

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Coram: Dr. Pramod Deo, Chairperson
Shri V.S.Verma, Member
Shri M Deena Dayalan, Member**

**Date of Hearing: 28.11.2011
Date of Order : 9.2.2012**

Petition No. 289 of 2010(Suo Motu)

In the matter of:

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| 1. M/s LANCO Power Limited, Gurgaon | ... Respondent |
| 2. PowerGrid Corporation of India Limited | |
| 3. PTC India Limited |Proforma Respondents |

Petition No.290 of 2010 (Suo Motu)

And

In the matter of:

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| 1. Western Regional Load Despatch Centre, Mumbai |Respondent |
| 2. PowerGrid Corporation of India Limited | |
| 3. PTC India Limited |Proforma Respondents |

Interlocutory Application No.8/2011

And

In the matter of:

Madhya Pradesh Power Trading Company Limited ... **Intervening Applicant**

And

In the matter of:

Injection of power by LANCO Amarkantak Thermal Power Station into the regional grid as Unscheduled Interchange in contravention of Central Electricity Regulatory Commission(Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009.



Parties Present:

1. Shri Anil Sharma, LANCO
2. Shri Krishna Rao, LANCO
3. Shri Prabhat K. Shrivastava, LANCO
4. Shri Abhumanyu Gartia, WRLDC
5. Ms. S. Usha, WRLDC
6. Shri S. K. Sonee, CEO, POSOCO
7. Shri S. R. Narasimhan, POSOCO
8. Ms. Jyoti Prasad, NRLDC
9. Shri Y.K. Sehgal, PGCIL
10. Shri. S. Sen, PGCIL
11. Ms. Manju Gupta, PGCIL
12. Ms. Puja Priyadarshini, PTC
13. Shri Ravi Prakash, PTC
14. Shri G. Umopathy, Advocate, M.P. Trading Co.
15. Shri Rahul Kumar, Advocate, M.P. Trading Co.

Per Dr Pramod Deo, Chairperson and Shri V S Verma, Member

ORDER

M/s LANCO Power Limited, Gurgaon has established two units of 300 MW each in its Amarkantak Thermal Power Station (hereinafter “the generating station”) at Pathadi village, Korba District, in the State of Chhattisgarh. It came to the notice of the Commission that the first unit of the generating station was synchronized to the western regional grid on 1.5.2009 and achieved full load on 4.6.2009 and the second unit of the generating station was synchronized to the western regional grid on 22.2.2010. However without declaring commercial operation, both Units of the generating station were injecting power into the grid as Unscheduled Interchange on regular and continuous basis without seeking any form of open access. Since, there was a *prima facie* case of violation of Clauses (6) and (7) of Regulation 8 of Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access



in inter-State Transmission and related matters) Regulations, 2009 (hereinafter referred to as “Connectivity Regulations”) by LANCO Power Limited, the Commission in its order dated 12.11.2010 in Petition No.289 of 2010 had issued show cause notice to LANCO Power Limited as follows:

“3. Clauses (6) and (7) of Regulation 8 of 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 “Connectivity Regulations”) provide as under:

“(6) The grant of connectivity shall not entitle an applicant to interchange any power with the grid unless it obtains long-term access, medium-term open access or short term open access.

(7) A generating station, including captive generating plant which has been granted connectivity to the grid shall be allowed to undertake testing including full load testing by injecting its infirm power into the grid before being put into commercial operation, even before availing any type of open access, after obtaining permission of the concerned Regional Load Despatch Centre, which shall keep grid security in view while granting such permission. This infirm power from a generating station or a unit thereof, other than those based on non-conventional energy sources, the tariff of which is determined by the Commission, will be governed by the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009. The power injected into the grid from other generating stations as a result of this testing shall also be charged at UI rates.”

4. As per the above regulations, an entity is not entitled to interchange power with the grid unless it has obtained long-term access, medium-term access or short term open access. The only exception is that a generating station, without availing any type of access, may be allowed by the concerned Regional Load Despatch Centre to inject its infirm power into the grid during testing including full load testing and such power shall be charged at UI rates.

*5. In the present case, we notice that both units of the generating stations have been synchronized and achieved full load after testing. However, for the reasons best known to the respondent, the generating station has not been declared under commercial operation. The generating station does not appear to have applied for and obtained long term access, medium term access or short term open access as the power from the generating station even after synchronization is being injected into the grid as *Unscheduled Interchange*. Therefore, injection of power by the generating station into the grid on continuous and regular basis after synchronization of the units of the generating station without seeking open access is in clear violation of the Clauses (6) and (7) of Regulation 8 of Connectivity Regulations as quoted in para 3 above.*

6. We hereby direct M/s LANCO Power Limited to explain by 25.11.2010 the reasons for not seeking the open access for injecting power into the grid and to show cause as to



why action under section 142 of the Electricity Act, 2003 should not be taken against it for contravention of clauses (6) and (7) of Regulation 8 of the Connectivity Regulations.”

2. Western Regional Load Despatch Centre (WRLDC) which was responsible for allowing LANCO Power Limited to inject power into the grid as Unscheduled Interchange was also issued with a show cause notice in our order dated 12.11.2010 in Petition No.290 of 2010 (Suo Motu) as under:

“5. In the present case, we notice that both units of the generating stations have been synchronized and achieved full load after testing. However, the generating station has not been declared under commercial operation. The generating station has been injecting power into the grid without obtaining any type of access even after synchronization. As per clause (7) of the Regulation 8 of Connectivity Regulations, the concerned Regional Load Despatch Centre may allow injection of power into the grid during the testing including full load testing of the generating station keeping the grid security in view. By allowing injection of power by the generating station into the grid on continuous and regular basis even after synchronization and achieving full load of the units of the generating station without seeking open access, the respondent has failed to act within the parameters of Clause (7) of Regulation 8 of Connectivity Regulations.

6. We hereby direct Officer-in-charge of the Western Regional Load Despatch Centre to explain by 25.11.2010 the reasons for not preventing injection of power by the generating station into the grid without obtaining any type of access as per the relevant regulations of the Commission and to show cause as to why action under section 142 of the Electricity Act, 2003 should not be taken against him for contravention of clause (7) of Regulation 8 of the Connectivity Regulations.”

3. Both LANCO Power Limited (LPL) and Western Regional Load Despatch Centre (WRLDC) have filed their replies vide affidavits dated 25.11.2010 and 2.12.2010 respectively. The Commission sought some additional information from LPL vide its order dated 22.12.2010 and from WRLDC vide order dated 15.2.2011 which have been filed vide affidavits dated 31.12.2010 and 25.2.2011 respectively.



REPLY OF LANCO POWER LTD.

4. LPL in its affidavit dated 25.11.2010 has submitted the following in respect of 1st Unit of the generating station:

- (a) Long Term Open Access for injection of power from the 1st Unit of 300 MW of the generating station was applied for by PTC India Limited (PTC) which was granted by Power Grid Corporation of India Limited (PGCIL) on 8.11.2006. Subsequently, a Bulk Power Transmission Agreement (BPTA) was signed between PTC and PGCIL on 5.3.2007. Therefore, Long Term Open Access was obtained and BPTA was executed in accordance with Clause 11 of Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2004 (hereinafter referred to as "2004 Regulations").
- (b) Transmission charges for use of the system are being paid in accordance with the directions issued by Western Regional Load Despatch Centre (WRLDC) in its letter dated 22.12.2008. CTU has collected the WR transmission charges right from the date of synchronization i.e. with effect from 1.5.2009.
- (c) After commercial operation of the 1st Unit of the generating station with effect from 9.4.2010, sale of power is being done on short term basis through PTC and short term open access has been taken additionally in



accordance with the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008. At present, charges for Long Term Open Access as well as Short Term Open Access are paid to Power Grid in respect of 1st Unit.

As regards the 2nd Unit of the generating station, LPL has submitted as under:

- (a) Long Term Open Access for injection of power from 2nd Unit of 300 MW of the generating station was applied for by PTC which was approved by PGCIL vide the minutes of the 9th meeting of Western Region constituents held on 30.7.2007, subject to completion of dedicated transmission line, establishment of 765/400 kV WR Pooling Station near Sipat and certain other systems under WR system strengthening scheme. It was further decided in the said meeting that till the commissioning of the transmission schemes, the power transfer may be effected on short term basis depending upon transmission capacity availability. Subsequently, a Bulk Power Transmission Agreement (BPTA) was signed on 27.7.2009 between PTC and PGCIL in accordance with Regulation 11 of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2004.
- (b) 2nd Unit of the generating station has been synchronized as per the LPL's synchronization notice dated 12.1.2010 and permission for synchronization has been accorded by Western Regional Load Despatch Centre vide its

letter dated 19.1.2010. The testing of the project is ongoing and commercial operation date of 2nd Unit has not yet been achieved.

5. LPL has submitted that open access has been granted for both units of the generating station prior to synchronization and specific permissions have been obtained from WRLDC before injecting power into the Western Regional grid. Therefore, there is no violation of clauses (6) or (7) of Regulation 8 of Connectivity Regulations.

6. The Commission in its order dated 22.12.2010 directed LPL to clarify the following:

- (a) The reasons for selling power through STOA particularly when LPL has long term access to supply power to MPSEB and to place on record a copy of the PPA between MPSEB and PTC/LPL.
- (b) The reasons for the unusually long time of 11 months taken for achieving the commercial operation of the Unit-1 as against the normal practice of 6 months.
- (c) The reasons for not achieving the commercial operation of the Unit-2 and to place on record the copy of the PPA signed between LPL and PTC/HPGCL.
- (d) Details of MW injections in each time block of the day since the date of synchronization of Unit-1 (i.e. 1.5.2009) till the date of commercial operation (i.e. 9.4.2010) and similar details in case of Unit-2 from the date of synchronization on 22.2.2010 till date.

7. LPL in its affidavit dated 30.12.2010 has submitted para-wise replies to the above as under:

(a) LPL entered into a PPA with PTC on 11.5.2005 for sale of power from its 300 MW Unit 1. PTC signed a Power Sale Agreement on 30.5.2005 with erstwhile MPSEB for sale of 300 MW power. Long Term Open Access was obtained by PTC for supply of power to MPSEB. However, PPA was terminated by the Respondent on 14.3.2008 due to non-fulfillment of the conditions precedent stipulated in the PPA by PTC. Madhya Pradesh Power Trading Company Limited (MPPTCL), the successor of MPSEB, filed a writ petition before the High Court of Madhya Pradesh contesting the termination of the PPA. The case of MPPTCL finally culminated in SLP No.16101/2009 which was dismissed by the Supreme Court on 8.4.2010. As the long term PPA dated 11.5.2005 between LPL and PTC stood terminated, LPL has signed another agreement with PTC and has been selling power on Short Term basis since 9.4.2010.

MPPTCL filed a petition before MPERC for approval of Power Sale Agreement. MPERC directed LPL to submit to its jurisdiction for approval of generation tariff. On appeal, the Appellate Tribunal has set aside the order on the ground that MPERC has exceeded its jurisdiction by asking LPL to submit to its jurisdiction for the purpose of determination of generation tariff. Civil Appeals filed by MPPTCL and MPERC are pending before the Hon'ble Supreme Court. Further, PTC had initiated proceedings against LPL before MPERC against termination of PPA. Though MPERC granted a stay in

favour of PTC, the same has been vacated by the Appellate Tribunal in appeal. PTC has filed a civil appeal before the Hon'ble Supreme Court which in its order dated 11.12.2009 has refused to grant stay on the order of the Appellate Tribunal. LPL has submitted that it could not declare commercial operation since the PPA was terminated and its validity was in dispute. A copy each of the PPA between LPL and PTC and a copy of the PSA between PTC and MPPTCL have been placed on record.

- (b) As regards the delay in commercial operation of the 1st Unit, LPL has submitted that though the Unit was initially planned for synchronization in January 2009, the same got delayed due to problems experienced in the lubrication system of the turbine and consequent damage to the bearings which affected the testing and stabilization process. After rectification/replacement of the defective parts, the Unit was synchronized successfully on 1.5.2009. However as the turbine bearing temperature had been keeping high, the testing and stabilization process of the unit was affected badly. Furthermore, over loading of the 400 kV Korba-Sipat transmission line, through the LILO of which LTOA was granted to the Unit also impacted the respondent's ability to achieve commissioning. The problems were partially addressed when the Pathadi-Sipat-Raipur transmission line was modified as Pathadi-Raipur line. WRLDC also issued various fax messages and codes from time to time to regulate the generation in view of the overloading of the 400 kV Korba-Sipat transmission line. Moreover, the private railways siding meant for

transportation of coal from SECL mines to the power point was not commissioned till January 2010 which was crucial for ensuring adequate coal stock to operate the plant continuously at full load. Since the MPPTCL's appeal was pending before the Supreme Court and the PPA was under dispute, LPL could not declare the commercial operation in the absence of long term PPA. Only after MPPTCL appeal was finally disposed of by the Supreme Court, LPL commenced scheduling of power.

- (c) LPL signed a PPA with PTC on 19.10.2005 for sale of power from its 2nd 300 MW unit. PTC signed a Power Sale Agreement with Haryana Power Generation Corporation Limited. The unit was synchronised on 22.2.2010 and achieved full load on 25.3.2010. However due to technical problems and transmission constraints, LPL could not run the unit continuously at full load and declare commercial operation till date. The following reasons have been advanced by LPL for not being able to run the unit at full load:
- (i) Heavy steam leakage from the turbine side leading to resynchronization on 7.4.2010;
 - (ii) Tripping on 9.4.2010 and 10.4.2010 due to EH oil leakage from the control valve;
 - (iii) Shutdown from 26.5.2010 to 21.6.2010 due to problems in the coal mills, gear box and coal mill motor;
 - (iv) Time taken for rectification of the problems due to non-availability of expert Chinese engineers on account of change in VISA policy;

- (v) Heavy leakage of flue gas in the duct leading to the chimney due to faulty design at joint plane;
- (vi) Fire accident in coal mills and consequent failure of grinding rolls;
- (vii) Problems in ash handling system due to choking of ash evacuation from the ESP hoppers and problem in wetting heads;
- (viii) Delay in commissioning of dry ash handling system and water circulation system; and
- (ix) Overloading of transmission lines and high frequency conditions prevailing in the system and consequent grid security issues affecting operation of the unit continuously at full load and completion of testing and achieving stabilization.

(d) LPL has submitted that it is taking steps to complete the testing and commissioning process as quickly as possible. LPL has placed on record a copy of the PPA between LPL and PTC and a copy of the PSA between PTC and HPGCL. LPL has placed on record the details of MW injection in each time block in respect of 1st Unit from 1.5.2009 to 9.4.2010 and 2nd Unit from 22.2.2010 till 26.12.2010.

REPLY OF WESTERN REGIONAL LOAD DESPATCH CENTRE

8. WRLDC in its affidavit dated 2.12.2010 has submitted as under:

- (a) The issue of open access, whether long term, medium term or short term for evacuation of power from a generating station would arise in case there is an agreement between the two parties for transmission/conveyance of

electricity from one place to another place. If the generating companies including a captive generating plant are injecting power based on the regulations governing unscheduled interchange notified by the Commission, there will be no issue of taking long term, medium term or short term open access. If the frequency in the system allows a generating company including the captive generating plant to inject power into the system to support the grid frequency, they are entitled to inject power without the need to obtain any long-term, medium-term or short-term open access subject to curtailment of UI power by RLDCs in case of threat to the system security.

- (b) The present regulations of the Commission do not cast any duty or function on the WRLDC to terminate the connectivity given to a generating station at the time of synchronization, testing and commissioning. The scheduling of power by the generating company after testing and commissioning needs to be to an identified purchaser/end user and would require a long-term, medium-term or short-term open access to reach the place of delivery. So long as there exists a long-term, medium-term or short-term open access for such conveyance of electricity, irrespective of whoever has applied for such access, the generating company can schedule power for dispatch.
- (c) WRLDC being a statutory body in charge of operation of the grid is not expected to get into commercial disputes between the parties, namely

whether the generator is or is not fulfilling the obligations under the Power Purchase Agreement.

9. As regards 1st Unit, WRLDC has submitted that it was synchronized on 1.5.2009 and PTC is sharing the Western Region transmission charges proportionate to 300 MW of their LTOA granted with effect from 1.5.2009. WRLDC has placed on record the Regional Energy Account (REA) issued by Western Regional Power Committee for sharing of Western Region transmission charges with effect from 1.5.2009. 1st Unit of the generating station was declared under commercial operation with effect from 9.4.2010 and scheduling under short term open access has been started by WRLDC on receipt of application from LPL. From 1.5.2009 till 8.4.2010, WRLDC did not receive any request from LPL for scheduling of power reportedly due to pending disputes before MPERC, MP High Court, APTEL and Supreme Court. From 1.5.2009, PTC continued to pay the transmission charges in line with the REA issued by Western Regional Power Committee for the 300 MW LTA granted by CTU in addition to the STOA charges as applicable. WRLDC has also given approval to LPL to sell upto 273 MW power at the power exchange from 15.6.2010 to 15.12.2010. For STOA and PX transactions, payments for transmission charges are being made by LPL to nodal RLDC/NLDC as per the regulations of the Commission in addition to the charges for LTA being paid by PTC.

10. As regards the 2nd Unit of the generating station, WRLDC has submitted that as per the BPTA signed between PTC and POWERGRID on 27.7.2009, the date of commencement of open access is the date of commissioning of the unit and availability of the identified transmission strengthening scheme. Till the commissioning of the

transmission scheme, PTC was allowed by CTU to transfer power to HPGCL on short-term basis depending upon the availability of transfer capability. Unit-II was synchronized on 22.2.2010 and has not yet been declared under commercial operation as required under the PPA with PTC and the PTC's PSA with HPGCL. Considering the delay in commissioning of schedule of WR pooling station near Sipat, a System Protection Scheme (SPS) has been put in operation progressively for both units of LPL starting from 1.9.2010 to ensure grid security as well as evacuation of power from both units of LPL. It has been further stated that LPL has not come forward with any STOA request for sale of power due to which generation could not be scheduled by WRLDC.

11. WRLDC has submitted that as per the records available with it, PTC has taken long term access for 600 MW for both the units of LPL from CTU and BPTAs for the same is in place. BPTA for 2nd Unit of the generating station is still not operational due to non-commissioning of the strengthening scheme. It has further submitted that LTAs granted to PTC for 600 MW continues to remain valid till the expiry of the LTAs. Relying on para 5 of the Statement of Reasons of the Connectivity Regulations and para 5 of the Explanatory Memorandum to the draft Central Electricity Regulatory Commission (Unscheduled Interchange Charges and Related Matters) (Amendment) Regulations, 2010, WRLDC has submitted that there are no hard limits on UI volumes on underdrawals or over injection in the present power deficit condition. As per the understanding of WRLDC there is no bar on such injections as UI provided that there is no danger to system security. As regards the declaration of commercial operation of both units of the generating station, WRLDC has submitted that no specific conditions/targets are given for declaration of commercial operation of the stations even

whose tariff is determined by the Commission. Since the tariff of the generating station of LPL is not being determined by the Commission, the date of commercial operation will be decided as per the provisions of the PPA between the buyer and seller. The onus is on LPL to declare commercial operation in terms of PPA and WRLDC has no role in this regard.

12. WRLDC has further submitted that in terms of Clause 6.4.12 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 (hereinafter "IEGC"), irrespective of the transmission access granted to any entity, UI has to be curtailed first in case of any threat to the system security. In case of Lanco Pathadi, whenever instances of heavy loading on 400 kV Bhilai-Seoni and 400 kV Bhilai-Koradi were observed WRLDC took effective action to curtail the UI injection of LPL. WRLDC has also placed on record the copies of the messages issued from its control room to curtail the UI injection from the generating station of LPL. WRLDC has also submitted that in terms of Regulation 8(6) of Connectivity Regulations, the obligation of not injecting power into the system except under long term, medium term or short term open access is of the generating company. The connectivity given cannot be taken away by WRLDC on the ground that long term, medium term or short term open access has come to an end at any point of time or does not exist. The connectivity given continues to exist and can be taken away only by an order of the appropriate Commission or appropriate court. The functions of WRLDC do not include the power to disconnect a generating station on the basis that it does not have open access or it is continuing to inject power without declaring commercial operation.

13. WRLDC has submitted that for the above reasons, there is no violation of Clauses (6) and (7) of Regulation 8 of the Connectivity Regulations on the part of the WRLDC.

14. The Commission directed WRLDC in its order dated 15.2.2011 in Petition No. 290/2010 to cite the relevant regulation or legal provision under which WRLDC had allowed injection of infirm power by LPL as unscheduled interchange and the details of MW injection in each time block of the day from the date of synchronization till the date of commercial operation. WRLDC in its reply filed vide affidavit dated 25.2.2011 has submitted that Regulations 19 and 35 of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 were amended on 7.1.2008 to provide that infirm power shall be accounted for as unscheduled interchange. Although the scope of the said regulations cover only those generating stations whose tariff is regulated by the Commission, a reading of the Statement of Reasons dated 7.1.2008 reveals that the Commission intended the application of the regulation for all other power stations. It has been further submitted that by its very nature, the UI mechanism operates outside the scheduling regulations as it is dependent on the grid frequency and is an invitation to the generator to support grid stability. There seems to be no reason as to why such UI mechanism should be directly or indirectly related to the existence of long term or short term contracts. Even though there is no long term or short term contract, the generator should be able to inject power to support the grid in case of low frequency. As regards the rates of UI charges, it has been submitted that if the Commission comes to the conclusion that UI rate is higher and entities are taking advantage of the same, modification to the rates should be considered. Moreover, if the Commission intends that all generators should notify the date of commercial operation to an authority such as

RLDC or NLDC, it may be specifically provided in the regulations. WRLDC has further submitted that there is an unresolved issue of the duration for which infirm power can be injected without any access. Connectivity Regulations or any other regulations do not specify any outer limit for testing of unit and generating power on infirm basis subject to concurrence of RLDCs. On the other hand, Clause 6.4.10 of IEGC provides that the inter-State generating stations may be allowed to generate beyond the given schedule under deficit conditions as long as such deviations do not cause system parameters to deteriorate beyond permissible limits and do not lead to unacceptable line loading. It has been submitted that WRLDC has been operating on this principle. WRLDC has further submitted that in the absence of clear-cut provisions, the gaps in the regulations with respect to infirm power at UI rates was addressed by WRLDC in its best judgment through a harmonious reading of all the relevant regulations and Statement of Reasons available at that time. WRLDC has also placed on record the details of MW injection in each time block of the day in respect of Unit-I from 1.5.2009 and for Unit-II from 22.2.2010 till 25.2.2011.

SUBMISSIONS DURING THE HEARING

15. Shri Shanti Bhushan, learned Senior Counsel appearing for LPL during the hearing on 17.3.2011 submitted the following:

- (a) Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter “2009 tariff regulations”) defines infirm power as electricity injected into the grid prior to commercial operation of a unit or block of the generating station. Regulation 11 of 2009 regulations provides that supply of infirm power shall be accounted as Unscheduled

Interchange and paid for from the regional or State UI pool account at applicable frequency-linked UI rate. The revenue earned from the sale of infirm power after accounting for the fuel expenses shall be applied for reduction in capital cost. Therefore, there is an in-built disincentive in the regulations not to prolong the injection of infirm power as it will reduce the capital cost and consequently the tariff. In reply to a query of the Commission that the 2009 tariff regulations are applicable in case of the generating stations whose tariff is determined by the Central Commission and not in case of the LPL's generating station which is a merchant plant, learned senior counsel submitted that as per the PPA between PTC and LPL entered on 11.5.2005, tariff of the generating station was to be determined by the Central Commission as it was not clear to the parties at that point of time that Central Commission would not have jurisdiction to determine the tariff when the power is supplied to a trader. The law was laid down by the Appellate Tribunal for Electricity (the Tribunal) in Petition No.1/2005 and was reiterated by the Tribunal in its order dated 21.10.2008 in Appeal No.71/2008 in a case involving LPL which provided that the appropriate Commission would not have jurisdiction to determine tariff when power is supplied by a generating company to a trader.

- (b) As per Regulation 8(6) of the Connectivity Regulations, a generating station including a captive generating plant which has been granted connectivity is permitted to inject infirm power with the permission of RLDC during testing who shall keep the grid security in view. In this case, power



has been injected with the permission of the WRLDC. There is no violation of the regulations. Unit 1 has already declared commercial operation from 9.4.2010 and Unit 2 has not still been declared under commercial operation for the reasons given in LPL's reply dated 30.12.2010. The learned senior counsel submitted that the UI charges would be reduced from the capital cost as and when the respondent's generating station supplies power to distribution companies in future.

- (c) Referring to para 1.7 of the Minutes of the 9th meeting of Western Region constituents held on 30.7.2007, the learned counsel submitted that long term open access for transfer of 300 MW power from Pathadi-II was granted subject to completion of proposed 400 kV Pathadi-WR pooling station near Sipat D/c (Quad) line and removal of LILO arrangement of 400 kV Korba STPS-Sipat at Pathadi and restoration of the line to its original configuration. Till that time, power transfer was to be effected on short term basis depending upon transmission capacity availability. Accordingly, the LPL is injecting power on availing short term open access.
- (d) Right to declare the commercial operation is given to the generator without any restriction and the generator is required to ensure that all systems are in place before going for commercial operation. Therefore, WRLDC has no authority to determine whether the units of the generating station are fit for declaration of commercial operation.

- (e) There is no violation of any regulation of the Commission by LPL and therefore, the show cause notice under section 142 of the Act against LPL be discharged.

16. The representative of WRLDC in his submission reiterated the points made in the replies filed vide its affidavits dated 2.12.2010 and 25.2.2011.

17. The Commission directed WRLDC in the Record of Proceedings dated 17.3.2011 to submit the following information:

- (a) Details of UI energy injected and UI earned by M/s LPL since synchronization of Unit-I and Unit-II till date.
- (b) Copies of messages received from LPL seeking permission to inject power for testing their units from time to time.

18. WRLDC has submitted the required information vide its affidavit dated 11.4.2011. In the said affidavit WRLDC has also raised a number of issues for regulatory clarity. It has been submitted that WRLDC to the best of its ability and understanding has taken utmost care to ensure that grid security is not hampered on account of injections by generators through the UI mechanism. Whenever there was any congestion in the network, LPL has been directed to reduce generation and such instructions have been duly complied with by the generator. WRLDC has also issued letters dated 23.2.2011 and 8.3.2011 to LPL directing them to schedule the power in line with clauses 6 and 7 of Regulation 8 of Connectivity Regulations. However, LPL has responded to the letters by

stating that the Commission is seized with the matter in the suo-motu proceedings and has expressed its reservation about WRLDC's direction to stop injection of power from Unit-II of the generating station. WRLDC has submitted that the actions taken by it have been after exercising due diligence and any perceived inconsistency with any regulation is on account of interplay between twelve relevant regulations affecting system operation. It has been prayed that the show cause notice issued to WRLDC may be discharged.

19. After consideration of the submissions of LPL and WRLDC, the Commission noticed that Regulation 8(7) of the Connectivity Regulations allows a unit of the generating station to inject power into the grid as unscheduled interchange during testing including full load testing if it has been granted connectivity. 1st Unit of the generating station was injecting power into the grid under UI from 1.5.2009 till 9.4.2010 and 2nd Unit of the generating station was injecting power into the grid under UI from 19.1.2010. Under the provisions of Regulation 4.4 of the Indian Electricity Grid Code, 2006, an agency seeking connectivity to ISGS is required to apply to CTU with the requisite details for connectivity and after compliance of requirements and procedure set out by the CTU in the offer of connection, the CTU is required to notify that the applicant agency can be connected to the grid. With effect from 1.1.2010, the connectivity shall be granted by the CTU as the nodal agency as per the provisions of the Regulation 8 of Connectivity Regulations. Since no document was placed on record by LPL and/or WRLDC regarding grant of connectivity to 1st Unit and 2nd Unit of the generating station under the relevant regulations, the Commission decided to implead CTU as a necessary party to the proceedings being the nodal agency for grant of

connectivity under the Indian Electricity Grid Code, 2006 and the Connectivity Regulations. Similarly, the Commission noticed from the records that PTC had been paying the transmission charges from the date of synchronization of both the units to the grid despite the fact that the PPA between LPL and PTC in respect of 1st Unit was terminated by LPL on 14.3.2008. Since the LTOAs were granted to PTC, we decided to implead PTC as a necessary party in the proceeding in order to understand the circumstances under which power was being injected into the grid under UI despite the existence of LTOAs. PTC was directed in our order dated 9.11.2011 to file its submission on the status of the LTOAs granted to it by the CTU in respect of both units of the generating station. CTU was also directed in the same order to submit the following documents/clarifications:

- (a) All relevant documents with regard to the applications of LPL for connectivity in respect of both units of the generating station and the final disposal of the said application.
- (b) A brief on the procedure and practice being followed by CTU for grant of connectivity and long term access under the earlier and current regulations.
- (c) Views of the CTU on the following based on the provisions of the various regulations of the Commission and the prevailing practice as to:
 - (i) Whether LTOA granted by CTU to PTC can be treated as the LTOA for LPL being the generating company owning the said generating station;
 - (ii) Whether LPL had any valid LTOA from 1.5.2009 till 22.2.2010 in respect of Unit 1 and from 19.1.2010 in respect of Unit 2 of the

generating station during which LPL injected power into the grid under the UI; and

(iii) Whether the contention of WRLDC in its reply dated 25.2.2011 that prior to 1.1.2010 " *during that period (pre- 1st January 2010), LTOA implied connectivity also (as there were no separate regulations for connectivity), LANCO Unit 1 was allowed to get connected to the grid and inject infirm power*", is correct?

20. CTU and PTC have filed their replies vide affidavits dated 21.11.2011. CTU has made the following submissions in response to our queries above:

(a) As regards the applications of LPL for connectivity, it has been submitted that Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2004 (hereinafter "Open Access Regulations") did not have separate provisions for connectivity and LTOA. PTC India had applied for LTOA for 1st Unit and 2nd Unit of LPL vide its letters dated 22.12.2005 and 20.3.2007 which were granted vide letters dated 8.11.2006 and 16.6.2008 respectively in consultation with CEA and WR constituents and after following the procedure. As regards connectivity, it has been submitted that 1st unit was synchronized on 1.5.2009 and 2nd was synchronized on 20.2.2010. The interconnection matter was deliberated between CTU and LPL and 1st Unit was connected through the LILO of 400 kV Korba-SIPAT S/c at LPL generation switchyard as part of LTOA and 2nd unit through bus extension of 1st Unit as part of interim arrangement of interconnection. Subsequent to the notification of

Connectivity Regulation, LPL has submitted the requisite details for connection in format CON-4 for signing of the connection agreement by letter dated 2.6.2010. CTU after processing the details has issued format CON-V vide letter dated 24.11.2010. Signing of the connection agreement between LPL and CTU is under process.

(b) As regards the procedure followed for grant of connectivity and LTOA, it has been submitted that under Open Access Regulations, CTU was authorized to grant long term Open Access for inter-State transmission system. On receiving application for LTOA from an applicant, CTU used to carry out system studies to ascertain whether LTOA can be granted without any additional system strengthening in accordance with transmission planning criteria stipulated in the Grid Code. Where LTOA could be granted without system strengthening, the same was communicated to the applicant after which the applicant was required to execute a Bulk Power Transmission Agreement (BPTA) as per Regulation 11 of Open Access Regulations for sharing of applicable transmission charges of CTU and concerned STU/SEB/Transmission licensee including inter-regional charges. LTOA came into force after signing of the BPTA and fulfilment of the conditions specified in the LTOA intimation letter. Where system strengthening is required for grant of LTOA, the CTU carried out the studies for additional transmission elements. Based on the system studies, CTU evolved the most optimal transmission system strengthening requirement which was discussed and finalized with CEA and the constituents in the LTOA meeting called by CTU. On the basis of the discussions during the LTOA meeting, CTU used to issue

intimation letter for allowing LTOA provided all terms and conditions were acceptable to the applicant. Thereafter the applicant used to sign the BPTA for paying the transmission charges of CTU/STU/other transmission licensees for the dedicated transmission systems and transmission charges of the concerned region and applicable inter-regional charges. When the unit of the generating station for which LTOA was granted, was ready for testing/synchronization, the generator/the LTOA customer would approach the transmission licensee where he wanted to connect as per the LTOA intimation. After obtaining permission from concerned RLDC to connect to the system and fulfilling all conditions of the Grid Code, the generators were allowed to be connected to the grid.

Under the Connectivity Regulations, the CTU was allowed to grant connectivity and long term access for inter-State transmission system. Detailed Procedure prepared by the CTU in this regard has been approved by the Commission which has come into force from 1.1.2010. A generating station including a captive generating plant with installed capacity of 250 MW and above and a bulk consumer having load of 100 MW and above are eligible to apply for connectivity. On receiving the completed applications for connectivity, CTU carries out necessary inter-connection studies as specified in the Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007. Based on the studies, CTU evolves connectivity arrangement for the applicant which is discussed and finalized with CEA and the constituents in the Connectivity/MTOA/LTA meeting called by the CTU and on the basis of the discussion held in the said meetings, CTU issues intimation for grant of connectivity provided all terms and conditions are fulfilled. Thereafter the



applicant has to furnish certain additional information which is processed by the CTU and a further intimation is given with details of the connections to be carried out. Thereafter, connection agreement is signed between CTU and the applicant prior to physical inter-connection. A copy of the said connection agreement is provided to concerned RLDC/SLDC.

CTU has further submitted that under the Connectivity Regulations, generating stations including a captive generating plant, consumers, electricity traders or distribution licensees are eligible to apply for LTA which is applicable for 12 to 25 years. After receipt of the complete application for LTA in the prescribed format in accordance with the approved procedure accompanied with applicable application fee and bank guarantee, CTU processes the application. CTU carries out system studies to ascertain the transmission system required in accordance with the transmission planning criteria to effect power transfer as per the LTA application. Based on the system studies, CTU evolves most optimal system strengthening requirement which is discussed and finalized with CEA and consequently in LTA meeting called by CTU. Based on the discussions, CTU issues intimation of long term access provided all terms and conditions are fulfilled by the applicant. Based on the intimation, the applicant signs the Transmission Service Agreement for paying the transmission charges of CTU/STU/SEB/other transmission licensees for dedicated transmission system and for sharing of the applicable transmission charges of the concerned region including applicable inter-regional transmission charges as per the regulations.

(c) With regard to the views of CTU as to whether LTOA granted to PTC can be treated as LTOA for LPL, it has been submitted that as per the Open Access Regulations and Connectivity Regulations, a long term customer shall not transfer his rights and obligations specified in the BPTA without prior approval of the Commission. Accordingly, LTOA granted by CTU to PTC for 1st and 2nd Units for power transfer on LTA to its beneficiaries implies that PTC is the long term customer.

(d) In response to the query whether LPL had valid LTOA in respect of both units during which it had injected power into the grid under UI, CTU has clarified that LTOA was granted to PTC from the date of commissioning of the generation project and availability of the transmission strengthening. For the period from 1.5.2009 till 22.2.2010 in respect of 1st Unit, LTOA conditions were fulfilled and therefore, LTOA for transfer of power to MPSEB for 1st Unit was valid. As regards 2nd Unit, since dedicated transmission system and other strengthening schemes are not available, LTOA for 2nd Unit is not valid.

(e) CTU has agreed with the contention of WRLDC that prior to 1.1.2010 i.e. effective date of commencement of Connectivity Regulations, there was no separate provision for connectivity and long term access.

21. PTC in its reply has submitted the status of the LTOA in paras 5 & 9 of its affidavit. Briefly, PTC has submitted that for sale of power from 1st Unit of the generating station LTOA was granted by CTU to PTC on 8.11.2006 and for 2nd Unit on 30.7.2007.

BPTA was signed by PTC with CTU on 5.3.2007 in respect of 1st Unit and on 29.7.2009 in respect of 2nd Unit of the generating station. Therefore, Long Term Access has been obtained by PTC in accordance with Regulation 11 of Open Access Regulations. PTC has further submitted that Long Term Access has been granted for both units of the generating station prior to synchronization. LTOA for 1st unit has been made operational w.e.f. from date of synchronization and LTOA for 2nd Unit would become operational after completion of the system specified in the BPTA. PTC has confirmed that the transmission charges for use of the system of 1st Unit is being paid in accordance with the BPTA. Since, sale of power is being done on short term basis through PTC after commercial operation of 1st Unit, short term open access charges are being paid separately in accordance with the 2008 Open Access Regulations.

22. During the hearing of the Petition on 28.11.2011, the Ld. Counsel for LPL submitted that the reply filed by CTU in its affidavit dated 21.11.2011 is broadly in line with the affidavit earlier filed by LPL. He clarified that as regards 1st unit of the generating station, there was LTOA in place and as regards 2nd Unit, long term access was approved subject to certain conditions, which are yet to be fulfilled. Power is now being evacuated under short term open access. The Ld. Counsel for PTC submitted that it has filed the status of LTOAs in respect of both units of the LPL and in that connection, he referred to Paras 5 to 9 of its affidavit dated 21.11.2011.

23. We sought clarification on the following issues from the representative of CTU during the hearing:

- (a) Why the connectivity has not been granted in respect of the units of the generating station?
- (b) Whether connectivity was given to anyone separately prior to coming into force of Connectivity Regulations?
- (c) Whether any generator can get connected to the grid, if connectivity is not granted?
- (d) What is the deemed date of connectivity in case of the units of the generation station of LANCO?
- (e) Whether there are generators who are similarly placed as LANCO i.e. they do not have connectivity to the grid?
- (f) Is the LTOA of LANCO still valid after termination of the PPA with PTC? Can it be said that the units of the generating stations of LANCO have got the LTOA?

24. The representative of CTU submitted the following by way of clarification to the above queries:-

- (a) The application for LTOA in respect of 1st Unit was made by LPL on 22.12.2005 in accordance with the Open Access Regulations. At that time there were no separate provisions for LTOA and connectivity and w.e.f. 1.1.2010, the Connectivity Regulations provided for connectivity and LTOA separately.

- (b) Connectivity was not given separately to any generator prior to 1.1.2010.
- (c) LTOAs were being granted subject to certain conditions. These conditions were considered as connectivity. However, the issue of formal connectivity came with the Connectivity Regulations. The formal connection agreement was approved during April 2010. After that CON-V was issued to LPL on 24.11.2010.
- (d) Formal connectivity in respect of the generating station will be considered as November, 2010, when the CON-V was issued. However, the date of synchronization of the 1st Unit from 1.5.2009 will be considered as the deemed date of connectivity.
- (e) All generators have signed the Connection Agreement. In case of the generating station of LPL, CON-V has been issued and formal connection agreement is pending on account of certain information sought from the generator.
- (f) In so far as CTU is concerned, the LTOA has been granted to PTC and the said LTOA cannot be transferred from PTC to LANCO without the approval of the Commission. In any case, no such request has been received from PTC for transfer of LTOA to LANCO. Therefore, LANCO cannot be said to have the LTOA.

25. The representative of WRLDC submitted that prior to 2010, there was no concept of connectivity and those generators who had LTOA were granted connectivity. She



further clarified that in respect of those generating stations who were already connected to the grid, WRLDC is now insisting for connectivity. With reference to our query as to how and under what terms and conditions, LPL was admitted as an UI Member, the representative of WRLDC clarified that LANCO is connected with the CTU and in accordance with the control area jurisdiction, WRLDC has admitted LANCO as an UI Member.

26. Shri S K Sonee, CEO POSOCO submitted that connectivity agreement is concerned with the safety and security of the plant. He submitted that all generating stations who have got deemed connectivity prior to 1.1.2010 should be directed to sign the connectivity agreement by a cut off date.

ANALYSIS OF THE CASE

27. On perusal of the documents on record and after hearing the submissions of the parties, we are of the view that the following issues need consideration of the Commission before proceeding to the question of sustainability of charges against LPL and WRLDC as framed in our orders dated 22.11.2010:

- (1) Jurisdiction;
- (2) Connectivity;
- (3) Open Access;
- (4) Injection of power as Unscheduled Interchange

Jurisdiction of the Commission

28. The learned senior counsel for LPL had submitted during the hearing on 23.3.2010 that the generating station being a merchant plant and having a PPA with a trading company is not amenable to the jurisdiction of the Central Commission or the

State Commissions in the matter of determination of tariff. We have already considered this objection in our order dated 9.11.2011 which is extracted as under:

"3. The learned senior counsel for LPL had submitted during the hearing that the generating station being a merchant plant and having a PPA with a trading company is not amenable to the jurisdiction of the Central Commission or the State Commissions in the matter of determination of tariff. We have considered this objection regarding our jurisdiction. We are of the view that the present proceeding has been initiated under section 142 of the Electricity Act, 2003 for the charges of violation of the provisions of the Connectivity Regulations. It is clarified that the Connectivity Regulations apply to every generating station in the matter of grant of connectivity, long term access and medium term open access to Inter-State Transmission System. In fact, the term "applicant" in Regulation 2(1)(b) has been defined to mean" (i) a generating station of installed capacity of 250 MW and above, including captive generating plant of exportable capacity of 250 MW and above or bulk consumer in respect of grant of connectivity and (ii) a generating station including a capital generating plant, a consumer, an electricity trader or a distribution licensee, in respect of long term access or medium term open access, as the case may be". Since the merchant power plant is a generating station and in the absence anything to the contrary in the Connectivity Regulations, the provisions of Connectivity Regulations are applicable to the LPL. Moreover, the provisions of Grid Code and UI regulations which deal with injection of power into the ISTS are applicable to all generating stations irrespective of whether their tariff is determined by the Commission or not. The Commission has been vested with the power under section 142 of the Act to take action for contravention of the provisions of the Act or regulations made thereunder. Accordingly, the Commission has initiated the present proceedings against LPL to look into the alleged violations of the provisions of Connectivity Regulations. We reject the contention of the learned senior counsel for LPL that the generating station is not amenable to the jurisdiction of the Commission simply because its tariff is not being determined by the Commission."

Connectivity

29. Clauses (6) and (7) of Regulation 8 of the Connectivity Regulations provides as follows:-

"(6) The grant of connectivity shall not entitle an applicant to interchange any power with the grid unless it obtains long-term access, medium-term open access or short term open access.

(7) A generating station, including captive generating plant which has been granted connectivity to the grid shall be allowed to undertake testing including full load testing by injecting its infirm power into the grid before being put into commercial operation, even before availing any type of open access, after obtaining permission of the concerned Regional Load Despatch Centre, which shall keep grid security in view while granting such permission. This infirm power from a generating station or a unit thereof, other than those based on non-conventional energy sources, the tariff of which is determined by the Commission, will be governed by the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009. The power injected into the grid from other generating stations as a result of this testing shall also be charged at UI rates."

30. A reading of the above clauses would make it clear that connectivity to the grid is the prime requirement for injecting power under long term, medium term and short term open access under the Connectivity Regulations. Even in the absence of any form of access, a generator is allowed to inject infirm power into the grid with the permission of the RLDC during the period of testing including full load testing only if it has been granted connectivity. The power injected as infirm power by a generating station whose tariff is being determined by the Commission shall be governed as per the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009. However, Regulation 8(7) of Connectivity Regulations provides that the power injected by other generating stations shall be charged at UI rates. Therefore, a generating station like LANCO is permitted to inject power into the grid during testing including full load testing for which it shall be paid at UI rates. This has been provided to ensure that the power generated by such generating stations during testing is available to the grid to maintain grid frequency.

31. As already noted, connectivity is a prime requirement for a generator to inject power into the grid under any form of access or as infirm power during the testing. Clauses (1) to (5) of the Connectivity Regulations provide for the procedure for grant of connectivity. An applicant has been defined in Regulation 2(b)(i)(a) as “a generating station of installed capacity of 250 MW and above, including a captive generating plant of exportable capacity of 250 MW and above or a bulk consumer in respect of grant of connectivity”. Regulation 2(1)(c) provides that ‘Bulk consumer’ means in respect of grant of connectivity, any consumer who intends to avail supply of a minimum load of 100 MW from the inter-State Transmission System. Hence, both LPL and PTC are within the

scope of the term “applicant” because the installed capacity and the minimum load exceed the thresholds specified above.

32. It is an admitted fact that 1st Unit of the generating station of LPL has injected power into the grid under the UI with the permission of WRLDC with effect from 1.5.2009 till 9.4.2010. The 2nd Unit of the generating station has injected power into the grid with effect from 22.2.2010. Since connectivity is a requirement under Connectivity Regulations, both the units are required to have connectivity prior to injection into the grid. It is the case of LPL that LTOAs have been granted to both units of the generating station prior to 1.1.2010 i.e. the date when Connectivity Regulations came into force. Since there was no requirement of separate connectivity prior to 1.1.2010, it was not required to obtain connectivity separately. WRLDC in its submission has stated that prior to 1.1.2010, LTOA included connectivity. CTU in its reply and in response to our query has clarified that under 2004 Open Access Regulations, LTOAs were granted with certain conditions and these conditions were considered as connectivity as LTOA were operationalised subject to fulfillment of these conditions. CTU has further confirmed that the date of synchronization of a unit would be considered as deemed date of connectivity. 1st Unit of the generating station which was synchronized from 1.5.2009 shall be deemed to have been granted connectivity from that date. By the same principle, 2nd Unit of the generating station which was synchronized with effect from 19.1.2010 shall be deemed to have been granted connectivity with effect from that date. About the general principle followed for grant of connectivity prior to 1.1.2010, CTU has explained the following in its affidavit dated 21.11.2011:

“ When the unit of the generating station for which LTOA was granted, was ready for testing / synchronization, the generator/the LTOA customer would approach

the transmission licensee where he was to connect as per the LTOA intimation. After obtaining permission from concerned RLDC to connect to the system and fulfilling all conditions of the Grid Code the generator was allowed to be connected to the Grid Code.”

Going by the practice followed by the CTU in respect of all generators in the matter of grant of connectivity prior to 1.1.2010, we are of the view that since LTOAs were obtained by PTC for injection of power from both the units of the generating stations, the units are deemed to have been granted connectivity and are not required to obtain connectivity separately before injecting power into the grid during testing including full load testing.

33. The representative of CTU submitted during the hearing that the Connectivity Agreement as per the requirement of the Connectivity Regulations was approved in April, 2010 and CTU has taken steps to get the Connectivity Agreements signed by all generators. Shri S K Sonee, CEO, POSOCO has submitted that since connectivity is concerned with safety and security of the grid, the Commission may specify a cut off date by which all generators including those who have got deemed connectivity should sign the Connectivity Agreements. We find merit in the submission of Shri Sonee. We direct the CTU to ensure that all generators sign the Connectivity Agreements as per the formats prescribed in the Detailed Procedure by 31.3.2012 and a compliance report to that effect is filed with the Commission by 15.4.2012. All RLDCs are directed that with effect from 1.4.2012, they should satisfy themselves that all generators within their control area jurisdiction have signed the connectivity agreement and any instance of non-compliance shall be brought to the notice of the Commission.



Open Access

34. The charge against LPL in the show cause notice is as under:

“5. In the present case, we notice that both units of the generating stations have been synchronized and achieved full load after testing. However, for the reasons best known to the respondent, the generating station has not been declared under commercial operation. The generating station does not appear to have applied for and obtained long term access, medium term access or short term open access as the power from the generating station even after synchronization is being injected into the grid as Unscheduled Interchange. Therefore, injection of power by the generating station into the grid on continuous and regular basis after synchronization of the units of the generating station without seeking open access is in clear violation of the Clauses (6) and (7) of Regulation 8 of Connectivity Regulations as quoted in para 3 above.”

35. It would emerge from the above that LPL has been charged with injection of power into the grid on continuous and regular basis without any form of open access. LPL has submitted the following with regard to the open access regarding 1st Unit of the generating station.

“Long Term Open Access for injection of power from 1st Unit of 300 MW of the project was applied for by PTC India Limited (“PTC”). Long Term Open Access was granted by the Power Grid Corporation of India Limited (“PGCIL”) on 8th November 2006 and subsequently a Bulk Power Transmission Agreement was signed on 5th March 2007 between PTC and PGCIL (BPTA). Therefore, it may be seen that Long Term Open Access was obtained in accordance with Clause 11 of Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2004.”

As regards 2nd Unit of the generating station, LPL has submitted as under:

“Long Term Open Access for injection of power from 2nd Unit of 300 MW of the generating station was applied for by PTC which was approved by PGCIL vide the minutes of the 9th meeting of Western Region constituents held on 30.7.2007, subject to completion of dedicated transmission line, establishment of 765/400 kV WR Pooling Station near Sipat and certain other systems under WR system strengthening scheme. It was further decided in the said meeting that till the commissioning of the transmission schemes, the power transfer may be effected on short term basis depending upon transmission capacity availability. Subsequently, a Bulk Power Transmission Agreement (BPTA) was signed on 27.7.2009 between PTC and PGCIL in accordance with Regulation 11 of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2004.”

LPL has submitted that long term open access has been granted for both the units of the generating stations prior to synchronization and specific permission has been obtained from WRLDC before injecting power into the grid.

36. PTC has submitted that LTOAs have been obtained by PTC for both units of the generating station prior to synchronization. LTOA for 1st unit has been made operational w.e.f. from date of synchronization and LTOA for 2nd Unit would become operational after completion of the system specified in the BPTA. CTU in its reply has submitted that LTOA granted to PTC for the 1st and 2nd Units of the generating stations for transfer of power implies that PTC is the long term customer. It has been further clarified that as per Open Access Regulations and Connectivity Regulations, a long term customer cannot transfer its rights and obligations specified in the BPTA without the approval of the Commission. During the hearing, the representative of CTU confirmed that LPL does not have the LTOAs and PTC has the LTOA being the long term customer. We have gone through the documents on record. We notice that PTC has been granted LTOAs for both units of the generating station and PTC has also signed the BPTAs with CTU to pay the transmission charges including inter-regional charges. Though the PPA between LPL and PTC and consequently the PSA between PTC and MPPTCL have been terminated in respect of supply of power from 1st Unit of the generating station, we find that PTC continues to hold the LTOA and pay the transmission charges. PTC has not taken any action to transfer or relinquish the LTOA. Regulation 18 of the Connectivity Regulations provides for relinquishment of the access right by a long term customer. However, there is no provision in the Connectivity Regulations which provides for cancellation of the LTOA. From the above analysis, it emerges that LPL does not have LTOAs in respect of the units of the generating station.

37. On perusal of the LTOAs and BPTAs in respect of both units of the generating station, we find that long term open access would be operational after commercial operation of the units and constructions of the associated transmission systems. Since both the units were injecting power into the grid after synchronization without declaring commercial operation, the long term open access cannot be operationalised. Therefore, existence of LTOAs for evacuation of power from the generating station has no relevance before the commercial operation of the units of the generating station.

Injection of Power as Unscheduled Interchange

38. The charge against LPL is that both units of the generating station have been injecting power into the grid during a particular period on continuous and regular basis after synchronization without seeking any form of access. As we have already noticed, LTOAs can be operationalised after commercial operation of the units of the generating station. LPL has not sought any medium term or short term open access during the period. As per Regulation 8(7) of Connectivity Regulations, generators other than those whose tariff is being determined by the Commission can inject power into the grid before commercial operation for the purpose of testing including full load testing and such power shall be charged at UI rate. Therefore, a generator who is connected to the grid can inject power during testing including full load testing as UI power. In view of that matter, both units of the generating station have been injecting power as UI as permitted by Regulation 8(6) of the Connectivity Regulations.

39. 1st Unit of the generating station has been injecting power under UI since 1.5.2009, i.e. prior to the Connectivity Regulation came into force. The Connectivity

Regulation makes a provision that “*The power injected into the grid from other generating stations as a result of this testing shall also be charged at UI rates.*” Though, it is a fact that in none of the regulations of the Commission prior to the coming into force of the Connectivity Regulation, a generator whose tariff is not determined by the Commission was expressly allowed to inject its power under UI before the commercial operation. However, there was no bar for these generators to inject power during testing before commercial operation. In fact, in the Statement of Reasons to the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (Amendment) Regulations, 2008, the Commission had observed that the private generators can inject their infirm power under UI. The said observation was specified in the form of Regulation 8(7) of the Connectivity Regulations. Prior to 1.1.2010, the system operator after synchronization of the units of the generating station has allowed injection of power in the UI mode in order to help the grid, particularly in the shortage situation prevailing in the country. In any case, the show cause notice has been issued for violation of clauses (6) and (7) of Regulation 8 of Connectivity Regulations and therefore the charge cannot cover the period prior to 1.1.2010.

40. As regards the injection of power after 1.1.2010, it is to be considered whether it has been injected on regular and continuous basis. The data submitted by LPL and WRLDC show that except in few instances, power has been injected on regular and continuous basis. WRLDC has submitted that as per Regulation 6.4.12 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010, UI has to be curtailed first in case of any threat to any system security, irrespective of the transmission access granted to any entity. WRLDC has further submitted that in case of LANCO, whenever instances of heavy loading on 400 kV Bhilai-Seoni and 400 kV Bhilai-

Karadi were observed, WRLDC took action to curtail the UI injection of LPL. As regards the prolonged injection under UI, LPL has submitted that though the 1st Unit was initially planned for synchronization in January 2009, it got delayed due to problems experienced in the lubrication system of the turbine and consequent damage to the bearings which affected the testing and stabilization process. Even after synchronization with effect from 1.5.2009, the turbine bearing temperature being high, the testing and stabilization of the unit was affected badly. Apart from this, overloading of 400 kV Korba-Sipat transmission line and non-commissioning of the private railways siding till January 2010 also affected the commercial operation of 1st Unit. As regards the 2nd Unit, LPL has submitted that due to various reasons the unit cannot run at full load. A summary of the problems is mentioned at para 7(c) of this order. We are of the view that both the units of the generating stations had certain teething problems which has contributed to some extent to the delay in declaration of the commercial operation apart from the matter of termination of PPA being sub-judice before the Hon'ble Supreme Court.

41. In the prevailing power shortage situation in the country, injection of power by the generators under UI helps in maintaining its safety and security of the grid. In the Statement of Reasons to the Central Electricity Regulatory Commission (Unscheduled Interchange Charges and related matters) (First Amendment) Regulations, 2010, the Commission has observed as under:

“78. Commission is clear in its mind that UI mechanism is meant for unintended deviations and not for intentional deviations involving under draws and over injections. However, under deficit condition as prevailing in the country, Commission has preferred to reduce financial incentive in order to induce the Beneficiaries or Buyers and Generator or Sellers to go for sale of power through the scheduled route. The Commission has also provided in the regulation on grid connectivity that mere connectivity with the grid shall not entitle a generator to inject into the grid without seeking open access except during testing and

commissioning of the Station prior to COD. However, such injection would be in consultation with respective RLDCs. It is the duty of RLDCs that any decision of RLDC in this regard is in line with the intended objective of the regulations and is in public interest. In any case, the intent of UI regulation is not to frustrate the generation under deficit conditions especially when it is helping the grid. Moreover, such injection without open access has no right of transmission system and therefore, it is in the interest of the generator to seek open access.”

Hence, it could be seen from the above that under the prevailing deficit conditions it would be in the benefit of the grid to receive injection under UI.

42. The next question that arises for our consideration is as to how long a generator should be allowed to inject power into the grid as UI without declaring commercial operation. There is no provision in the Connectivity Regulations about the period during which injection of infirm power by the generator as UI can be allowed. Secondly, there is no built-in disincentive which would prevent the generator to stop injecting infirm power into the grid as UI and to identify buyers for sale of such infirm power. As the number of merchant power plants getting connected to the grid are likely to grow in future, there is a requirement for clarity on the issue. Accordingly, the Commission has proposed an amendment to clause (7) of Regulation 8 of Connectivity Regulations in order to provide for a time limit upto which power can be injected into the grid during testing including full load testing and also to provide for a price cap on UI rate on sale of such infirm power linking it to the cost of fuel used for generation. We are of the view that after the amendment is issued, the generators cannot inject power into the grid on regular and continuous basis, without seeking open access, as it would be economically unviable to run the generating station for fuel cost only.

43. To recapitulate our discussion above, LPL was charged with contravention of the provisions of clauses (6) and (7) of Regulation 8 of Connectivity Regulations. Clause (6) specifies that connectivity does not entitle a generator to interchange power unless it obtains any form of access. Clause (7) pertains to injection of power, consequent to grant of connectivity, during testing including full load testing as UI prior to the date of commercial operation without obtaining any access. We have already come to the conclusion that prior to 1.1.2010, LTOA conditions were taken as connectivity. Since PTC was granted LTOAs for supply of power from both units of LPL prior to 1.1.2010, the connectivity is deemed to have been granted from the dates of synchronization of the units of the generating station. Therefore, there is no violation of clause (6) of Regulation 8 of Connectivity Regulations by LPL. As regards the alleged violation of clause (7), both the generating units after having connectivity are entitled to inject power into the grid as UI for testing and full load testing before commercial operation without availing open access. We have come to the conclusion that on account of certain teething problems, both units of LPL could not declare commercial operation within a reasonable period and had to inject power as UI for a considerable period. By injecting power under UI, LPL has helped the grid and has complied with all the directions of WRLDC in ramping up or backing down the generating station as per the requirement of the grid. On account of lack of clarity in the Connectivity Regulations regarding the length of time for which injections can be made under UI, the injection of power was prolonged for which the generator cannot be blamed unilaterally. We grant the benefit of reasonable doubt to LPL on this account. Accordingly, the charge of contravention of clauses (6) and/or (7) of Regulation 8 of Connectivity Regulations is not established

against LPL. Consequently, we discharge the notice under section 142 of the Act against LPL.

44. WRLDC was charged with contravention of clause (7) of Regulation 8 of Connectivity Regulations for not preventing LPL from injecting the power as UI without availing any form of access. As already stated, LPL had deemed connectivity for both the units of the generating station from the date of synchronization and therefore, it was entitled to inject power into the grid during testing including full load testing as UI power without obtaining any form of access. Therefore, no charge could be established against WRLDC for allowing LPL to inject power into the grid as UI to which LPL was eligible on account of its deemed connectivity. However, WRLDC as the system operator is saddled with the responsibility to allow injection of power under UI after satisfying itself that the injection of power is for testing purposes only. Power to grant permission carries with it the power to withdraw the permission. From the submissions made by WRLDC, it is concluded that they were working in the interest of the Grid while permitting prolonged injection under UI and more so in view of absence of provision to that effect in the Connectivity Regulations. While we discharge the notice under section 142 of the Act against WRLDC, as deliberate infraction on the part of WRLDC cannot be established, it would have been a welcome step if WRLDC as well as other RLDCs would have brought to the notice of the Commission the difficulties being encountered by them in implementing the regulations.

I.A No.8 of 2011 filed by MPPTCL

45. The Interlocutory Application No.8 of 2011 has been filed by Madhya Pradesh Power Trading Corporation Limited (MPPTCL) for impleadment as an intervener in the Petition No.289/2010(Suo Motu) and Petition No.290/2010(Suo Motu) initiated against LPL and WRLDC respectively. MPPTCL has submitted that it had entered into a PSA dated 30.5.2005 with PTC Ltd for purchase of 300 MW power from LPL. PTC executed a back to back PPA dated 11.5.2005 with LPL for purchase of 300 MW power for selling it to MPPTCL. LPL terminated the PPA on 14.3.2008 which was brought to the notice of MPPTCL on 28.3.2008. MPPTCL challenged the unilateral termination of PPA by LPL before the MP High Court wherein, an interim stay was granted on 31.3.2008. In a writ appeal filed by LPL the MP High Court by order dated 29.6.2009 vacated the stay and dismissed the writ petition filed by MPPTCL. The order of the MP High Court was upheld by the Supreme Court by order dated 8.4.2010. The Hon'ble Supreme Court in the said order has clarified that MPPTCL would be free to avail all other available remedies. Accordingly, MPPTCL has invoked arbitration clause against PTC and subsequently, PTC has invoked arbitration clause under PPA for specific performance of the contract to start the power flow. MPPTCL has alleged that after the purported termination of PPA by LPL, the power earmarked for MPPTCL was injected by LANCO as infirm power to earn UI charges. MPPTCL has further submitted that LPL has indulged in gaming activity and the entire amount paid to LPL should be reduced to zero and adjusted in the account of the beneficiary which has been deprived of the power. MPPTCL has also submitted that WRLDC and LPL have collectively violated the Tariff Regulations, UI Regulations and IEGC and as a result, MPPTCL has been deprived of



its legitimate power under the contract and LPL has been unjustly enriched by the UI charges.

46. In our order dated 17.3.2011, we had directed issue of notice to LPL and WRLDC on the question of maintainability of the IA. Both LPL and WRLDC have filed their replies in response to the notice. LPL in its reply has submitted that MPPTCL has not set out a single averment to show as to how it is a necessary party to the present proceedings. The impleadment application has no nexus with the suo motu proceedings initiated by the Commission. The allegation in the suo motu petition is the violation of the Connectivity Regulations, whereas MPPTCL has alleged the violation of terms and Conditions of Tariff Regulations, UI Regulations and the IEGC. It has been further submitted that it is well settled that a party is a necessary party in a proceeding if its presence is necessary for the adjudication of dispute in the proceedings and no order can be passed without affecting the rights of the said party. LPL has submitted that the impleadment of MPPTCL in the present proceedings is not necessary and will not in any manner be in the interest of effective adjudication of the present proceedings. WRLDC has submitted that MPPTCL had full knowledge of the background under which LPL power station was operating as all information relating to the schedule issued by WRLDC, actual generation and the UI amount received by LPL were available in public domain. If MPPTCL had any grievance with regard to the inconsistency of the actions of WRLDC with any regulation, it could have approached the Commission with a petition. It has been further submitted that MPPTCL had neither interacted with WRLDC nor approached the Commission on the issue. Therefore, impleadment of MPPTCL as an intervener in the proceeding is not necessary for the proper adjudication of the case.

During the hearing of the IA, Shri Shanti Bhushan, learned senior counsel for LPL submitted that MPPTCL has no *locus standi* for impleadment in the matter as it is not a necessary party and therefore, the IA for impleadment be rejected.

47. We have considered the submission of the parties with regard to the prayer for impleadment made in the IA. We find that MPPTCL has sought impleadment in the matter on the ground that since MPPTCL was deprived of its legitimate share of power subsequent to the termination of PPA by LANCO, it is vitally interested in the matter. Both LPL and WRLDC have opposed the impleadment on the ground that MPPTCL is not a necessary party for proper adjudication of the matter. The Hon'ble Supreme Court in Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Ors. { (1992)2SCC524 } has laid down the law on the question of impleadment of parties in a proceedings as under:

“The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some questions involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e. he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action.”{emphasis supplied}

However, it is not as if the Intervener's presence is necessary for dealing with the issues in the aforesaid show cause notices regarding the Connectivity Regulation. It is not as if



the issues in the said show cause notices cannot be effectually and completely settled unless the Intervener is a party.

48. The question is also as to what *locus standi* would the Intervener have in the present proceedings where LPL and WRLDC were charged for non-compliance of the Connectivity Regulations? The test is whether the Intervener has sufficiency of interest in the matter to which the suo motu petition relates. We are of the view that the Intervener is not directly or legally interested in the issues underlying the show cause notices. The charge on LPL and WRLDC is not at all connected with the question of termination of PSA of MPPTCL with PTC or PPA of PTC with LPL. Termination of PPAs are commercial matters and the disputes with regard to such termination can be settled through the commercial and dispute resolution mechanisms given in the PPA/PSA. In our view, MPPTCL does not have *locus standi* and consequently is not a necessary party to the proceedings and accordingly, the IA is dismissed.

49. Petition Nos. 289 of 2010 (suo-motu) and 290 of 2010 (suo-motu) and IA No.8 of 2011 stand disposed of in terms of the above.

**sd/-
(V S Verma)
Member**

**sd/-
(Dr Pramod Deo)
Chairperson**

Per Shri M. Deena Dayalan, Member

I respectfully disagree with the findings arrived at in this order. I shall dwell upon the issues in my order separately.

**sd/-
(M Deena Dayalan)
Member**

