of some of the Respondents that Regulation 18 should be ignored.

(b) Regulation 18 is unworkable with respect to relinquishment Charges for various reasons

88. The Respondents have submitted that no relinquishment charges can be imposed unless it is conclusively demonstrated that there would be continued stranded capacity for a period of 12 years starting from operationalization of the LTA, specifically attributable to the generators. The Respondents have further submitted

that since the medium term open access and short term open access power is flowing in the system vacated by long term customers, there would be no stranded capacity. The Respondents have further submitted that where relinquishment charges are imposed and collected by CTU for relinquishment of LTA by a generator, there is no mechanism for refund of such relinquishment charges in the event a fresh beneficiary comes forward and applies for LTA before the expiry of 12 years period from the date of relinquishment. The Respondents have also submitted that where no augmentation has been made, levy of relinquishment charges will be contrary to the Order of the Commission in Petition No.63/MP/2013. They have also raised the issue that there is no clarity as to how the relinquishment charges will be applied in the case of reallocation of entitlement of DICs by MoP.

89. We have considered the submission of the Petitioner and Respondents. Regulation 18 of the Connectivity Regulations provides for relinquishment of LTA by a LTA Customer on payment of relinquishment charges for the stranded transmission capacity. The Commission has dealt with all related issues including computation of stranded capacity and recovery of relinquishment charges in latter part of this order. Further, the re-allocation of power by Ministry of Power from the unallocated capacity and re-allocation of capacity from the Central Generating Stations, has also been dealt with in latter part of the order.

(c) Mandate of Section 38 of the Act has not been fulfilled by CTU.

90. The Respondents have submitted that though Section 38 of the Electricity Act, 2003 provides that for the purposes of granting LTA, CTU is mandated to coordinate with various entities, including the Central Electricity Authority (CEA), licensees and the generating companies, CTU failed to develop the transmission system in an

efficacious or purposeful manner commensurate with the requirements namely, actual power demand scenario in the target regions, long-term power procurement processes initiated by the respective Discoms in the said target regions, and the actual long term PPAs executed by the generating companies. The Respondents have further submitted that CTU has to take into account the actual ground realities and undertake system studies qua initiation of long term power procurement processes by Discoms, power demand scenario and execution of long term PPAs as otherwise the transmission system would be left stranded and become uneconomical, which would be against the mandate of Section 38 of the Act. Generators opted for LTAs in particular regions, depending upon the electric power survey conducted by the CEA with respect to power demand scenario in future in various regions in consultation with CTU and the distribution licensees. Since CEA has done a downward revision in the recent survey reports, which demonstrates that CEA did a course correction based upon the actual ground realities, CTU was also required to follow suit with respect to the LTAs granted to the various beneficiaries, as per Section 38 of the Act. The Respondents have further submitted that CTU is working on a bottom up approach where its network planning is guided by LTA requirements of utilities to secure its investment instead of adopting a top down approach of objectively planning network development based on load growth projections; and trying to de-risk its own investment by passing on all business risks including those related to its statutory functions on generating companies. On the other hand, CTU has submitted that it is strictly complying with the provisions of the Act, National Electricity Policy, Tariff Policy, Connectivity Regulations and Regulatory Approval Regulations while planning and executing the inter-State transmission

system and its functions as a deemed transmission licensee are not in conflict with its role as the CTU.

91. We have considered the submissions of the Petitioner and Respondents. Para 5.3 of the National Electricity Policy and para 7.1.4 of the Tariff Policy clearly provided that *“prior agreement with the beneficiaries would not be a pre-condition for network expansion and CTU/STU should undertake network expansion after identifying the requirements in consonance with the National Electricity Plan and in consultation with the stakeholders, taking up the execution after due regulatory approval”*. The Commission in discharge of its statutory functions has framed the Connectivity Regulations and Regulatory Approval Regulations. The scope of the Regulatory Approval Regulations is as under:

“3. Scope and applicability

(1) These regulations shall apply to :

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

(ii) an ISTS Scheme for system strengthening / up-gradation , identified by Central Transmission Utility to enable reliable, efficient, co-ordinated and economical flow of electricity within and across the region for which consultation with Central Electricity Authority and beneficiaries if identified has been held.

(2) These regulations shall not apply to ISTS Scheme, for which all the beneficiaries/respective STUs have signed Bulk Power Transmission Agreement to share the transmission charges.”

92. Regulation 12 of the Connectivity Regulations provides for the process of application to be made to CTU for long term access to ISTS. Relevant provisions of Regulation 12 are extracted as under:

“12. Application for long-term access

(1) The application for grant of long-term access shall contain details such as name of the entity or entities to whom electricity is proposed to be supplied or from whom electricity is proposed to be procured along with the quantum of power and such other details as may be laid down by the Central Transmission Utility in the detailed procedure:

Provided that in the case where augmentation of transmission system is required for granting open access, if the quantum of power has not been firmed up in respect of the person to whom electricity is to be supplied or the source from which electricity is to be procured, the applicant shall indicate the quantum of power along with name of the region(s) in which this electricity is proposed to be interchanged using the inter-State transmission system;

Provided further that in case augmentation of transmission system is required, the applicant shall have to bear the transmission charges for the same as per these regulations, even if the source of supply or off-take is not identified;

Provided also that the exact source of supply or destination of off-take, as the case may be, shall have to be firmed up and accordingly notified to the nodal agency at least 3 years prior to the intended date of availing long-term access, or such time period estimated by Central Transmission Utility for augmentation of the transmission system, whichever is lesser, to facilitate such augmentation;

Provided also that in cases where there is any material change in location of the applicant or change by more than 100 MW in the quantum of power to be interchanged using the inter-State transmission system or change in the region from which electricity is to be procured or to which supplied, a fresh application shall be made, which shall be considered in accordance with these regulations.

(2) The applicant shall submit any other information sought by the nodal agency including the basis for assessment of power to be interchanged using the inter-State transmission system and power to be transmitted to or from various entities or regions to enable the nodal agency to plan the inter-State transmission system in a holistic manner.”

93. Many of the long term customers whose cases are being considered in this Order sought long term access to ISTS by indicating target beneficiaries as they did not have the PPAs for supply of power to identified beneficiaries. CTU after considering their applications approached the Commission for regulatory approval by way of Petition No.233/2009 for execution of the evacuation system required for a group of generation developers. The Commission after examination of the proposal for regulatory approval issued the following directions:

“39. We have examined all these aspects in general and have also gone into the corridor-wise requirement of the proposed transmission network. We have taken note of the fact that the proposed transmission corridors have been evolved, planned and finalized by the CTU in line with the perspective plans developed by the CEA after holding extensive deliberations with the stakeholders, consultations with CEA at forums including LTOA Meetings, Standing Committee Meetings of CEA for Power System Planning and in the respective Regional Power Committee meetings. We are of the view that these transmission systems need to be implemented matching with the commissioning schedules of the IPPs.

40. As already stated, Central Transmission Utility is required to discharge all functions of planning and coordination relating to inter-state transmission system as provided for in section 38 (2) (b) of the Act. Transmission planning involves system studies to be conducted by CTU taking into account the scenarios for the nine transmission corridors under consideration. Therefore, it is presumed that CTU would have conducted these studies to ensure coordinated planning. At this stage we wish to make it clear that the Commission has not gone into the depth of optimum system planning since that is the function of CEA U/s 73 of the Electricity Act 2003 and since consultations on the planning have taken place in the standing committee of CEA on transmission planning, it is assumed that CEA has taken care of this aspect. The Commission has only checked the feasibility of the proposed nine corridors based on likelihood of IPPs coming up, based on physical progress and whether the payment security mechanism is in place. CTU has claimed that the estimated cost for development of the HPCTC is based on the latest 3rd quarter 2009 price level. The cost aspect has not been examined by the Commission in detail. The same shall be vetted at the time of approving tariff after prudence check in accordance with the prevalent regulations on terms and conditions of tariff.

41. Based on the affidavits submitted by the project developers of IPPs and on the spot assessment by CTU, the progress of IPPs at different stages of implementation is satisfactory and utilization level of proposed HCPTC at the time of their progressive commissioning is expected to be sufficient. Moreover, the project developers of IPPs have signed and submitted Bank guarantee in many cases. Hence, we accord regulatory approval for execution of the nine nos. of HCPTCs proposed by CTU as per the project scope as mentioned in Annexures -I to IX of this order. As for HCPTC-VIII for IPPs in Srikakulam area, we direct that the work on the corridor may be initiated only after signing the BPTA and submission of BG by the IPPs.

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

94. Therefore, the entire process of regulatory approval and execution of the High Capacity Power Transmission Corridors were undertaken based on the LTA applications of the IPPs and the regulatory approval accorded by the Commission.

Signing of the PPAs was not a pre-condition for development of such corridors, though in terms of Regulation 12 of the Connectivity Regulations, the IPPs were required to intimate about the PPAs entered into by them in order to enable the CTU for augmentation of the transmission system. CTU has indicated that it has held meetings on Long Term Access in various regions to assess the progress of the generating stations of the IPPs. CTU has informed that in most of the cases, IPPs have been shifting their COD for various reasons related to their projects. It was not the mandate of CTU to check whether the IPPs have entered into PPAs and then execute the transmission systems. Further, a number of transmission lines and transmission systems have been executed through tariff based competitive bidding where it is not possible to defer the implementation for tardy progress of the generation projects. Therefore, in terms of the National Electricity Policy and Tariff Policy delinking network expansion from the prior agreement with the beneficiaries and the mandate of the Connectivity Regulations and Regulatory Approval Regulations and the order of the Commission dated 31.5.2010 in Petition No.233/2009 directing the Petitioner to execute the HCPTCs matching with the progress of the generating stations of IPPs, CTU was not expected to assess the actual power demand scenario in the target regions, long-term power procurement processes initiated by the respective Discoms in the said target regions, and the actual long term PPAs executed by the generating companies at the time of execution of the HCPTC. We do not accept the contention of the Respondents that CTU has failed to discharge its responsibility under section 38 of the Act while executing the transmission systems under consideration in this petition.

(d) Relinquishment charge is a compensation and not penalty and that losses incurred by CTU on account of relinquishment have to be proved.

95. The Petitioner has submitted that relinquishment under Regulation 18 of the Connectivity Regulations entails payment of a compensation for stranded capacity and the compensation so recovered is to be utilized for reducing the transmission charges payable by the long term customers and medium term customers. The compensation for relinquishment is in effect the transmission charges which the relinquishing long term customer would have paid, had he continued to remain such long term customer of ISTS under the access rights availed by it. The compensation means giving an equivalent or substitute of equal value which is necessary to restore an injured party to its former position. When a long term customer relinquishes its long term access rights and obligations undertaken in terms of the BPTA, it no longer pays transmission charges for the use of ISTS and its share of servicing the transmission assets is then required to be undertaken by the remaining long term and medium term ISTS users on whom the additional burden of transmission charges falls. The relinquishment compensation is thus in effect the transmission charges which the relinquishing long term customer would have paid had he continued to remain such long term customers of ISTS under the access rights availed by them. The relinquishment is a statutory option available under the Connectivity Regulations. Therefore, it is not a penalty which is a sum of money that is the law exacted payment by way of punishment for doing the same act which was prohibited or for doing the same act which was required to be done. It is neither damages which is a pecuniary compensation recovered by courts by a person who had suffered the loss, detriment or injury, whether to his person, property or rights, through unlawful act or omission or negligence of another. The compensation on account of relinquishment in effect is an accelerated payment of its share of transmission charges by the existing long term customer to service the transmission

assets comprised in ISTS. Right from the framing of the Connectivity Regulations, the Commission had intended that premature withdrawal of the long term access was to be subjected to such relinquishment charges as were to ensure recovery of the transmission charges that were to fall short on account of premature withdrawal i.e. relinquishment of long term access and the intention all along was that premature withdrawal of long term access by any long term customer was neither to cause any under-recovery to the transmission licensee nor was to burden the balance DICs with additional transmission charges. This intention became more evident from the provisions of Regulation 18(3) which required the relinquishment compensation to be used for reducing transmission charges payable by other long term and medium term customers. The provision in Regulation 18 for levy of 66% of the NPV of the estimated charges of the period falling short by 12 years creates adequate balance of equity in favour of the relinquishing long term customer as the remaining long term customers were required to bear and share the resultant difference of 34% in estimated transmission charges so as to ensure that the annual transmission charges as determined by the Commission are fully paid. Any further incentivisation for the existing long term customer for any reason whatsoever was bound to cause additional burden on the remaining long term customers and users, thus operates unfairly and unjustly against them and ultimately adversely affects the end consumers of power transmitted through the ISTS. The mechanism left no room for accommodation of the pleas of existing generators such as of force majeure during the project implementation, access not having been operationalized and issues emerging with their power purchases.

96. Respondents have submitted that after the enactment of the Connectivity Regulations, determination of stranded capacity was to be seen as the sine qua non

for payment of compensation on account of LTA relinquishment as the judicial precedence to this effect suggests that the actual loss is to be determined first for claiming any amount of compensation. They have rejected the stand of the Petitioner that the existing LTA customers are sharing the additional burden of transmission charges on account of the relinquishment of other LTA customers, without taking into account the revenue collected under MTOA or STOA and have submitted that for compensation to be paid, it has to be ensured that for the entire period contemplated under Regulation 18(1)(b), the transmission system remain stranded and has not been used by any other LTA/MTOA/STOA customer which has wholly or partly replaced the stranded capacity. In order to ensure a stable and reliable grid, CEA has moved from N-1 contingency to N-1-1 contingency and, therefore, the computation of stranded capacity, as on the date of relinquishment for the entire period contemplated under Regulation 18(1)(b) has to be made keeping in view the fact that such stranded capacity may not be any more stranded once the system moves to N-1-1 contingency. Respondents have further submitted that since compensation/ damages are paid to recompense for the losses suffered by the non-defaulting party under a contract on account of failure of the defaulting party to perform as per terms of the contract, the compensation for LTA relinquishment will have to adhere to the basic norms of computation of damages/compensation provided under the Indian Contract Act, 1972, particularly, section 74.. The onus of claiming and proving damages is on the entity claiming compensation and no amount can be granted in the absence of proof of damages. The Respondents have relied upon the judgment of the Hon'ble Supreme Court in Kailash Nath Associates Vs. Delhi Development Authority [(2015) 4 SCC 136] and Balammal V. State of Madras [AIR 1968 SC 1425]. Respondents have submitted that determination of

specific quantum of the stranded transmission capacity and identification of the transmission assets thereof in ISTS, in terms of the power transfer capability is sine qua non for imposition of relinquishment charges.

97. We have considered the submissions of the parties. Long Term Access rights have been granted to the LTA customers under provisions of Regulation 12 of the Connectivity Regulations and such access rights carry with itself the corresponding commitment under Regulation 26 to pay the transmission charges for the transmission systems included in the LTA grants. Further, in terms of the Connectivity Regulations, the LTA customers have signed the Bulk Power Transmission Agreements or Long Term Access Agreement making unconditional commitment to pay the transmission charges throughout the term of the LTA. Regulation 18 deals with the relinquishment of long term access rights by the LTA customers. Regulation 18 provides for an exit provision for the long term customers to relinquish the LTA rights subject to payment of transmission charges for a maximum period of 12 years with a notice period of one year or payment of transmission charges in lieu thereof. Since BPTA or LTA Agreements are in terms of the Connectivity Regulations, they are in the nature of statutory contract. Therefore, the relationship between the CTU and the LTA customers are basically statutory in nature and has to be governed by the provisions of the Connectivity Regulations. As a corollary, the relinquishment of access rights of the LTA customers has to be strictly construed in terms of the provisions of the Connectivity Regulations.

98. Regulation 18 which deals with the relinquishment of long term access rights by LTA customers is extracted as under:

“18. Relinquishment of access rights

(1) A long-term customer may relinquish the long-term access rights fully or partly before the expiry of the full term of long-term access, by making payment of compensation for stranded capacity as follows:-

(a) Long-term customer who has availed access rights for atleast 12 years

(i) Notice of one (1) year – If such a customer submits an application to the Central Transmission Utility at least 1 (one) year prior to the date from which such customer desires to relinquish the access rights, there shall be no charges.

(ii) Notice of less than one (1) year – If such a customer submits an application to the Central Transmission Utility at any time lesser than a period of 1 (one) year prior to the date from which such customer desires to relinquish the access rights, such customer shall pay an amount equal to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of a notice period of one (1) year.

(b) Long-term customer who has not availed access rights for at least 12 (twelve) years – such customer shall pay an amount equal to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of 12 (twelve) years of access rights:

Provided that such a customer shall submit an application to the Central Transmission Utility at least 1 (one) year prior to the date from which such customer desires to relinquish the access rights;

Provided further that in case a customer submits an application for relinquishment of long-term access rights at anytime at a notice period of less than one year, then such customer shall pay an amount equal to 66% of the estimated transmission charges (net present value) for the period falling short of a notice period of one (1) year, in addition to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of 12(twelve) years of access rights.

(2) The discount rate that shall be applicable for computing the net present value as referred to in sub-clause (a) and (b) of clause (1)above shall be the discount rate to be used for bid evaluation in the Commission's Notification issued from time to time in accordance with the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees issued by the Ministry of Power.

(3) The compensation paid by the long-term customer for the stranded transmission capacity shall be used for reducing transmission charges payable by other long-term customers and medium-term customers in the year in which such compensation payment is due in the ratio of transmission charges payable for that year by such long term customers and medium-term customers."

99. Regulation 18 provides for relinquishment of access rights fully or partly before expiry of the full term of long term access by making payment of compensation for the stranded capacity. The regulation has fixed a period of maximum of 12 years for the purpose of compensation for access rights even though

the tenure of the LTA is 25 years. Further, the compensation has been fixed at an amount of 66% of the transmission charges (net present value) for the stranded transmission capacity for a period falling short of 12 years. In other words, the long term customers relinquishing the access rights are exempted from paying 34% of the transmission charges (net present value) for a period falling short of 12 years. Thus on account of the exit of a long term customer through relinquishment, the entire transmission charges from 13th year to 25th year and 34% of the transmission charges from 1st year to 12th year for the relinquished capacity has to be borne by other long term customers and medium term customers. This aspect becomes clear from Regulation 18(3) which provides that the compensation received on account of relinquishment shall be applied for reducing the transmission charges of other long term and medium term customers which are required to bear the additional transmission charges which would have been borne by the relinquishing long term customers but for the relinquishment of long term access rights. Therefore, Regulation 18 statutorily provides for a compensatory mechanism for relinquishment of access rights by long term customers by apportioning the risks between the relinquishing long term customers and the other long term and medium term customers keeping in view the likely utilization of the relinquished transmission assets. It is pertinent to mention that neither BPTA nor Long Term Access Agreements between the long term customers and CTU provide for any compensatory mechanism but only mention that it shall be determined as per the regulations of the Commission. In other words, the compensatory mechanism for long term access rights is statutory in nature. Therefore, the Commission does not agree with the contention of relinquishing long term customers that the compensation on account of relinquishment of long term access rights shall have to be decided on

the principles of section 73 and 74 of the Indian Contract Act, 1872. Some of the Respondents have argued that the relinquishment compensation is in the nature of penalty or damages and therefore, injury or actual losses have to be proved to claim the compensation. In our view, relinquishment compensation is neither in the nature of penalty nor damages and therefore, actual losses or damages are not required to be proved by CTU. Relinquishment of long term access rights is a statutorily permissible option which entails payment of compensation for the stranded capacity on account of such relinquishment. Since the compensation has been designated in the form of transmission charges (net present value) for the period of maximum 12 years if access rights is not availed or for the period falling short of 12 years where access rights is partially availed, compensation under Regulation 18 of the Connectivity Regulations is payment of the share of transmission charges by the long term customers to service the transmission assets comprised in the ISTS in terms of its long term access to the extent it remains stranded consequent to the relinquishment. Stranded Capacity has been defined in Regulation 2(1)(v) of the Connectivity Regulations as “the transmission capacity in ISTS which is likely to remain unutilized due to relinquishment of access rights by a Long Term Customer”. Therefore, relinquishment charges are in the nature of compensation which a long term customer is obliged to pay as transmission charges (net present value) in terms of the mechanism envisaged in Regulation 18 for relinquishment of the capacity out of its long term access rights to the extent such capacity is likely to remain unutilized. Payment of compensation for relinquishment of long term access rights is a statutory obligation on the part of long term customers relinquishing the access rights, subject to the determination of stranded capacity.

(B) Basis for assessment of Stranded Capacity

100. The Petitioner, vide affidavit dated 9.3.2015, has enclosed an earlier letter dated 28.7.2014 addressed to the Secretary of the Commission where the following methodology for determination of stranded capacity was suggested:

“Bringing Objectivity to the determination process - As mentioned above, the present mechanism for determination of quantum of compensation on account of relinquishment is quite subjective and open to disputes. It is therefore necessary to inculcate objectivity in the entire exercise so that all the stakeholders are upfront aware of compensation quantum in a transparent manner. In the present era of levy of transmission charges based on point of Connection it would be prudent to link it with published Point of Connection rates, as these rates are computed on quarterly by associating all the stakeholders under the aegis of CERC.”

101. The Petitioner, in the same letter suggested the followings:

“4. Need for treating dedicated & common transmission system differently – The transmission systems are broadly categorized as (i) dedicated transmission from generation switchyard to ISTS pooling station (ii) common transmission system beyond pooling station. While the common transmission system serves group of generating stations, the dedicated transmission system or connectivity line serves only one generating station. Ideally, the dedicated or connectivity line from generation switchyard should be developed by the generation developer. The enabling provision for implementation of dedicated transmission by generation developer has also been provided in Electricity Act, 2003 as per which the construction of dedicated transmission line has been listed as one of the duties of generation developer. Further the Act also envisages that generation developer shall not require transmission license for development of dedicated transmission line. However, the regulation provided that thermal generating station with 500 MW and above may not be required to construct dedicated/connectivity transmission line and the same shall be developed under coordinated transmission plan of CEA and CTU. Accordingly, as on date many connectivity transmission lines have been undertaken under ISTS. Relinquishment of LTA by generation developer for whom dedicated/connectivity transmission line is being implemented as ISTS shall render this line as unutilized.”

102. The methodology suggested by the Petitioner to calculate relinquishment charges is as follows:

“The formula for computation of relinquishment charges in case the LTA applicant changes the region owing to which there is a change in Injection as well as Drawal points

Y

Relinquishment Charges = 66% of $\sum\{(Inj. PoC * X) + (Drawl PoC * X)\}$

$/(1+rate)^i]$

$i=1$

Where,

X = Quantum of LTA to be reduced in MW

Y = Period falling short of 12 years of LTA from the month of receipt of request plus notice period falling short of 12 months, in years.

Inj. PoC = Published PoC notice rates for the months of receipt of request at the point of injection (if generation is existing) or of the Injection zone (if generation is yet to be commissioned)

Drawl PoC = Published Minimum of PoC rates for the month of receipt of request for target region (If the relinquished capacity is based on target region) or PoC rates of drawl zone (If the relinquished capacity is based on firm PPA)

In case of change of only drawl region, the injection point remains the same, hence the compensation shall be calculated on the basis of PoC charges of the drawl region only.

Y

Compensation = 66% of $\sum [(Drawl\ PoC * X) / (1+rate)^i]$

$i=1$

Where,

Drawl PoC=Published Minimum of PoC rates for the month of receipt of request for target region (If the relinquished capacity is based on target region) or PoC rates of drawl zone (If the relinquished capacity is based on firm PPA)

Discount rate for NPV= Published discounting rate from CERC "Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees".

103. In its affidavit dated 8.9.2017, the Petitioner has submitted that the approach of adopting load flow studies to determine isolated stranded transmission elements has not been successful as has been evaluated and endorsed by the Committee for determination of Stranded Capacity and Relinquishment Charges. The Petitioner has submitted that since large quantum of LTA has been relinquished by various long term customers, the effect of their exit from the LTA arrangement is reflected in

additional burden passed on to the remaining DICs (long term and medium term customers) who continue to contribute to Yearly Transmission Charges. According to the Petitioner, determination of stranded transmission capacity is not an end in itself but only a methodology to determine the additional burden passed on to the remaining DICs by exit of a long term customer. The Petitioner has submitted that the determination of stranded capacity should be guided by top-down approach of finding the rationale for levy of relinquishment charges and the desired application of relinquishment charges recovered, instead of bottom up approach of finding isolated/stranded transmission elements for determination of transmission charges. The Petitioner has submitted that Regulation 18 of the Connectivity Regulations ought to be read alongwith Regulation 5 of the Sharing Regulations to have a holistic construction of the relinquishment of LTA and its incidence on the liability of others in payment of transmission charges. Therefore, the determination of stranded capacity ought to be considered in terms of the quantum relinquished under LTA and the consequent effect of such relinquishment on the other DICs sharing the Yearly Transmission Charges in the PoC pool. The Petitioner has suggested that determination of relinquishment charges should be such as to reasonably recover the shortfall in recovery of YTC which additionally burdens the remaining DICs which could be achieved on the basis of PoC injection charges based on the location of the generation, considered at 66% of the NPV of the estimated transmission charges for the stranded transmission capacity for the period falling short of 12 years of access rights. The Petitioner has submitted that alternatively, based on the facts and figures of relinquishments submitted, relinquishment charges may be determined on a fixed rate per MW basis.

104. The Respondents (Generators) have not accepted the methodology suggested by the Petitioner and have submitted as under:

(a) Determination of stranded capacity under Regulation 18 which is attributable to the entity relinquishing its LTA rights is necessary for determination and imposition of relinquishment charges. If it is not possible to conclusively and scientifically determine the stranded capacity, then no relinquishment charges can be imposed and no attempt can be made for levy of relinquishment charges based upon any notional stranded capacity. The Petitioner is giving a reverse interpretation of Regulation 18 by first seeking determination of financial impact and then assuming the stranded capacity which is fundamentally flawed.

(b) The Petitioner wants to achieve the end goal i.e. levy of relinquishment charges without following the means to that end which is determination of the stranded capacity. In the absence of any means to determine the stranded capacity, it will not be justified to levy the relinquishment charges on any of the long term customers.

(c) Load flow study as a tool has been in use and is being used for transmission planning, determination of PoC charges and determination of TTC/ATC not only in India but all over the world. Like many other studies in the field of engineering, economics or finance, load flow study is also sensitive to initial assumptions. Determination of PoC charges is also based on several sequence processes including AC load flow which are sensitive to assumptions. If the load flow analysis is to be used for the determination of stranded capacity, a detailed procedure can be laid down similar to that

incase of PoC charges so that a transparent and non-discriminatory procedure for load flow analysis is applied in all cases. The determination of stranded transmission capacity and consequent compensation by use of well-established engineering too like load flow analysis is more likely to withstand judicial scrutiny than arbitrary percentage of LTA capacity.

(d) The extent of liability of relinquishment charges by an LTA customer is required to be worked out having regard to the stranded capacity which would require clear identification of several factors such as what should be treated as stranded capacity, the duration for which capacity is stranded, whose capacity is stranded and how much of the capacity remains stranded. Relinquishment charges should be recoverable/adjusted after having a complete accounting of the commercial usage and the revenue earned by the CTU for the transmission system. The determination of stranded capacity should be on case to case basis taking into consideration the above-mentioned factors and any other relevant factor in a specific case.

(e) The question of how much of stranded transmission capacity could be justly and rationally attributed to an individual DIC will arise only when the determination of specific quantification of the stranded transmission capacity has been done. The operative parts of the definition of stranded capacity focus on transmission capacity in ISTS likely to remain unutilized. Clearly the emphasis is not on immediate loss of revenue and an assessment is to be made on a long-term horizon. Accordingly, determination of the stranded capacity would exclude unused transfer capability due to (i) (N-1) planning criterion; (ii) [(N-1)-1] planning criterion; (iii) voltage stability limit; (iv) angular

stability limit; (v) transformation capacity limit along the path of flow/displacement; and (vi) any restriction due to overloading in an intermediate weak transmission link in the normal course.

(f) The proposed mechanism of recovery of relinquishment charges is based upon upfront NPV-based lump sum payments whereas admittedly the relinquishment charges are in lieu of transmission charges which are collected on yearly basis. Hence, any recovery of relinquishment charges should be on an annual basis after drawing the accounts for unutilized capacity by PGCIL. Further, such relinquishment charges paid by a relinquishing LTA customer should be reconciled/adjusted by PGCIL on an annual basis after incorporating the reduction in the liability of payment of the transmission charges on the existing LTA customer and relinquishing transmission network during last one year period, as finalized in coordination meetings of the CTU. Such commercial settlement may be formalized through an annual reconciliation process and the same should be clearly reflected in the truing-up Petition filed by PGCIL before the Commission seeking approval for its trued-up Annual Revenue Requirement ("ARR") for the corresponding Tariff Period.

(g) Instead of recovering the entire relinquishment charges from a relinquishing LTA customer with a one-time payment, the relinquishment charges should be paid by a relinquishing LTA customer in installments spread over 4 quarters from the date of relinquishment after reconciling/adjusting the transmission charges collected from LTA, MTOA and STOA customer(s) for the respective quarter.

(h) In case of Ashok Leyland vs. State of Tamil Nadu and Another [(2004) 3 SCC 1], a three judge bench of the Hon'ble Supreme Court has held that the word 'determination' must be given its full effect, which pre-supposes application of mind and expression of conclusion. It connotes the actual determination and not a mere opinion or finding and, therefore, the Petitioner's proposal to levy relinquishment charges in the absence of determination of the standard capacity is untenable.

105. The following comments have been received from the distribution companies:

(a) West Bengal State Distribution Company Limited (WBSEDCL) has submitted that in accordance with Section 73 of the Indian Contract Act, 1872, compensation can only be awarded against one party when there is corresponding loss suffered by another party. Therefore, imposition of relinquishment charges where the Petitioner is not incurring any loss or damages is patently unfair and contrary to settled legal position. WBSEDCL has further submitted that before allowing any compensation to the Petitioner on account of relinquishment, the Petitioner should be required to provide that the system or part thereof was set up for the beneficiary; there are no beneficiaries who may utilise the stranded asset; and relinquishment of LTA is causing financial loss to the Petitioner. WBSEDCL has further submitted that if any compensation is granted to the Petitioner, there should be a mechanism for refund of the same in the event fresh beneficiary applies for LTA before the expiry of the period which is short of 12 years. WBSEDCL has requested the Commission to put in place a dispute resolution mechanism at the stage of computation of relinquishment charges enabling the beneficiaries of the LTA

and the Petitioner to amicably determine the applicable relinquishment charges.

(b) Gujarat Urja Vikas Nigam Limited (GUVNL) has submitted that a careful reading of Regulation 18 of the Connectivity Regulations would show that the term “for stranded capacity” has been used not with the intention of requiring the CTU/Transmission Licensee to show what capacity would not be used at all from the date of the relinquishment for the remaining period of 12 years. Rather the term ‘for stranded capacity’ has to be examined with reference to the date on which relinquishment is sought and what would happen in future is totally irrelevant. It has been further submitted that the Regulation 18 restricts the compensation by way of 66% of the transmission charges only upto the remaining period of 12 years whereas the long term access may be much more than 12 years. It may be that in a given situation, the Petitioner may not be able to utilise the capacity relinquished for the entire period of 25 years and it does not mean that in such cases, the Petitioner can claim actual compensation for the remaining period of 25 years.

(c) Kerala State Electricity Board Limited (KSEBL) has submitted that while arriving at relinquishment charges detailed load flow studies based on load generation balance of the entire State including the capacity addition, transmission system planned etc. will reveal the extent of stranded capacity in the coming years. The capacity utilization after a period of operation may be different for the system from that initially envisaged. Further, the stranded capacity may exist only for some period and a generalization of procedure may not be appropriate.

(d) TANGEDCO has submitted that it is illogical that there will not be any stranded capacity in a meshed network due to relinquishment of part/full LTA by any of the LTA customers. Even though there would be power flow in the newly connected/ augmented system once integrated to the network due to the physical properties of electricity, there will definitely be un-utilized capacity attributed to the customer who opted for the relinquishment.

106. We have considered submissions of Petitioner and Respondents. The Petitioner has submitted that the determination of stranded capacity should be guided by top-down approach of finding the rationale for levy of relinquishment charges and the desired application of relinquishment charges recovered, instead of bottom up approach of finding isolated/stranded transmission elements for determination of transmission charges. The Respondents have submitted that stranded capacity should be determined using load flow studies and that determination of stranded capacity is a sine qua non to levy relinquishment charges. Regulation 18 of the Connectivity Regulations provides that a long term customer may relinquish the long term access rights fully or partly before the expiry of the full term of long term access, by making payment of compensation for stranded capacity. Regulation 2(1)(v) of the Connectivity Regulations defines the stranded transmission capacity as “the transmission capacity in the inter-State Transmission System which is likely to remain unutilised due to relinquishment of access rights by a long term customer in accordance with Regulation 18”. Thus, the stranded transmission capacity refers to the transmission capacity that is likely to remain unutilised as on the date of relinquishment. Regulation 18(1)(a)(ii) provides that where a long term customer has availed access rights for at least 12 years, it shall be required to pay an amount equal to 66% of the estimated transmission charges (net present value)

for the stranded transmission capacity for a period falling short of notice period of one year. Further, Regulation 18(1)(b) provides that where the long term customer has not availed the access rights for 12 years, the relinquishment charges shall be an amount equal to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of 12 years of the access rights in addition to an amount equal to 66% of the estimated transmission charges (net present value) for the period falling short of the notice period of one year. Regulation 18(2) provides that for computing the net present value, the discount rate used for bid evaluation notified by the Commission from time to time shall be used. Therefore, the stranded transmission capacity shall have to be determined on the date of relinquishment of access right and the relinquishment charges shall be determined on the basis of the net present value for the period of the stranded capacity falling short of 12 years and notice period falling short of 1 year.

107. The next question is how the stranded transmission capacity shall be determined. The Commission after going through the pleadings of the Petitioner and the Respondents is of the view that since the relinquishment charges are to be paid for stranded transmission capacity falling short of the 12 years of access rights, there is a clear mandate of the regulation to determine the stranded transmission capacity. The Commission in its order dated 16.2.2015 in Petition No.92/MP/2014 had directed CEA to suggest methodology to work out stranded capacity and the formula for calculating corresponding relinquishment charges of LTA keeping in view the load generation scenario and power flows considered at the time of planning and changes subsequent to proposed relinquishment after taking note of the difficulties expressed by CTU to decide the stranded capacity. However, CEA has not provided

methodology for working out the stranded capacity. The Commission also directed CEA to furnish the system study files based on which decision to implement the transmission systems under the Petition was taken. CEA forwarded the requirement of files to CTU, but neither CEA nor CTU have been able to provide the system study files to the Commission.

108. We notice that new transmission systems are finalized based on load flow studies as per CEA Transmission Planning criteria and the Indian Electricity Grid Code (IEGC). The relevant portion of IEGC is quoted below:

“(b) The CTU shall carry out planning process from time to time as per the requirement for identification of inter-State transmission system including transmission system associated with Generation Projects, regional and inter-regional system strengthening schemes which shall fit in with the perspective plan developed by CEA. While planning schemes, the following shall be considered in addition to the data of authenticated nature collected from and in consultation with users by CTU:

- i) Perspective plan formulated by CEA.
- ii) Electric Power Survey of India published by the CEA.
- iii) Transmission Planning Criteria and guidelines issued by the CEA
- iv) Operational feedback from RPCs
- v) Operational feedback from NLDC/RLDC/SLDC
- vi) Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-state Transmission and related matters) Regulations, 2009.
- vii) Renewable capacity addition plan issued by Ministry of New and Renewable Energy Sources (MNRES), Govt. of India

(c) In addition to the inter-State transmission system, the CTU shall plan, from time to time, system strengthening schemes, need of which may arise to overcome the constraints in power transfer and to improve the overall performance of the grid. The interstate transmission proposals including system strengthening scheme identified on the basis of the planning studies would be discussed, reviewed and finalized in the meetings of Regional Standing Committees for Transmission Planning constituted by CEA, in consultation with the Regional Entities, RPC, CEA, NLDC and the RLDC and action may be taken by CTU on the basis of Power Purchase Agreements (PPAs) signed with the beneficiaries. In case of associated transmission system where all PPAs have not yet been signed, and where agreement could not be reached in respect of system strengthening schemes, the CTU may approach CERC

for the regulatory approval in accordance with Central Electricity Regulatory Commission (Grant of Regulatory Approval for Capital Investment to CTU for execution of Inter-State Transmission Scheme) Regulations, as and when they come into force.”

109. Further, Regulation 13 of the Connectivity Regulations provides for system study by the Nodal Agency before granting long term access. Clauses (1) and (2) of the Connectivity Regulations are extracted as under:

“13. System Studies by the Nodal Agency

(1) On receipt of the application, the nodal agency shall, in consultation and through coordination with other agencies involved in inter-State transmission system to be used, including State Transmission Utility, if the State network is likely to be used, process the application and carry out the necessary system studies as expeditiously as possible so as to ensure that the decision to grant long-term access is arrived at within the timeframe specified in regulation 7:

Provided that in case the nodal agency faces any difficulty in the process of consultation or coordination, it may approach the Commission for appropriate directions.

(2) Based on the system studies, the nodal agency shall specify the inter-State transmission system that would be required to give long-term access. In case augmentation to the existing inter-State transmission system is required, the same will be intimated to the applicant.”

110. From the above provisions, it emerges that the basis for grant of long term access rights is the system studies carried out by CTU in consultation with CEA and the stakeholders. The need for new transmission system may arise due to new generation or to remove congestion or to meet increased/perspective demands of the States. Once the requests are received by CTU under the referred heads, CTU after carrying out load flow studies ascertains whether existing system will suffice or new system is required. CTU while planning for new systems takes into consideration the status of existing systems, particularly whether it is fully utilized or partly utilized based on which decision to plan new systems would have been taken. However, for determination of stranded capacity, CTU has stated that load flow studies are based on a large number of assumptions pertaining to load generation

and network configuration and these assumptions are always open to disputes. We are of the view that load flow study as a tool has been in use and is being used for the transmission planning, determination of PoC charges and determination of TTC/ATC not only in India but in other parts of the world. Determination of PoC charges is also based on several sequence processes including AC load flow studies which are sensitive to assumptions and the transmission charges are shared by the DICs based on load flow studies as per the Sharing Regulations. In that sense, we agree with the Respondents that the determination of stranded transmission capacity by use of well-established engineering tool like load flow analysis will be appropriate and scientific. The Commission is of the view that the stranded transmission capacity in terms of Regulation 18 of the Connectivity Regulations should be based on load flow studies with clearly laid out assumptions.

(C) Procedure for assessment of Stranded Capacity

111. Having decided that the load flow studies shall be used for determination of the stranded transmission capacity, the next question is what are the factors that should be taken into consideration and what is the procedure that should be followed for carrying out load flow studies.

112. On the procedure for determination of stranded transmission capacity, the responses of the Petitioner, Respondents and other stakeholders are briefly discussed as under:

- (a) The Petitioner is not in favour of conducting load flow studies for determination of stranded transmission capacity and, therefore, has not suggested any procedure for that purpose.

(b) If the load flow analysis is to be used for the determination of stranded capacity, a detailed procedure need to be laid down so that a transparent and non-discriminatory procedure for load flow analysis is applied in all cases.

(c) NLDC and WRLDC (Respondent No.11 and 12) have submitted that Power system is a meshed network, wherein the transmission network is utilised by the grid connected entities. For the purpose of calculation of stranded capacity, there can be several categories with different treatments as under:

(i) The dedicated transmission line from generating station to the pooling station of the transmission licensee (including deemed transmission licensee) may get stranded in case the generating station relinquishes the LTA.

(ii) The transmission links for evacuation of power from the pooling station towards the Target Regions may get stranded in case some of the generating stations connected to the pooling station decide to relinquish their LTAs.

(iii) Under the current scenario, some of the inter-regional transmission corridors are fully utilised by others, leaving no room for any margin under LTA/MTOA. Thus, it may appear that there is no stranded capacity owing to the relinquishment of LTA, as the same may be utilised by the other LTA applicants. However, based on LTA applications submitted to CTU, transmission systems were planned and are currently being developed. After commissioning of the

transmission systems, which are under development, stranded capacity is likely to arise on inter-regional corridors also.

(iv) The transmission system developed for delivery of power at the doorstep of the drawee utility may get stranded in case of relinquishment of LTA by the drawee utility.

(d) TANGEDCO has submitted that it is illogical to assume that there will not be any stranded capacity in a meshed network due to relinquishment of part/full LTA by any of the LTA customers. Even though there would be power flow in the newly connected/augmented system once integrated to the network due to the physical properties of electricity, there will definitely be un-utilized capacity attributed to the customers who opted for the relinquishment.

(e) Respondent No. 10 (Essar Power MP Limited) has stated that determination of the stranded capacity should exclude unused transfer capability due to:

- i. (n-1) planning criterion;
- ii. [(n-1)-1] planning criterion;
- iii. voltage stability limit;
- iv. angular stability limit;
- v. transformation capacity limit along the path of flow/displacement; and
- vi. any restriction due to overloading in an intermediate weak transmission link in the normal course.

(f) The Respondent No. 16 (Dhariwal Infrastructure Limited) has suggested for determination of the stranded transmission capacity based on the load flow studies based on the actual load flows so that the extent of the utilization of each line can be determined. In this regard, it has suggested to consider following two scenarios:-

(i) In the first scenario, the load flows on the lines/network elements (specifically built for subject generation evacuation) can be determined by considering that the subject generation capacity has been installed.

(ii) In the second scenario, the load flows on the lines/network elements (specifically built for subject generation evacuation) can be determined by considering that the subject generation capacity is not installed. Based on the difference in load flow analysis of the two scenarios, the stranded capacity for each subject line may be calculated. Such determination of stranded capacity should be in the time frame of 12 months or less as the Commission may deem fit for considering the changes in the usage of the transmission system over a period of time.

(g) Respondent No.6 (KSK Mahanadi Power Ltd.) and PEL Power Ltd. have submitted that the approach should be based on load flow studies (considering with and without the concerned generating station).

(h) The Respondent No.18 [MB Power (Madhya Pradesh) Limited] has submitted that in the context of relinquishment of part or full LTA, stranded transmission capacity will essentially mean unutilized available capacity of the meshed transmission network or unutilized ATC. Since utilization of ATC is on account of the allocations/transactions under LTA, MTOA and STOA in each

time block of the day, unutilized ATC shall mean that part of the ATC that has remained unutilized considering collective commercial transactions under LTA, MTOA and STOA in each time block of the day, which can be attributed to the quantum of the LTA that has been relinquished by a customer. The stranded capacity can only be determined post operationalization of the entire transmission system identified for such granted LTA. Further, such stranded transmission capacity can only be determined based on the utilization of the ATC under LTA, MTOA and STOA under each time block of the day which can be subsequently aggregated on annual basis after having a complete accounting of the commercial usage.

(i) The Respondent No.1 (KSEBL) has submitted that the stranded capacity should be determined on post facto basis based on actual load flow and the transmission system in service during the concerned period, quantum of capacity actually unutilized, transmission investment cost of CTU/ transmission licensee during that particular period and compensation recoverable. The levy of relinquishment charges should be stopped once the cost of transmission investment is completely recovered.

(j) GUVNL has stated that stranded transmission capacity has to be examined with reference to the date on which relinquishment is sought and what would happen to the capacity in future is irrelevant.

(k) The Respondents have submitted that the issue of determination of stranded capacity has earlier been dealt by the Commission in Petition Nos. 118/MP/2012 and 63/MP/2013 and the Commission cannot take a different view in the matter in the present petition.

113. We have considered the submissions of the Petitioner and Respondents. We intend to first deal with our Orders in Petition No. 118/MP/2012 and Petition No.63/MP/2013 before deciding the procedure for assessment of stranded capacity. In Petition No. 118/MP/2012, the transmission corridor was planned for a number of generators including LANCO and the issue for consideration was whether surrender of 50% LTA (800 MW out of total LTA of 1600 MW) by LANCO would result in stranded transmission capacity. The Commission in the order dated 8.6.2013 dealt with the issues as under:

“18. As such, there are 7 generators which are beneficiary of this transmission corridor and this transmission system was initially constructed for 50% of the LTA in which Lanco LTA was considered as 1600 MW and therefore, by surrendering 50% of that there is no standard capacity as the system itself was conceived only for 50% of the capacity.

19. From the facts available on record it clearly emerges that with the reduction in transmission capacity allocated to the petitioner, there is no likelihood of stranding of the transmission capacity available for Phase – I. However, in the affidavit of 28.9.2012, the first respondent has stated that with the surrender of the transmission capacity of 800 MW on the commissioning of the complete transmission system, the capacity equivalent to Phase – II of the generation project of the petitioner would be stranded unless some other projects come up by that time. In the meeting of the Standing Committee held on 8.2.2012 it was specifically brought out that no capacity would get stranded because in addition to IPPs, other generating companies like NTPC were ready to utilize the surplus transmission capacity becoming available consequent to reduction of capacity allocated to the petitioner. Therefore, there is no possibility of capacity getting stranded after surrender of capacity of 800 MW by the petitioner.

23. We have already noted that IPPs and other generating companies like NTPC are available to utilize the surplus transmission capacity. In this manner, any reduction in injection of power by the petitioner will be offset against injection of power by the other generators ready to use the surplus capacity. Thus there is no possibility of increasing liability of IPPs even marginally. Further, as noted above, the first respondent's submission is that allocation of 800 MW of the transmission capacity to the petitioner in the first instance would not have influenced the capacity planned. For this reason too, the surrender of 800 MW capacity now does not increase the liability for payment of PoC charges.

24. We therefore conclude that surrender of capacity by the petitioner neither causes stranding of transmission capacity nor does it affect the liability of others for payment of PoC charges.”

114. In the above order, the Commission after considering the submission that the

corridor was built for 50% of the LTA and that there are IPPs and other generating companies like NTPC which are available to use the surplus capacity made available on account of reduction of LTA of Lanco Babandh from 1600 MW to 800 MW, came to the conclusion that surrender of capacity by Lanco Babandh would not cause stranding of transmission capacity nor affect the liability of others for payment of transmission charges. Since there was a finding with regard to the absence of stranded capacity in the peculiar facts and circumstances in that case, it cannot be held as laying down guiding principle for consideration of the cases of relinquishment and stranding of capacity in future cases.

115. In Petition No. 63/MP/2013, LancoKondapalli Power Ltd (LKPL), a gas based plant in Andhra Pradesh, was granted LTA for 350 MW having Northern Region (150 MW) and Western Region (200 MW) as Target Regions. LKPL applied for reduction of LTA from 350 MW to 250 MW and change of target regions to Southern Region with Andhra Pradesh as beneficiary State. CTU had accepted the relinquishment of 100 MW and had conveyed that in the absence of any stranded capacity, LKPL was not liable to pay relinquishment charges. Subsequently, LKPL sought relinquishment of 250 MW and submitted that relinquishment charges are not payable since no augmentation of ISTS had been carried out for grant of LTA to LKPL. Since no decision was taken, LKPL filed Petition No. 63/MP/2013 before the Commission seeking relinquishment of 250 MW capacity without relinquishment charges.

116. The submission of CTU in its affidavit dated 23.1.2014 has been taken note of in the order of the said Petition as under:

“19.PGCIL has not filed any reply to the petition. However, PGCIL has filed its submissions vide affidavit dated 23.1.2014 which is extracted as under:

“6. Subsequently, LKPL vide letter dated 14.08.2012 & 04.09.2012, have requested for reduction of LTA quantum from 250 MW to Zero MW citing non-availability of gas in KG D6 basin. The issue was deliberated in the 20th SRPC meeting held on 28.09.2012 and it was noted that constituents of SRPC had reservations in relinquishing the LTA rights by LKPL as reduction of LTOA quantum to zero shall effectively render the present LTA arrangement to mere Connectivity. In the same meeting POSOCO indicated that they have already filed a petition in CERC requesting that Long Term Access to be mandatory along with the Connectivity. Accordingly, the request of LKPL for reduction of LTA quantum of 250 MW to 0 MW from its generating plant has been kept under abeyance. The issue for reduction in LTOA quantum from 250 MW to 0 MW was further deliberated in the 15th meeting of Southern Region Constituents on Connectivity & Long Term Access held on 4th January, 2013 wherein the Southern Region constituents were not agreeable for reduction in the LTA quantum and proposed to discuss the matter in further meetings with all the SR constituents.

7. Here it is to mention that the LTOA is granted for long term use of 25 years and changes in power supply position cannot be predicted with certainty in the present era of high growth. Therefore, it is very difficult to predict that in future the scenario may not change and Southern Region becomes again surplus in power and utilize the interregional links for export of power. In the present arrangement of sharing of transmission charges, the transmission charges on account of all ISTS network are pooled and then shared by Designated ISTS Customers (DICs) in proportion to their capacity as per PoC mechanism. Naturally under such arrangement transmission charges on account of exit of one DIC shall have to be shared by remaining DICs.

8. Therefore, taking into consideration the long term (25 years) usage of ISTS network by LKPL, the uncertainty of regional power scenario and reluctance of existing DICs for reduction of LTA quantum it is not possible to assess stranded capacity due to relinquishment of LTA.”

117. The Commission, after taking note of the fact of the case, observed in para 27 and 28 of the said Order as under:

“27. From the facts available on record it clearly emerges that with the reduction in transmission capacity allocated to the petitioner, there is no likelihood of the available transmission capacity for stage-II getting stranded. In the 14th meeting of SR constituents held on 16.4.2012 it was specifically indicated by PGCIL that taking into considering that (i) ISTS argumentation has not been carried out for the power transfer requirement of arising due to LKPL, (ii) regulation permits change of capacity up to 100 MW without filing fresh application, and (iii) regulation also provides for the long term customer to relinquish his rights, the request of Lanco may be agreed and Long-term Access intimation may be revised .

28. Since no system augmentation was done for Lanco, the existing (ISTS System) was erected based on the needs of the then existing beneficiaries with their consent to bear the costs thereof. Compensatory charges under Regulation 18 of the Connectivity Regulations are to be paid for the recovery of investment on the development of the inter-State transmission network to

the extent of stranded capacity. Compensation is payable only for stranded transmission capacity caused on account of relinquishment and not merely on allocation/grant of LTOA. As such, it cannot be claimed that any stranded capacity is being rendered claimed in the ISTS due to reduction of long term open access granted to the petitioner. It is a well settled principle of law that no compensation is payable if there is no stranded capacity created on account of relinquishment. We, therefore, conclude that surrender of capacity by the petitioner neither render transmission capacity to be stranded nor does it affect the liability of others for payment of PoC charges.”

118. In the above case, there is a positive finding based on the facts that there would be no stranded capacity on account of surrender of the LTA of 250 MW by LKPL. The observation that “since no system augmentation was done for LANCO, the existing (ISTS system) was erected based on the needs of the then existing beneficiaries with their consent to bear the cost thereof” should be read in the context of the finding that there would be no stranded capacity on account of surrender of the LTA of 250 MW by LKPL. It is to be noted that in the 20th SRPC meeting held on 28.09.2012, the constituents of SRPC had reservations in relinquishing the LTA rights by LKPL as reduction of LTA quantum to zero would effectively render the present LTA arrangement to mere Connectivity, and not that the relinquishment would result in stranded capacity. Therefore, the decision in the Petition No.63/MP/2013 cannot be taken as an authority that where the LTA has been granted within the existing margin on the date of grant of LTA, relinquishment of such LTA would not result in stranded capacity.

119. The Petitioner has submitted that CTU had proceeded to assess the development of various generation projects by holding Joint Coordination Committee Meetings from time to time. However, apart from a few generation projects such as Aryan MP Power Ltd, PEL Power Ltd, Navabharat Power Private Ltd and Spectrum Coal and Power Ltd, none of the long term customers associated with HCPTC corridors had chosen to relinquish fully or partly their LTAs except when HCPTC

corridors were close to commissioning. The Petitioner has submitted that there is a very evident correlation between operationalization of HCPTC corridors and relinquishment of LTAs. The Petitioner has submitted that the incidence of relinquishment is both sudden and at a high rate in those transmission corridors which are indicated in the Joint Coordination Committee Meetings to be nearing completion and the requirement to establish payment security mechanism is conveyed to the concerned long term customers. The Petitioner has further submitted that the long term customers initially obtained the LTA on target region basis. However, all the LTA quantum for which the concerned Long Term Customers have failed to execute the PPAs have been relinquished while retaining only such LTA quantum for which PPAs have been tied up, despite the fact that LTAs have been sought and granted for a period of 25 years. The Petitioner has submitted vide an affidavit dated 8.9.2017, the position as regards overall relinquishment of long term access across nine HCPTC as under:

S No.	HCPTC Corridor	Envisaged Capacity (MW)	Effective LTA Remaining on the Corridor(MW)	% Relinquished/Abandoned/in-abeyance
1.	I	6080	1263	79.2
2.	II	3510	200	94.3
3.	III	2162	2162	0.0
4.	IV	3760.15	729.3	80.6
5.	V	16282	9724	40.3
6.	VI	3436	2380	30.7
7.	VII	2000	558	72.1
8.	VIII	1240.8	0	100.0
9.	XI	2137	540	74.7
	Total	40607.95	17556.3	56.8

120. It is evident from the above table that out of 40607.95 MW envisaged capacity in 9 HCPTCs, quantum of 17556.3 MW is remaining and the balance capacity of 23051.65 MW has been surrendered. In fact, the average works out to

56.8% of relinquishment/abandonment or in abeyance of LTAs. Considering such large quantum of relinquishment of capacity, it cannot be said that there would not be stranded transmission capacity in ISTS. In the changed scenario, the decisions of the Commission in Petition No.118/MP/2012 and 63/MP/2013 are inapplicable to deal with such large scale relinquishment of LTAs resorted to by the long term customers.

121. The Commission after due consideration of the provisions of the Connectivity Regulations and IEGC, the submission of the parties and need for assessment of the stranded transmission capacity through load flow studies has devised a methodology to be followed for determination of stranded transmission capacity. The methodology for determination of stranded capacity is as under:

Step 1 (Base case)- An All India base case is required to be prepared based on the actual peak load for the month in which completion of all transmission lines/substations in each of the High Capacity Power Transmission Corridor or identified augmentation has been completed in the month in which commissioning of the last transmission line or substation element in the identified augmentation occurred. CTU shall identify the month as above and POSOCO shall provide the base case for this month based on peak load scenario used for TTC computation by POSOCO. Such base case file should include all the identified transmission system as above. On the base case file provided by POSOCO, CTU shall also include all generators who have either relinquished or abandoned in the concerned HCPTC corridor/augmentation. The injection of the generators who have relinquished the LTA or abandoned the project shall be considered as equal to the LTAs granted to the

generators. For Long Term Customers who have relinquished after the above identified month, the base case scenario shall be considered based on actual peak load for the month in which relinquishment is effective. For load generation balance, generation from other existing generators in the same region, shall be reduced on pro-rata basis.

Step 2(Relinquished scenario)- The generators in each of the High Capacity Power Transmission Corridor/identified augmentation of transmission systems who have relinquished/abandoned shall be removed from the above base case or their injection shall be reduced by their relinquished quantum resulting into revised power flow under relinquished scenario. The generation from other existing generators in the same region shall be correspondingly increased.

Step 3- The transmission lines/substations covered under the system augmentation in terms of the respective BPTA/LTA agreements of generators which have relinquished the capacity or abandoned the project shall be segregated and separately listed for use in Step 4 below.

Step 4-Flow in Step 1 (Base case), Step 2 (Relinquished scenario) and Step 3, i.e., in the transmission lines covered under BPTA/LTA agreements of generators who have relinquished the capacity or abandoned their projects shall be captured.

Step 5-In case there is reduction in the flow, the difference in the transmission line flows between the Base case and the Relinquished scenario shall be treated as the stranded capacity of the line. In cases where there is increase

in flow, the stranded capacity shall be considered as zero. Except for the cases where the stranded capacity is to be considered as zero, the percentage capacity of a particular line stranded is to be determined by dividing the difference obtained above by the loadability of the line as explained herewith. If the difference in two cases (Base case vis-à-vis Relinquished scenario) for individual lines is more than maximum quantum relinquished for the entire corridor/identified augmentation, the difference between the line flows shall be capped upto relinquished quantum for the corridor/ identified augmentation. The loadability of the line shall be considered as per loadability indicated by CTU on its website for ATC/TTC for the relevant period.

Step 6- Steps 1 to 5 shall be repeated for all the corridors based on the date of commissioning of the last transmission line/substation in that corridor. In case the transmission system planned under a particular corridor is under execution (i.e. the corridor is yet to be commissioned), the base case shall be prepared on the present peak load considering such elements as commissioned in the base case.

Step 7-The base case should be N-1 and N-1-1 compliant as per CEA Transmission Planning Criterion, 2013. , Where the base case is not compliant with CEA Transmission Planning Criterion, 2013, the generation of the generating projects who have relinquished or abandoned the project shall be reduced on pro-rata basis to make the system N-1and N-1-1 compliant. The quantum of such reduced generation is to be recorded separately as this quantum will not attract any charges towards stranded capacity.

122. An illustrative example covering the above steps is detailed below:

S.NO	Power Flow on HCPTC before and after Relinquishment								
	FROM BUS	TO BUS	KV D/C or S/C	CORRIDOR	Line Loadability "LL"	Base Case Power Flow(MW) "BP"	Relinquished Scenario Power Flow(MW) "RP"	Difference (MW) "DF"	% DIFFERENCE
1.	A	B	400 D/C	HCPTC-P	ABC	1000	800	RP-BP	DF/LL
2.	D	D	765 S/C	HCPTC-P	POR	1500	1600	0 (since power flow has increased)	0%
3.	X	Y	400 S/C	HCPTC-Q	XYZ	500	200	-300 = -80	80/XYZ

LL = Line loadability

For Example: Assuming that relinquishment in HCPTC-Q is 80 MW, the difference DF shall be capped to -80 MW for S.No. 3 in above case.

123. The methodology shall be applicable for the cases where the LTAs have been granted with identified system augmentation and generation projects have sought full or part relinquishment. The methodology shall not be applicable for dedicated transmission lines since it is the liability of the concerned generator to pay the transmission charges for such dedicated transmission line. Where long term customers have been granted LTA with such identified augmentation which was originally planned for some other LTA customers, such long term customers shall also be liable to pay relinquishment charges as per methodology specified above.

The methodology of load flow as specified above shall not be applicable in case of HVDC. However, where the LTA has been granted with identified HVDC, the stranded capacity shall be identified based on capacity allocated to the long term customers on that HVDC line.

124. The rationale for each of the steps given in para 121 above are as follows:-

- (i) Step 1, where all generators are considered with injection as LTA,

simulates the condition of flow at the time of planning. Similarly, Step-2 simulates the status as on date of relinquishment.

- (ii) The relinquishment charges shall be calculated as on date of commissioning of the entire identified transmission system, irrespective of the actual date of operationalisation of LTA. For Long Term Customers who have relinquished after the identified month of commissioning of entire identified transmission system, the base case scenario shall be considered based on actual peak load for the month in which relinquishment is effective.
- (iii) At Step 3, the identified system for a particular group of generators/ a generator is listed so that stranded capacity in such lines is calculated.
- (iv) At Step4, flow at Base case and Relinquished scenario is captured, so as to determine how much flow would have been there with all the generators (Base case) and without the generators having relinquished (Relinquishment scenario).
- (v) At Step 5, difference in flows is determined. In case difference is negative i.e. flow in the line has reduced on relinquishment, the extent of such reduction is taken as stranded capacity for the line. In case flow has increased, the line is not considered as stranded. Further, the flow might decrease more than the relinquished quantum for a particular corridor due to nature of power system. In such cases, difference in flow is capped upto relinquishment sought in a particular corridor. The percentage of stranded capacity (where flow has reduced on relinquishment) is

determined by dividing the difference by loadability of the line. This ensures that any capacity in excess of the requirement of planning due to lumpy nature of transmission is not added to the stranded capacity. Further the loadability has been taken as per CTU website. A sample of such Assumption on CTU website as “Major assumptions/observations for declaration of TTC/ATC for Apr’18 to Jan’19 issued on 05.01.2018” is quoted below for clarity:

“3. The limit of various 765kV Inter-regional corridors between WR & NR has been considered as 3000MW under n-1 condition after commissioning of Jabalpur – Orai – Aligarh 765kV D/c corridor between WR & NR. Limit of Aurangabad – Solapur – Raichur 765kV corridor has been considered as 2750MW per circuit under N-1 contingency. Limit of all other 765kV lines has been considered as 2500MW under N-1 contingency. The loading limits of all the 400kV lines are the thermal limits.”

- (vi) Step 7 ensures that stranded capacity is calculated only after making the system N-1/N-1-1 compliant.

125. With regard to N-1/N-1-1 criteria, CEA transmission planning criteria 2013 provides that system should be compliant with N-1/N-1-1 condition. In our view, this aspect must be considered. In case the system is not N-1/N-1-1 compliant i.e injection is more than what transmission system could withstand safely, to make system compliant with such criteria of N-1/ N-1-1, the generation shall be reduced.

126. Further, we have taken note of the submissions of the CTU in Petition No. 233/2009 while approaching the Commission regarding grant of Regulatory Approval of HCPTCs as follows:-

“As regards, the utilization of proposed HCPTC-I, it is pertinent to mention the proposed corridor envisages only skeleton transmission system which in any case shall be required even if 50% of the LTOA quantum (6000 MW) is materialised.”

Further Annexure-IV of BPTA signed by Petitioner with LTA applicants provides as follows”:

“In the event of default by any developer under Clause 5 and 6 of this Agreement, the transmission charges for the system mentioned at Annexure-3 would be shared by balance developers. However, the damages collected (if any) from the defaulting developer(s) under clause 5 & 6 of this agreement shall be adjusted for the purpose of claiming transmission charges from the balance (remaining) developers.”

Further Clause 5 and 6 of the BPTA provides as follows:-

“5.0 (a) The Long term transmission customer shall not relinquish or transfer its rights and obligations specified in the Bulk Power Transmission Agreement, without prior approval of POWERGRID and CERC and subject to payment of compensation in accordance with the CERC Regulations issued from time to time.

6.0 (a) In case any of the developers fail to construct the generating station /dedicated transmission system or makes an exit or abandon its project, POWERGRID shall have the right to collect the transmission charges and/ or damages as the case may be in accordance with the notification/regulation issued by CERC from time to time. The developer shall furnish a Bank guarantee from a nationalized bank for an amount which shall be equivalent to Rs.5 (five)Lakhs/MW to compensate such damages. The bank guarantee format is enclosed as Annexure-Y. The details and categories of bank would be in accordance with clause 2 (h) above. The Bank guarantee would be furnished in favour of POWERGRID within 3 (three) months of signing of this Agreement. (b) This bank guarantee would be initially valid for a period of six months after the expected date of commissioning schedule of generating unit(s) mentioned at Annexure-1 or actual date of commissioning whichever is earlier. The bank guarantee would be encashed by POWERGRID in case of adverse progress of individual generating unit(s) assessed during coordination meeting as per para 7 below. However, the validity should be extended by concerned Long Term transmission customer(s) as per the requirement to be indicated during co-ordination meeting. (c) The POWERGRID shall build transmission system included at Annexure-3 keeping view of various commissioning schedules, however, till the completion of identified transmission elements the transfer of power will be based on the availability of system on short term basis. (d) In the event of delay in commissioning of concerned transmission system from its schedule, as indicated at Annexure-4 POWERGRID shall pay proportionate transmission charges to concerned Long Term Open Access Customer(s) proportionate to its commissioned capacity (which otherwise would have been paid by the concerned Long Term Open Access Customer (s) to POWERGRID) provided

generation is ready and POWERGRID fails to make alternate arrangement for dispatch of power.”

127. The submission of Petitioner in 233/2009 as quoted above and the relevant Clauses of BPTA indicates that while planning, CTU had considered that there may be cases where few generators may not materialize. It was conceived that in such cases, other generators under the BPTA were to pay the charges subject to adjustment of damages collected. In view of this assumption while planning was undertaken by the CTU, we have directed that in case system is not N-1/N-1-1 compliant i.e. transmission system has been planned for lesser capacity than the capacity for which LTA was sought keeping in view uncertainty of generation, such generation which has been abandoned shall first be reduced to make the system (N-1)/(N-1-1) compliant. In case it is required to reduce more generation, the injection of generators who have relinquished shall be reduced pro-rata till the system becomes (N-1)/(N-1-1) compliant. Such capacity which was reduced to make the system compliant shall not be considered under stranded capacity.

128. A related issue arises as to whether there is a need to simulate network conditions for each year of the 12 years period or period of relinquishment and whether usage of transmission system by other customers under MTOA/STOA shall be considered while calculating compensation payable towards stranded capacity. The views of the Petitioner and the Respondents are captured in brief as under:

(a) The Petitioner has submitted that assessment of %age of stranded transmission capacity for the prospective period of 12 years can only be achieved through load flow studies simulating the network condition corresponding to such time frame. However, the load flow studies, as is known, are

based on large number of assumptions pertaining to load generation and network configuration.

(b) Respondent No.6 (KSK Mahanadi Ltd), has submitted that in cases where only the drawl points have been changed, compensation can be charged only if this minimum capacity is idle for a period of time to be determined, perhaps on an annual basis. Secondly, if during the period under consideration (i.e. annual basis] a capacity/line is used even for a short period of time by PGCIL in its operations, then there should be no payment liability for idling subsequently. It has also submitted that it should be considered that there is no stranded capacity if transmission system is allotted for use of STOA or MTOA customers.

(c) The Respondent No. 18 (MB Power Limited), has submitted that the objective of application/recovery of the "Relinquishment Charges" for a pre-specified period of time provided for by the Commission is to protect the commercial interests of CTU on account of the surrender of the LTA customer thereby causing the corresponding "transmission capacity" remaining unutilized and thus being "stranded". It has stated that in view of the same, the Commission, therefore, needs to settle the issue regarding the utilization of the so called "Stranded Transmission capacity" at a later date for commercial transactions by way of long term, medium term and/or short term commercial transactions, and the recovery of the transmission charges thereof by CTU. It would be only fair to work out the relinquishment charges after considering the same. It has suggested that where relinquishment charges have been recovered at the rate specified under Regulation 18, the same should be credited back to the LTA customer who had

earlier paid the "relinquishment charges" to the extent the relinquished capacity is utilized subsequently.

(d) The Respondent No. 16 (Dhariwal Infrastructure Limited) has submitted that instead of recovering the entire relinquishment charges from a relinquishing LTA customer with a one-time payment, the relinquishment charges earlier paid by a relinquishing LTA Customer should be reconciled/adjusted by the CTU on an annual basis after incorporating the reduction in the liability of payment due to induction of the new LTA Customer as finalized in Coordination meetings of the CTU.

(e) The Respondent No. 11 (NLDC) and the Respondent No. 12 (WRLDC) have submitted that the important issues with respect to the above are as follows:-

(i) Relinquishment charges should not be on case-to-case basis. There should be a fixed formula for the calculation of charges.

(ii) Relinquishment charges should be known upfront ex-ante rather than post facto.

(iii) There should be connectivity charge and reliability charge for connectivity quantum, which finds mention in the Explanatory Memorandum of CERC (Sharing of inter-State Transmission Charges & Losses) (Fifth Amendment) Regulations, 2016.

(f) GUVNL has stated that a careful reading of Regulation 18 of the Connectivity Regulations would show that the term 'for stranded capacity' has been used not with the intention of requiring the CTU/Transmission Licensee

to show what capacity would not be used at all from the date of the relinquishment for the remaining period of 12 years. The term "for stranded capacity" is used as a reference to the capacity getting stranded by relinquishment. It is to be examined with reference to the date on which the relinquishment is sought and it is totally irrelevant as to what would happen to the capacity in the future. The surrender charges have to be paid with reference to the date of relinquishment.

129. We have considered submissions of Petitioner and Respondents. The Regulations do not require network conditions to be simulated apriori for every year of the 12 year period or period of relinquishment falling short of 12 years.

130. In the Statement of the Reasons of the Connectivity Regulations, the Commission has noted the following with respect to estimation of stranded capacity and calculation of compensation payable:-

"95. It has been suggested by PTC that the Commission may allow exit of a long term customer prior to expiry of full term of long term access subject to payment of compensation for stranded transmission capacity in a manner determined in accordance with Regulation 18. As per NDPL there is no incentive to surrender transmission capacity since customer is required to pay present value of tariff stream. If CTU finds another customer, the money should be returned to original customer. It has been suggested by PTC that at line 2, the word "present" may be replaced by "the then prevailing" and at lines 4 and 5, the phrase starting with "the transmission capacity" may be replaced by: "the stranded transmission capacity" to be in line with Regulation 18.

96. We agree that there should be an incentive for the long-term customer to surrender transmission capacity. If he has to pay the full charges, even after surrendering the transmission capacity, there is no such incentive. Therefore, Regulation 18 has been redrafted. Accordingly, a Long-term customer who has availed access rights for at least 12 (twelve) years, submitting application atleast 1 (one) year prior to the date from which such customer desires to relinquish the access rights, there shall be no charges. Notice of less than one (1) year shall require payment of an amount equal to 66% of the estimated transmission charges(net present value) for the stranded transmission capacity for the period falling short of a notice period of one (1) year. For Long-term customer who has not availed access rights for even 12 (twelve) years – such customer shall have to pay an amount equal to 66% of the estimated transmission charges (net present value)

for the stranded transmission capacity for the period falling short of 12 (twelve) years of access rights. In case a customer submits an application for relinquishment of long-term access rights at any time at a notice period of less than one year, then such customer shall pay an amount equal to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of a notice period of one (1) year, in addition to the charges for the stranded transmission capacity for the period falling short of 12 (twelve) years of access rights as mentioned above. The discount rate that shall be applicable for computing the net present value shall be the discount rate to be used for bid evaluation in the Commission's Notification issued from time to time in accordance with the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees issued by the Ministry of Power. The compensation paid by the long-term customer for the stranded transmission capacity shall be used for reducing transmission charges payable by other long-term customers and medium-term customers in the year in which such compensation payment is due in the ratio of transmission charges payable for that year by such long-term customers and medium-term customers.

97. It has been suggested by APTRANSCO that the CTU/STU should be allowed to retain a part of the compensation received. We are of the view that CTU/STU need not retain part of compensation because their revenue realization is unaffected and they are assured of payment of their ARR."

131. Therefore, the intention behind stipulating 66% of the estimated transmission charges (net present value) for a period of 12 years or relinquishment of access rights period falling short of 12 years is that any subsequent usage of transmission by other customers (LTA, MTOA and STOA customers) has been duly covered within 34% of the estimated transmission charges (net present value) which has been excluded from calculation of compensation for relinquishment of access rights.

(D) Methodology for calculating relinquishment charges

132. CTU shall assess the stranded transmission capacity as above and calculate the charges payable towards relinquishment as follows in continuation to steps as detailed at para121 above:

Step-8: As regards cost-plus projects, the Yearly Transmission Charge (YTC) for the identified transmission lines and substations shall be considered as per Commission's orders on determination of tariff of such lines. This would be based on quoted tariff in case of transmission system executed through Tariff

Based Competitive Bidding (TBCB). The transmission charge for the substation shall be apportioned among the transmission lines on pro-rata basis emanating from that substation. The transmission charges shall be considered as on the date of the completion of all transmission lines/substations in each of the High Capacity Power Transmission Corridor i.e. the date of commissioning of the last transmission line/substation in the concerned corridor.

Step-9: For relinquishment charges, 66% of NPV for the transmission charges for stranded capacity for 12 years shall be calculated. The discount rate applicable for computing the net present value shall be the discount rate to be used for bid evaluation in the Commission's Notification issued from time to time in accordance with the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees issued by the Ministry of Power in accordance with Regulation 18 (2) of the Connectivity Regulations. The relinquishment charges shall be apportioned amongst the LTA customers in the ratio of relinquishment sought by them after taking into account Step 7 at para 121 of this Order.

133. The Respondents have submitted that in the foreseeable future due to high growth rate of demand of electricity and large additions to generating capacity, there is hardly any possibility of underutilization of the transmission capacity that is available for commercial transactions. It has been submitted that the period prescribed in Regulation 18 is the maximum or outer limit that may be considered for recovery of relinquishment charges and it cannot be considered as a normative period to be applied indiscriminately in all cases of relinquishment without considering the extent of alternate utilization of the relinquished capacity.

134. We have already observed that any subsequent usage of stranded transmission capacity by other customers has been duly covered while stipulating 66% of the estimated transmission charges. Hence, the relinquishment charges shall be calculated for the period of relinquishment as per Regulation 18 of the Connectivity Regulations subject to our observations at Para 139 of this order.

(E) Effective Date of relinquishment sought prior to the scheduled date of LTA operationalization and after the scheduled/actual date of LTA operationalization.

135. The Petitioner has submitted that the effective date of relinquishment may be considered on a case-to-case basis taking into account the specified period of one year notice period as per Regulation 18 of the Connectivity Regulations. The Petitioner has further submitted that relinquishment of LTA ought to be considered only upon unequivocal submission of the long-term customer to bear relinquishment charges before the CTU (by way of letter) or before this Commission (by way of a Petition) which will be applicable in both cases i.e. whether LTA is relinquished prior to or after the scheduled date of LTA operationalization.

136. The Respondents have submitted the following responses:

(a) Vedanta Power Ltd, M/s Jindal India Thermal Power Ltd, Coastal Energen Private Ltd, M/s ILF&S Tamil Nadu Power Company Limited, M/s SKS Power Generation (Chhattisgarh) Limited, M/s Simhapuri Energy Limited, M/s GMR Kamalanga Energy Limited, M/s Maruti Clean Coal and Power Ltd., have submitted that the argument of PGCIL that relinquishment should be considered from the date the generator provides an unequivocal submission to bear relinquishment charges is fundamentally flawed on account of the fact that the said condition is not contemplated anywhere in Regulation 18.

Further, there is no prescribed format provided under Regulation 18 for intimating relinquishment. Since use/availing of ISTS can only happen upon operationalization of LTA under BPTA, LTA relinquished before operationalization means that LTA has not been availed and determination and imposition of relinquishment charges will not occur. The date on which the letter for surrender is issued by the generator is to be considered as the effective date of relinquishment, taking into account the fact that intention to surrender the LTA has been communicated by the said generator to CTU.

(b) M/s MB Power (Madhya Pradesh) Ltd has submitted that in both the scenarios, the effective date of relinquishment should be the date when the LTA holder issues the notice for relinquishment to CTU.

(c) Dhariwal Infrastructure Limited has submitted that in case of relinquishment sought prior to schedule date of LTA operationalization, the effective date for relinquishment should be the schedule date of LTA operationalization, if there is no delay in commissioning of the augmented transmission system. Otherwise, the actual commissioning schedule should be considered as the effective date for relinquishment. In case of relinquishment sought after schedule/ actual date of LTA operationalization, actual date of relinquishment may be treated as effective date of relinquishment if LTA is not operationalized. Further, if there is a delay in commissioning of the transmission system from the schedule date and the date of application for relinquishment falls beyond the scheduled date of LTA operationalization, the actual date of commissioning of the transmission system may be considered as effective date of relinquishment.

(d) KSEBL has submitted that relinquishment charges are not leviable in case of meshed network. If the subject transmission system was being used by MTOA or STOA applicants prior to the schedule date of LTA operationalization and if the same can be continued to be allotted to MTOA/STOA, no relinquishment charges may be levied. In other cases, relinquishment charges are applicable from the schedule date of LTA operationalization if the transmission system construction is completed. If the transmission system is not completed, the relinquishment charges are effective only from the date of completion of the transmission system or scheduled start of LTA, whichever is later. If the relinquishment is sought after the schedule/actual date of LTA operationalization, the relinquishment charges may be made effective from the date of relinquishment of the transmission system. Levying of relinquishment charges may be stopped once the transmission system usage is commenced.

(e) WBSEDCL has submitted that the date on which the application/communication for relinquishment of LTA is issued by the beneficiaries to the CTU, the same should be considered as the effective date for relinquishment of LTA in both cases.

137. We have considered submissions of Petitioner and Respondents. Regulation 18 of the Connectivity Regulations provides as under:-

“18. Relinquishment of access rights

(1) A long-term customer may relinquish the long-term access rights fully or partly before the expiry of the full term of long-term access, by making payment of compensation for stranded capacity as follows:-

(a) Long-term customer who has availed access rights for at least 12 years

(i) Notice of one (1) year – If such a customer submits an application to the Central Transmission Utility at least 1 (one) year prior to the date from which such customer desires to relinquish the access rights, there shall be no charges.

(ii) Notice of less than one (1) year – If such a customer submits an application to the Central Transmission Utility at any time lesser than a period of 1 (one) year prior to the date from which such customer desires to relinquish the access rights, such customer shall pay an amount equal to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of a notice period of one (1) year.

(b) Long-term customer who has not availed access rights for at least 12 (twelve) years – such customer shall pay an amount equal to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of 12 (twelve) years of access rights:

Provided that such a customer shall submit an application to the Central Transmission Utility at least 1 (one) year prior to the date from which such customer desires to relinquish the access rights;

Provided further that in case a customer submits an application for relinquishment of long-term access rights at any time at a notice period of less than one year, then such customer shall pay an amount equal to 66% of the estimated transmission charges (net present value) for the period falling short of a notice period of one (1) year, in addition to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of 12 (twelve) years of access rights.”

138. Regulation 18(1)(a) and 18(1)(b) provide that the long term customer intending to relinquish long term access rights shall have to make an application to CTU one year prior to the date it desires to relinquish the LTA. If the notice period is less than one year, then it has to pay the transmission charges (net present value) for the period falling short of one year. Therefore, the cases of LTA relinquishment prior to date of start of LTA or after date of start of LTA shall be considered in accordance with Regulation 18 of the Connectivity Regulations. In certain cases (through Orders in respective petitions), the Commission has directed the CTU to accept the LTA relinquishment subject to the payment of relinquishment charges to be determined in the instant petition. In such cases, notice period shall be considered from the date the application was made to CTU for relinquishment of

access rights and if no application was made, then from the date from which the Commission directed the CTU to accept the relinquishment.

139. Cases with treatment of notice period under alternative scenarios, namely, (i)LTA relinquishment prior to date of start of LTA, and (ii)LTA relinquishment after date of start of LTA are analysed below with illustrative examples.

(a)LTA relinquishment prior to date of start of LTA

Suppose, Customer A's scheduled date of start of LTA was 1.1.2014. However, the associated transmission system was commissioned on 1.12.2014. So, the effective date of start of LTA is 1.12.2014. Customer A issues notice to CTU on 1.4.2013 relinquishing its entire LTA without specifying any notice period. Thus, the notice date is 1.4.2013. However, relinquishment charges shall be calculated only from 1.12.2014, as on the effective date of start of LTA. In such case, since the transmission charge liability for such customer does not arise till date effective date of LTA i.e. 1.12.2014, no transmission charges shall be paid for the notice period falling short of 1 year i.e. for 1.4.2013 to 31.3.2014. Relinquishment charges shall be calculated from 1.12.2014 as per the specified methodology in this Order.

(b)LTA relinquishment after date of start of LTA

Suppose, Customer A issues relinquishment notice on 1.12.2014, wishing to relinquish with effect from 1.12.2014 itself. In such case, it shall be liable to pay 66% of the estimated transmission charges (net present value) for one (1) year. The estimated transmission charges shall be as per the prevailing mechanism of POC charges. Further, it shall be liable to pay transmission charges for stranded capacity for 12 years as per the specific methodology in this Order.

Suppose, Customer A relinquishes LTA as per notice dated 1.12.2014 with relinquishment effective from 1.12.2015. In this case, it shall pay POC charges for period from 1.12.2014 to 30.11.2015 since relinquishment starts from 1.12.2015. Since it has availed transmission facility for 1 year from 1.12.2014 to 30.11.2015, the relinquishment charges for stranded capacity shall be calculated for 11 years period starting 1.12.2015 as Notice period and availing of LTA for one year have run concurrently from 1.12.2014 to 1.12.2015.

(F) Treatment of Specific Cases

140. The following cases have been noticed which require specific decision:
- (a) Cases where LTA Customers have sought relinquishment with change in Target Region.
 - (b) Cases where LTA has been granted without system augmentation.
 - (c) Cases where relinquishment is sought on account of auxiliary consumption and overload capacity.
 - (d) Cases where relinquishment capacity has been reallocated or is likely to be reallocated to new LTA applicants.
 - (e) Cases of abandoned projects.
 - (f) Cases of reallocation of power by MoP.

Treatment of cases where Long Term Customers have sought relinquishment with change in Target Region

141. DB Power Limited has submitted that there is a distinction between LTA customers seeking change in beneficiary region and LTA customers who have surrendered their LTA i.e. no reduction in LTA capacity in the former case as against absolute reduction in LTA capacity in the latter. In case of change in region of

beneficiary, the LTA customer is still using the LTA, though in a different region. It has been submitted that for the purpose of levy of relinquishment charges, the entire inter-State transmission system is to be considered as a whole and the grid cannot be divided into regions. Therefore, change of region of beneficiary will not constitute relinquishment for the purpose of Regulation 18. Further, in order to constitute relinquishment, there has to be surrender of capacity i.e. absolute reduction in the LTA quantum. In case of change of region, there is no surrender of capacity and there is only change in the beneficiary region while keeping the capacity of the LTA unaltered and, therefore, there is no relinquishment under Regulation 18 so as to attract any relinquishment charges.

142. We observe that in case a long term customer who had sought LTA in a particular region seeks to shift its LTA to a different region, it relinquishes its LTA in original region and applies afresh in the changed region. We note that in case of change in Target Region, the liability of a long term access customer to pay transmission charge continues. The transmission charges by a long term customer are payable as calculated under Sharing Regulations. These Regulations calculate point of connection charges on the basis of usage of ISTS by a DIC and the methodology is based on load flow studies. In case of long term customers (viz. generators) with LTA to Target Region, point of connection charges in case LTA is without PPA are calculated at generation end only and generator is not liable to pay any Target Region charges. Hence, irrespective of the Target Region, charges on the basis of calculation at generation end shall continue. The same analogy can be extended for cases of change in Target Region. This implies that the charges shall remain same even if generator changes its Target Region. This can be explained through an example below:-

Example 1: Suppose a generator “A” is located in Western region. It has LTA to Northern Region effective from 1.4.2016. Suppose he relinquishes its LTA to Northern Region w.e.f. 1.6.2016 and seeks LTA to Southern Region starting from 1.12.2016. For the period starting 1.4.2016, the generator shall pay transmission charges as per POC methodology at its point of connection till 31.5.2016. From 1.6.2016 to 30.11.2016, it shall pay relinquishment charges in terms of methodology given in this Order. Starting from 1.12.2016, the generator shall start paying transmission charges calculated at its point of connection.

Example 2: Suppose generator A relinquishes 1000 MW in NR w.e.f. 1.6.2016 and seeks only 600 MW in SR w.e.f. 1.12.2016, relinquishment charges for 400 MW shall be payable w.e.f. 1.6.2016 for the entire period of relinquishment in addition to relinquishment charges for 600 MW from 1.6.2016 to 30.11.2016 in terms of methodology given in this Order.”

143. In the light of the above discussion, we are of the view that there shall be no relinquishment charges for change in Target Region, if the effective date of start of LTA in the changed region is the same as date of relinquishment in original region and the change in region is sought for entire capacity relinquished. If there is a gap between effective date of LTA as per fresh application for new region and relinquishment in previous region, transmission charges for stranded capacity shall be levied for such interim period and for such capacity for which LTA to changed region has not been effective.

Treatment of cases where LTA has been granted without system augmentation

144. The Petitioner, vide affidavit dated 8.9.2017, has submitted that for the purposes of ascertaining compensatory liability towards payment of relinquishment

charges, no differentiation between long-term customers granted LTA whether with or without system augmentation can be permissible. The Petitioner has submitted that under Sharing Regulations, DICs share transmission charges for all elements irrespective of whether it is catering to an LTA granted with system augmentation or without it. The Petitioner has submitted that part or full relinquishment causes same burden on the remaining DICs for servicing transmission charges. Therefore, the stranded capacity is the capacity in Rs./MW that the relinquishing LTA customer would henceforth stop bearing and would now be borne by the balance DICs.

145. The Respondents have filed their response to the proposition of the Petitioner as under:

(a) The Respondent No. 7 (JPL) and the Respondent No. 18 (MB Power Ltd)relying on the Commission's order dated 21.2.2014 in Petition No. 63/MP/2013, (LANCO Kondapali v/s POWERGRID) have submitted that Commission has held in the quoted Order that in case of LTA grant without augmentation, no compensation is payable as there is no stranded capacity created on account of relinquishment.

(b) The Respondent No. 18(MB Power Limited) has submitted that in cases where LTA is granted without augmentation of transmission system there will not be any stranded capacity as no system augmentation was done for the party who has relinquished the LTA and the existing transmission system was capable of carrying the power of the LTA Applicant. The system was already in place based on the needs of the then existing beneficiaries and the same beneficiaries should continue to bear the costs for the system.

(c) TANGEDCO has submitted that in case of no augmentation also, there will be stranded capacity and the capacity stranded could be assessed duly considering the number and quantum of LTA applications rejected after grant of LTA to the customer who wants to relinquish the access. The charges should be levied based on the opportunity cost.

(d) GUVNL has submitted that in cases where there was no requirement to upgrade any of the systems or lay down any new line for allowing Open Access and Open Access could be allowed on the surplus capacity already existing in the Inter-State Transmission System, and without any investment being made, if the applicant for Long Term Access had not availed the capacity, the said capacity would have been allocated to another Long Term User, as a result of which the CTU as well as the existing DICs would have benefitted. Accordingly, the compensation should be payable even in such situations.

(e) The Respondent No. 10 (Essar Power Limited) and Respondent No.24 [Essar Power (Jharkhand) Limited]and GMR Warora Energy Ltd. (GWEL) have submitted that if an IPP is accommodated on an existing corridor, it will not be liable for relinquishment charges, while the next one on whose application a new corridor is developed, would be liable to pay exorbitant relinquishment charges. This approach will result in discrimination. An IPP or CPSU generator or DISCOM granted LTA, with or without system strengthening, are required to be treated at par.

(f) The Respondent No.6, (KSK Mahanadi Limited) has submitted that in cases where LTA is granted without augmentation, there will not be any stranded capacity as the system was already in place based on the needs of

the then existing beneficiaries and the same beneficiaries should bear the costs for the same.

(g) The Respondent No. 26 (TRN Energy Ltd.) vide affidavit dated 22.7.2015 has submitted that relinquishment charges are paid for the recovery of investment on the development of the inter-State transmission network. If there is no parameter in the formula which calculates the investment made and extent of the same made for a particular entity, then it would not be possible to calculate its recovery by way of relinquishment charges.

146. We have considered submissions of Petitioner and Respondents. The question is to assess stranded transmission capacity, if any, in the existing system, which was allocated to Long Term customers and the said Long Term customers have relinquished the access rights. We have directed CTU to assess the stranded capacity based on load flow studies for cases where new lines have been specifically planned and executed for grant of LTA to Applicants. However, where LTA is granted on existing system, it is granted considering the entire existing system without assigning any specific lines. In the LTA grant on the basis of margins available in the existing systems, CTU does not indicate the specific lines. Therefore, in the absence of identification of ISTS lines, calculation of reduction in flow on account of relinquishment by Long Term customer cannot be made. In such cases, relinquishment charges shall be at All India Minimum PoC rate.

Treatment of cases where relinquishment is sought on account of auxiliary consumption and overload capacity

147. CTU during the second meeting of the Committee for assessment/determination of stranded transmission capacity held on 26.10.2015 stated that few DICs have sought relinquishment on account of auxiliary consumption for e.g. MB Power, JPVL, Jhabua.

148. Further, NTPC vide letter dated 13.4.2018 addressed to Secretary of the Commission, has requested that relinquishment on account of overload capacity should not be made liable for relinquishment charges. It has stated as follows:-

“As per provisions of PPAs signed with the beneficiaries. NTPC on behalf of its beneficiaries had applied for grant of LTA for various projects. The LTA quantum requested for various projects was in line with the extant CERC Regulations after considering the following:

- i) Overload capability based on IEGC clause no. 5.2(f), whereby the generating station is expected to generate 105% of their MCR during grid incidents and
- ii) Max DC (101 %) allowed to generator during the day as per the then UI Regulation, 2010

The CERC (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010. were amended through 2nd amendment notified on 28th March 2012. Regulation 2(1) (1) of the amended Regulations, provides as under:

Quote

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

Unquote

In line with above provisions, on behalf of beneficiaries the matter in regard to revision of LTA Quantum was taken up with CTU. CTU has informed that relinquishment charges are required to be paid for revision in LTA quantum. List of projects requiring revision of LTA quantum for the NTPC Projects is attached as **Annexure-I**

It is pertinent to mention that CTU has already revised the LTA quantum in similar matter from 1586.15 MW to 1508 MW for Gadrawara STPS (2X800 MW) vide its letter dated 07th May 2015 without seeking relinquishment charges.

Since, in this case there is neither abandonment of installed capacity nor any change in the beneficiary/ies, it should not fall under the relinquishment. Instead, only LTA quantum is to be revised in line with the requirement of CERC (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010.

In view of above, CERC is requested to issue a suitable clarification regarding non applicability of relinquishment charges in such cases.”

“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

149. We have considered submissions of the stakeholders. The Commission vide order dated 16.3.2017 in Petition No. 306/MP/2015 (PTC India Ltd. Vs. PGCIL & Others) directed as under:

“19. We have considered the submission of the parties. In our view, reduction of the LTOA/LTA quantum from 300 MW to 273 MW cannot be considered as relinquishment of LTA in terms of Regulation 18 of the Connectivity Regulations. The Petitioner’s case is not that it applied for LTOA for 300 MW and now it seeks revision of LTOA to 273 MW after reducing auxiliary consumption. On the other hand, the Petitioner’s case is that it applied for LTOA for 273 MW after reducing the auxiliary consumption from the installed capacity of 300 MW, but based on the decision in NREB, the Petitioner was granted LTOA corresponding to the installed capacity. We have noticed that there was no statutory basis for granting LTOA corresponding to the installed capacity. Even, as per the statement of PGCIL recorded in the minutes of WRPC meeting held on 22.11.2014, it was a general practice to grant LTOA alongwith connectivity corresponding to the installed capacity. Thus, the LTOA quantum granted to the Petitioner and included in the BPTA was the result of the decision in WREB and not as per the LTOA application of the Petitioner. What the Petitioner has sought is rectification of the LTOA quantum in the BPTA corresponding to the capacity for which LTOA was applied for. In our view, the case of the Petitioner is not covered under Regulation 18 of the Connectivity Regulations and the Petitioner is not required to pay any relinquishment charges for seeking the reduction of LTOA quantum corresponding to the capacity applied for. Since the issues involved in Petition No.92/MP/2015 relate to determination of stranded capacity on account of relinquishment of LTOA/LTA and the quantum of relinquishment charges that is required to be charged in accordance with Regulations 18 of the Connectivity Regulations, the decision in the said case is not relevant to the decision on the prayers of the Petitioner in the present case. PGCIL has clearly fallen into error by holding that the prayer of the Petitioner would be decided in the light of the decision in Petition No.92/MP/2015.”

150. In the light of the above decision, the Commission is of the view that relinquishment on account of auxiliary consumption and overload capacity shall not require payment of compensation payable towards such relinquishment.

Treatment of cases where relinquished capacity has been reallocated or is likely to be reallocated to new LTA applicants

151. Respondent No. 6 (KSK Mahanadi Power Ltd.) and PEL Power Limited have submitted that even in cases where LTA is granted with augmentation, there will not be any stranded capacity, if there are pending LTA applications in queue seeking LTA for the same corridor.

152. We have considered submission of Respondents. We are of the view that in case there are applicants for grant of LTA against the relinquished capacity in the same corridor, the relinquishment charges shall be calculated for the period starting with the date of relinquishment of LTA till the effective date of LTA of new LTA customer depending on its quantum of LTA.

Treatment of cases of abandoned projects

153. Petition Nos. 319/MP/2013, 315/MP/2013 and 69/MP/2014 were filed by project developers who had abandoned their projects and had sought relief from payment of relinquishment charges in the said petitions on the ground of being affected by force majeure. The Commission has rejected the plea of force majeure in these cases and decided that in the light of the provisions of Regulation 18 of the Connectivity Regulations, the Long Term Customers in case of abandoned projects are liable to pay the transmission charges as may be decided in the present petition.

154. The relevant observations of the Commission in order dated 12.7.2016 in the Petition No. 315/MP/2015 are extracted as under:

“40. Regulation 18 of the Connectivity Regulations provides as under:

XX

Under the above provisions, long term customer may relinquish long term access rights fully or partly, before the expiry of full term of long term access, by making payment of compensation for stranded capacity as provided herein. It is pertinent to mention that the regulations do not envisage any exemption from payment of compensation in case of relinquishment of LTA on any ground. As per regulations, a

long term customer is liable to pay compensation of an amount equal to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of 12 years of access right in case he relinquishes access right before expiry of 12 years upon giving a notice of one year for seeking relinquishment. It is clarified that the Commission vide its order dated 28.8.2015 in Petition No. 92/MP/2015 has constituted a Committee for assessment/determination of stranded transmission capacity with regard to relinquishment of LTA right by a long term customer and relinquishment charges in terms of the provisions of the Connectivity Regulations. Assessment of stranded capacity on account of relinquishment of LTA and determination of relinquishment charges shall be decided by the Commission after considering the recommendations of the Committee.”

155. Thus, the stranded transmission capacity resulting on account of the abandoned projects shall also attract the relinquishment charges liability, as per methodology detailed in this Order.

Treatment of cases of reallocation of power by Ministry of Power

156. Some of the Respondents have raised the issue of relinquishment charges in case of reallocation of entitlement of DICs by MoP. Regulation 2(1) (m) of the Connectivity Regulations defines long term customers as under:-

“Long-Term Customer means a person who has been granted long-term access and includes a person who has been allocated central sector generation that is electricity supply from a generating station owned or controlled by the Central Government.”

157. As per the above definition, the beneficiaries of the generating station owned or controlled by the Central Government are the deemed long-term customers. The coordinated transmission planning carried out by the CTU in consultation with the CEA takes into account all possible scenarios of conveyance of power from the Central Generating Stations to the beneficiaries. Since, the beneficiaries, as long term customers, are bearing the transmission charges in relation to the quantum of power allocated from the Central Generating Stations, there is no requirement for charging the relinquishment charges in case of reallocation/allocation of power by MoP.

(G) Manner of recovery and utilization of relinquishment charges collected

158. Regulation 18 (3) of the Connectivity Regulations provides as under:-

“The compensation paid by the long-term customer for the stranded transmission capacity shall be used for reducing transmission charges payable by other long-term customers and medium-term customers in the year in which such compensation payment is due in the ratio of transmission charges payable for that year by such long-term customers and medium-term customers.”

159. As per the above provision, the relinquishment charges paid by LTA customers shall be used for reducing transmission charges payable by other long term and medium term customers in the year in which such compensation is due in the ratio of transmission charges payable for that year by such long term customers and medium term customers. Therefore, Yearly Transmission Charges (YTC) shall be reduced by actual charges received towards relinquishment by relinquishing long term customers in terms of the above Regulation. Accordingly, the Petitioner is directed to keep the charges collected towards relinquishment in a separate account and utilize the same as directed above. Any interest accrued on this amount shall be credited in the account itself.

160. The relinquishing LTA customers are directed to deposit the relinquishment charges calculated and billed by CTU, within a period of three months of raising the bill by CTU. CTU is directed to calculate the stranded capacity and the compensation (relinquishment charges) payable by each relinquishing long-term customer as per methodology specified in this Order respectively within one month of date of issue of this Order and publish the same on its website.

Summary of Decisions

161. The summary of our decisions is as under:

- (a) The transmission capacity which is likely to be stranded due to relinquishment of LTA shall be assessed based on load flow studies with clearly laid out assumptions. CTU is directed to calculate the stranded capacity and the compensation (relinquishment charges) payable by each relinquishing long term customer as per methodology specified in this Order respectively within one month of date of issue of this Order and publish the same on its website. The compensation shall be payable for the years of stranded capacity falling short of 12 years, subject to (g) below.
- (b) Notice period for relinquishment shall be considered from the date the application was made to CTU for relinquishment and if no application was made, the date from which the Commission directs the CTU to accept the relinquishment.
- (c) Compensation payable under alternative scenarios of LTA relinquished prior to the date of start of LTA or after the date of start of LTA shall be as per Para 139 of this Order.
- (d) No compensation for change in Target Region shall be payable by the relinquishing LTA holders, if the effective date of start of LTA in the changed region is same as date of relinquishment in original region and the change in region is sought for entire capacity relinquished. If there is a gap between effective date of LTA as per fresh application for new region and relinquishment in previous region, transmission charges for stranded capacity shall be levied for such interim period and for such capacity for which LTA to changed region has not been effective.

- (e) For cases where no identified system augmentation was carried out to grant LTA, relinquishment charges shall be calculated at All India Minimum PoC rate.
- (f) Relinquishment on account of auxiliary consumption and overload capacity shall be allowed without any liability to pay the relinquishment charges.
- (g) In case there are applicants for LTA for the same corridor as being relinquished, the relinquishment charges shall be calculated for the number of years (period) till the effective date of LTA of incoming customer.
- (h) Relinquishing LTA customers shall deposit the charges calculated and billed by CTU as relinquishment charges, within a period of six months of raising the bill by CTU.

162. The Petition No. 92/MP/2015 along with IA is disposed of in terms of the above.

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

sd/-
(P.K.Pujari)
Chairperson