

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

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

Date: 21.3.2012

In the matter of

Central Electricity Regulatory Commission (Grant of Connectivity, Long-Term Access and Medium-Term Open Access in Inter-State Transmission and related matters) (Second Amendment) Regulations, 2012.

Statement of Reasons

The Commission had notified 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 "Connectivity Regulations") which came into force with effect from 1.1.2010. The Commission published on its web site on 2.06.2011 the draft of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-Term Access and Medium-Term Open Access in Inter-State Transmission and related matters) (Second Amendment) Regulations, 2011 inviting comments/suggestions from the stakeholders by 30.6.2011. The Commission also published supplementary draft amendments on 25.7.2011 inviting comments/suggestions from the stakeholders by 10.8.2011.

2. About 17 stakeholders submitted their comments/suggestions. The Commission also held a public hearing on 12.10.2011 wherein a number of stakeholders presented their views on various aspects of the proposed amendments in person. A list of stakeholders who made their comments/suggestions and participated in the public hearing is enclosed as **Annexure-I**.

3. The Commission has finalized the Central Electricity Regulatory Commission (Grant of Connectivity, Long-Term Access and Medium-Term Open Access in Inter-State Transmission and related matters) (Second Amendment) Regulations, 2011(hereinafter "Amendment Regulations") after detailed deliberations and due consideration of the various issues raised by the stakeholders. These are discussed in the succeeding paragraphs.

Amendment of the clause 7 of Regulation 8

4. In the draft amendment to the clause (7) of Regulation 8 of the Connectivity Regulations, the following was proposed:

“(7) (i) Notwithstanding anything contained in clause (6) of this regulation, a generating station, including a captive generating plant which has been granted connectivity to the grid shall be allowed to inject infirm power into the grid during testing including full load testing before its COD for a period not exceeding three months after obtaining prior permission of the concerned Regional Load Despatch Centre:

Provided that the concerned Regional Load Despatch Centre while granting such permission shall keep the grid security in view and ensure that injection of such infirm power is only for the purpose of testing, prior to COD of the generating

station or a unit thereof;

(ii) 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, shall be governed by the provisions of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 as amended from time to time or subsequent amendment thereof;

(iii) In respect of a generating station or unit thereof, whose tariff is not determined by the Commission, the generator may identify buyers for sale of infirm power during the period of testing prior to COD of the unit or the generating station as the case may be, and such infirm power shall be scheduled by the concerned Regional Load Despatch Centre subject to transmission constraints, if any. The price for such sale of infirm power to the identified buyers shall be as mutually agreed between the generator and identified buyer(s):

Provided that where infirm power is injected into the grid during the testing prior to COD of a generating station or unit thereof for which no buyer has been identified, the generator shall be paid at UI rates for such infirm power subject to the ceiling of the following rates corresponding to the fuel used for the generation:

| | | |
|--|---|------|
| Domestic coal (₹ / kWh sent out) | : | 1.65 |
| APM gas as fuel (₹ / kWh sent out) | : | 2.60 |
| Imported Coal/RLNG (₹ / kWh sent out) | : | 3.30 |
| Liquid Fuel (₹ / kWh sent out) | : | 9.00 |

Provided further that in case imported coal is being blended with domestic coal, then the ceiling rate of infirm power shall be arrived at in proportion to the ratio of blending based on the above rates of domestic and imported coal and shall be subject to a further ceiling of ₹ 1.90 / kWh ex-bus:

Provided also that in case the generating station uses natural gas supplied under Administrative Price Mechanism (APM), Re-gasified Liquid Natural Gas (RLNG) and Liquid fuel in combination for power generation, then the rate of infirm power shall be arrived at in proportion to the ratio of fuel consumption based on the rates specified above."

5. The above amendment was proposed as the Commission was of the view that the 'testing stage of a generating station is not for profit but to ensure that the generating unit is stabilized'. The reasons for the amendment were explained in the Explanatory Memorandum as

under:

"26. This provision was given for the purpose of testing of generating unit before being put in commercial operation. However, it did not specify the time period for which the generating unit could be under testing for the simple reason that the time period for testing could vary depending on whether problems were encountered in commissioning to a lesser or a greater extent, since sometimes there could be persistent problems in alignment or balancing of the unit. This left a generator open to misuse of the provision, by deliberately delaying commercial operation in case the UI rates at which this infirm power was to be charged, as was specified in the Regulations, was attractive. Therefore, it was proposed in the draft amendment to the Regulations that the generator be allowed to inject infirm power for a limited period, i.e. three months during testing before COD of units of a generating station. The consequent injection of power during testing, i.e. the infirm power, was allowed to be sold through short-term open access, after finding buyers for the same or be allowed to inject the same as Unscheduled Interchange (UI), and the same charged at UI rates, but subject to the ceiling rates near their variable cost. The Commission felt that this would encourage the generators to declare their COD as soon as possible. As a number of merchant power plants getting connected to the grid is likely to rise in future, it is felt that this Regulation would fortify the issue."

6. The comments received from the stakeholders on the proposed amendment to clause (7) of Regulation 8 of Connectivity Regulations have been discussed under four heads, namely, period of injection of infirm power, sale of power through bilateral arrangement, UI cap rate for injection of infirm power during testing and consultation with RLDC(s).

(A) Period for injection of infirm power:

7. The following responses have been received on the issue of the period of injection of infirm power prior to the date of commercial operation:

(a) Power Trading Corporation has submitted that in case a

generating company is not able to complete testing/full load testing within three (03) months due to unforeseen circumstances and RLDC is also not in a position to grant permission due to grid security, then Commission or RLDC may be allowed to grant exemption on case-to-case basis based on merit/genuineness of the case for extension of time limit for achieving COD.

(b) NHPC has submitted that the testing before COD should be for each Unit separately and not for the station as a whole.

(c) NTPC has submitted that the condition of maximum of three months should be applicable only for generating stations whose tariff is not determined by Commission. As provided in para 26 of the Explanatory Memorandum to the draft amendment, certain private generators were injecting power into the grid for considerable period of time without declaring commercial operation of the unit(s). Such delay in declaration of commercial operation would have incentive only for generators whose tariff is not determined by the Commission. For generating stations whose tariff is being determined by the Commission, earnings from such injection before commercial operation shall effectively reduce the capital cost. Hence there is no incentive in delaying the declaration of commercial operation; rather there will be disincentive of 0.5% ROE in case it is delayed beyond stipulated timeframe as per the 2009 Tariff Regulations. Hence the condition of maximum three months period for injecting infirm power

should not be applicable for generators whose tariff is determined by the Commission. Some generators may require to inject infirm power for more than 3 months after its synchronization due to technical/force majeure issues, which are beyond the control of the generators. Such generators may be considered to be allowed to inject infirm power even beyond 3 months, so that they are able to perform their full load testing. Such exceptions should be permitted on case to case basis. It has been suggested that the requirement as brought out in Clause 7 (i) of draft amendment needs to be more specific for clarity in following respects:

- i) The grounds on which the RLDC can refuse permission may be stated, e.g. transmission constraints etc.
- ii) RLDC should prescribe the limits of injection also.
- iii) Following stipulation may suitably be inserted in the 2nd paragraph of new clause 7(i):

"While granting permission, RLDCs shall consider clear priority of long-term/medium-term/short-term contracted power over injection of such infirm power."

(d) Neyveli Lignite Corporation Limited (NLC) has submitted that maximum period of six months may be allowed for declaring COD from the date of synchronization as was stipulated in the Tariff Regulations of 2001. The proposed amendment is silent as to how the infirm power is to be treated if it becomes inevitable for a generator who comes under the regulatory regime to exceed the proposed 3

months period i.e. whether generator can inject beyond three months or not. On the other hand, in respect of a generating station, whose tariff is not determined by the Commission, there is provision to continue injection beyond three months subject to a ceiling rate. A window should be provided for approaching the Commission in case of any constraints hampering timely declaration of COD on case to case basis.

(e) MB Power(MP) Limited has submitted that it agrees with the provision for capping on time period for injection of the infirm power; however, three (3) months would be a very aggressive time period for achieving COD as currently the project developers, in order to bring cost efficiency and speedy execution of the project, are procuring and deploying the power generation equipment based on various new domestic as well as international technologies, which may take a period of up to six (6) months for synchronization, testing, stabilization before its COD and therefore, the period of three (3) months may be enhanced to six (6) months. It has further been submitted that such extended period will not in any manner dilute the provisions in the Draft Amendment since in any event, during this period, the entire generated power can be sold only as infirm power to parties to be identified by the generator failing which, the generator shall be paid at UI rates for such infirm power at the rates specified in the draft amendment, which are proposed to be lower than prevailing UI rates. Therefore, there is an inbuilt mechanism that discourages the

generator from extending this period of testing unless absolutely necessary. With the implementation of the proposed amendment, the generators will be incentivized to accelerate the commissioning and complete the tests expeditiously. However, artificial limit of three (3) months with penal consequences upon failure to adhere to this deadline only imposes onerous obligations on the generator, which may not be necessary as the objectives are otherwise being adequately met by the other provisions of the proposed amendment.

(f) LANCO Power Limited has submitted that the proposed three months' testing time is very small to achieve stabilization/testing as most of the developers are now adopting supercritical technology in view of the higher efficiencies and least pollution aspects and also it is quite common that there will always be teething problems in the commissioning process. It has been suggested that a testing time of three operating or running months may be allowed or alternatively, for ease of control by RLDC, 180 days time may be allowed for completing the testing before COD.

(f) Adani Power Limited has submitted that the clause may be suitably amended for extension of time for injection of infirm power into the grid in case of genuine difficulties during the testing period.

(g) Torrent Power Limited has submitted that as the commissioning period varies with type of technology and longer period of

commissioning can also be due to technical problems in Turbines and Generators of the plant, such contingencies may take more time. Therefore, the proposed period of three months is too short and a period of at least 9 months should be provided for testing including performance and reliability.

(h) Shree Cement Limited has submitted that there is no clarity in the proposed regulations as to whether the period of three months for injection of infirm power is applicable to each unit of the generating station with multiple units coming up at the same location or it is applicable for the first unit only. The above time limit should be applicable separately to each generating unit commissioned.

(i) Hindustan Electricity Generation Company Pvt. Ltd has submitted that under the EPC contract, there is consideration of cure period of 270 days (9 months) to be exercised by the EPC Contractor in the event of failure in achieving guaranteed performance or failure to pass any test sequence. As such, period for injection of infirm power before COD for the purpose of testing and commissioning should be increased to 9 months.

8. We have considered the suggestions and comments of the stakeholders as discussed in the preceding paragraph. It is seen that the stakeholders in general have proposed for enhancement of the time limit of 3 months suggested in the draft regulations to about 6 to 9

months for injection of infirm power and also a provision to grant exemption on case-to-case basis based on merit/genuineness of the case for extension of time limit for achieving COD of a unit in case a generator is not able to complete testing/full load testing within the stipulated period due to unforeseen circumstances.

9. The Commission is in favour of facilitating testing and commissioning prior to COD of the unit(s) of the generating station, but not for continuous injection of power from the unit(s) without seeking any type of open access including long term access. Taking into account the comments of the stakeholders, we are of the view that a maximum period of six months for injection of infirm power for the purpose of testing and commissioning of the units from the date of first synchronization to the grid would be reasonable. Further, in exceptional circumstances, a generating unit may require a longer period due to unforeseen problems. We therefore consider it appropriate to allow extension in exceptional circumstances, for which generator shall be required to file a petition before the Commission two months in advance from the date of completion of the period of six months.

(B) Provision for sale of infirm power through bilateral arrangements

10. The following responses have been received on this issue in response to the draft regulations:

(a) Power Trading Corporation has submitted that the generators may identify buyers for sale of infirm power during the period of testing prior to COD but would face difficulty if this infirm power is scheduled. The actual power injection into the grid may be treated as scheduled power. There should be uniform nomenclature in that case i.e. "Rs/ kWh sent out" may be replaced by Rs/ kWh ex-bus".

(b) Southern Regional Power Committee has submitted that before COD, stable operation of the units may not be possible and there could be a number of outages. The concept of scheduling of infirm power in view of the uncertainty of the level of generation also needs to be examined.

(c) NTPC has submitted that infirm power cannot be scheduled due to its infirm nature. It may also create issues such as requirement of LTA/MTOA/STOA for infirm power since there is no provision of scheduling of infirm power and its priority in the scheduling under the Grid Code. Since Infirm power by first principles cannot be pre-scheduled, NTPC has opined that **infirm power may be post facto booked to the buyer (s), as SG=AG**. In case of generators having long term PPA (s) with the buyers, the applicable price of infirm power should be as stipulated in the PPA, including "zero" price if provided for. Such generators shall not be permitted to scout for buyers unless so permitted by the PPA. Any provision for mutually negotiating price for

sale of infirm power would further motivate generators not to declare commercial operation, in cases where generators are able to get high prices from buyers other than its long term buyers who shall get the power from such generators only after its commercial operation. Hence all other generators, who are not having long term PPA(s) with the buyers or in whose PPAs, sale of infirm power is not indicated, should follow the UI pricing at capped rates as proposed in the draft amendment.

(d) Adani Power Limited has submitted that since it is not possible to schedule the infirm energy presently, the Commission has provided for injection of entire quantum into the grid at UI rate. Moreover, in order to bring grid discipline, the Commission has built in sufficient incentive and penalty in the charges of UI after considering energy rates of generation from various fuel types.

(e) LANCO Power Limited has submitted that the proposal to allow scheduling of infirm power is defeating the whole purpose of treating the infirm power as UI. In view of the inconsistent nature of infirm power, it cannot be scheduled. Therefore, the proposal of scheduling of infirm power should be dropped.

11. We have considered the objections and submissions noted in the preceding paragraph. We are in agreement with the views of the stakeholders that scheduling of infirm power is not practicable and

would create operational and accounting problems. Accordingly, this provision will be deleted in the final regulations.

12. NTPC in its comments has suggested that in case of generators having long term PPA with the buyers, the applicable price of infirm power should be as stipulated in the PPA including zero price if provided for. In our view, allowing the price of infirm power to the generator in terms of the PPA by booking post facto would create operational complications as infirm power cannot be scheduled due to its infirm nature. Moreover, the generators may claim that their right over the infirm power in terms of the PPA has been recognized in the regulation and therefore in the event of injection of infirm power under UI, the difference between the rate of infirm power in the PPA and the UI cap rate should be paid to them. This will lead to dispute and unavoidable complications. Therefore, the Commission is of the view that since infirm power cannot be scheduled and should be injected under the UI, there should be clarity in the regulation with regard to operation of the provision regarding infirm power in the existing PPAs. Accordingly, Clause 7 of Regulation 8 of Connectivity Regulation would provide as under:-

"(7) Notwithstanding anything contained in clause (6) of this regulation and any provision with regard to sale of infirm power in the PPA, a unit of a generating station, including a captive generating plant which has been granted connectivity to the grid shall be allowed to inject infirm power into the grid during testing including full load testing before its COD for a period not exceeding six months from the date of

first synchronization after obtaining prior permission of the concerned Regional Load Despatch Centre."

(C) UI Cap rates for injection of infirm power for testing before COD based on Fuel Used for power generation

13. The following responses have been received in response to the draft amendment on the proposed UI cap for injection of infirm power:

(a) Hindustan Electricity Generation Company Private Limited has submitted that the basis for UI rates for RLNG based Generators at a ceiling of ₹ 3.3/kWh for Infirm power is not understood. Presently RLNG in India is benchmarked with JCC at around 14.5% slope. The prevailing market rate for RLNG is around \$18 landed per mmBtu. Also no Gas based Generator has tied up long term gas supply agreements due to high volatility in the RLNG prices. It has been suggested that a mechanism should be framed in order to capture such cases of high price of fuel cost keeping in mind the volatility in the RLNG market.

(b) Southern Regional Power Committee has submitted the following:

- i) A new sentence may be added that "for UI computation, generator shall furnish the blending ratio by Thursday for the past week to RPC Secretariat. If the blending ratio is not communicated, then the ceiling rate would be restricted to '1.65/kWh".(Rate for domestic coal/gas)
- ii) A new sentence may be added that "for UI computation, generator shall furnish the ratio of fuel consumption by Thursday

for the past week to RPC Secretariat. If the ratio of fuel consumption is not communicated, then the ceiling rate would be restricted to '2.60/kWh". (rate for APM gas as fuel)

(c) Power Company of Karnataka has submitted that the GCV and Cost considered for arriving at the UI rate has not been specified. In case of generators selected under competitive bidding route, based on levelised tariff, the recovery of short fuel cost is not possible, since quoted tariff shall remain valid for 25 years. Under such circumstances, factoring of cost in the tariff does not arise. It has been suggested that the actual cost payment or maximum ceiling rate, whichever is lower should be considered. The percentage of fuel and GCV considered for arrival of Rs 1.90/kWh as ceiling rate has not been specified which may be required for calculation of the UI rate in case of different ratio of blending of coal used for infirm power.

(d) NHPC has submitted that nothing has been mentioned in the proposed amendment regarding the rate of infirm power from hydro generating stations. It needs to be confirmed that rate of infirm power for hydro stations will be applicable UI rate.

(d) NTPC has submitted that the energy injected as infirm power is proposed to have different UI price ceiling rates depending on fuel. Looking from the point of view of the recipients of such power, differential price does not make sense. Moreover, the cost of testing is

an anticipated expenditure of the generator and paying UI rate for the same is not justified. In fact one could also argue that the cost of such testing should be borne entirely by the generator. A common ceiling rate corresponding to the UI rate for the frequency band of 49.98-50.00Hz (Rs 1.55 /kWh) may be adequate as the generator has no implication of negative UI. The intent of declaring commercial operation is that as soon as generator is reasonably ready to inject power, it should declare its COD and sell the power through commercial mechanisms. Infirm power should only be allowed for making generator ready for COD. It should not be used as a side mechanism to get additional commercial gains. Only because a generator is injecting power into the grid which shall be utilized by the consumers, it may be compensated. But it should not create any motivation for the generator to generate for additional commercial gains.

(e) LANCO Power Limited has submitted that in view of severe coal shortage in the country, some of the developers are forced to use e-auction coal to supplement the coal requirements. Though e-auction coal is indigenous, its rate is almost equal to imported coal. The Commission has been requested to consider this aspect before fixing any ceiling rates for the infirm power injected beyond the allowed testing time. However, it is essential to provide more clarity on how the ceiling UI rates will be arrived at in case of use of combination of fuels and agencies should be designated/authorized to certify the

fuel mix used. Considering the practical difficulties involved, LANCO Power Limited has suggested that alternatively, an appropriate simple mechanism may be prescribed for this purpose.

(f) Shree Cement Limited has submitted that the proposed cap seems to be very low as compared to the cost of generation of power. The variable cost of power generation based on domestic coal or imported coal is higher than the cap proposed above. A power plant injecting infirm power into the grid will be incurring loss if the payment for such power is below its variable cost of generation which in case of imported coal will not be less than ₹ 3.50/unit against cap of ₹ 3.30/unit proposed. Though the draft regulation stipulates cap on UI rates payable to the generator, it does not specify any cap on overdrawl. As such, the over drawing entity will be paying UI charges without any upper cap, but the over injecting entity which is assisting the grid against such over drawl is not paid at the UI rate. This is against the principle of fairness as the over injecting entity should be paid the amount equal to what is recovered from the over drawing entity. Though the draft regulation incorporates provision for different rates based on utilization of different fuels, it does not specify the mechanism for ascertaining the actual fuel usage by generators. Moreover, the draft regulation is silent as to which fuel should be considered as used if more than two fuels are used in a week without blending. As such it needs to be specified as to how the Commission would ascertain the actual fuel used for power generation or the

blending ratio of fuels etc. by the generators. Many generators are using other fuels like pet coke, lignite etc. for which no price has been fixed in the proposed regulations. As such a new category "Others" should also be incorporated to cater to the generators using different fuels. There is no clarity in the proposed regulations as to whether the period of three months for injection of infirm power is applicable to each unit of multiple generating units coming up at the same location or is it applicable for the first unit only. The above time limit should be applicable separately to each generating unit commissioned. It has been suggested that the regulation related to settlement of infirm power during pre-commissioning period be continued in its present form.

(f) MB Power (MP) Limited has submitted that in the current scenario, the fuel price is determined by the market forces which are very dynamic and volatile in nature. Therefore, to provide a ceiling on the rates of infirm power based on various fuels does not appear to be prudent and realistic, and it may cause substantial financial losses to the project developers. Relying on the observation in the 'Explanatory Memorandum' to the Draft Amendment that 'such ceiling rates should be near to the variable cost', MB Power has suggested that instead of capping the rates of infirm power, fuel cost should be allowed as a 100% pass through for the purpose of calculation of rates of infirm power, i.e. the actual fuel costs should be permitted to be recovered. In this manner, there would be no incentive for the generator to

prolong this testing period, and at the same time, the generator would not be penalized in the event the actual fuel consumption charges are recovered. It has been suggested that an appropriate mechanism should be put in place to determine the actual fuel costs incurred based on such documents as the audited statement certified by the equipment supplier/EPC contractor or other engineers conducting the tests, and the invoices duly certified by the statutory auditor of the generator.

(g) Neyveli Lignite Corporation Limited has submitted that the sale of infirm power at UI rates simplifies the commercial mechanism, since it will not interfere with REA computations. However, if the Commission feels that injection of infirm power for long periods is because of attractive UI rates, the UI rate may be replaced with energy cost of respective stations for generators who have not identified Purchasers. Appropriate amendment may be carried out to Regulations 11 of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009, if warranted.

(h) Torrent Power Limited has submitted that the cap rate for domestic gas should be increased to 2.60/kwh sent out. The cap rate for pit head generating station and non-pit head station should be different; hence, the rate of ₹1.65/kwh would be for pithead generating station and for non-pit head generating station, the cap rate should be increased to the extent of actual transportation cost incurred per kWh.

The cap rate prescribed for imported RLNG is also very low compared to the actual variable cost and therefore, it should be increased to at least ₹5/kwh sent out.

(i) Adani Power Limited has submitted that during high frequency conditions, the generator would not be able to recover its fuel cost from UI charges and hence will have to make up for this revenue loss with the help of UI charges during low frequency conditions. Also, the cost of fuel for infirm energy will be very high owing to poor station heat rate during stabilization period. Applying cap on UI charges for injection of infirm power would do injustice to the genuine generators. Torrent Power has suggested to retain the current provision related to settlement of injection of infirm power into the grid. It has been suggested that for implementing the draft provision, there is a requirement to revise the maximum ceiling rate of UI for infirm power and to introduce a minimum ceiling rate of UI.

14. We have considered the above suggestions and objections. Subsequent to the proposed amendment to the Connectivity Regulations introducing UI cap rates for the injection of infirm power into the grid, the Commission had also proposed to specify the UI cap rates in the UI Regulations and accordingly, included the same in the draft Second Amendment to the UI Regulations. The Commission has subsequently decided that all matters pertaining to UI including UI cap

rate should be specified in the UI Regulations only so that in case of revision in the UI cap rate only UI Regulations would be required to be amended. Accordingly, the UI cap rates have been specified in the Central Electricity Regulatory Commission (Unscheduled Interchange Charges and related matters) (Second Amendment) Regulations 2012 as under: -

"In terms of clauses (7) of Regulation 5, the cap rates for the infirm power injected into the grid by a unit of a generating station during the testing/commissioning prior to COD of unit shall be as follows corresponding to the fuel used for the generation:

| | |
|---|----------------|
| <i>Domestic coal/ Lignite/Hydro (₹/ kWh sent out)</i> | <i>: 1.65</i> |
| <i>APM gas as fuel (₹/ kWh sent out)</i> | <i>: 2.60</i> |
| <i>Imported Coal/RLNG (₹/ kWh sent out)</i> | <i>: 3.30</i> |
| <i>Liquid Fuel (₹/ kWh sent out)</i> | <i>: 9.00"</i> |

The detailed reasons for the decision on the UI cap rates for injection of infirm power has been given in paras 25 to 30 of the Statement of Reasons to the Second Amendment to the UI Regulations. In view of this, reference to the UI Regulations has been made in 4th proviso to clause 7 of Regulation 8 as under:-

"Provided also that the infirm power so injected shall be treated as Unscheduled Interchange of the unit(s) of the generating station and the generator shall be paid for such injection of infirm power in accordance with the provisions of the Central Electricity Regulatory Commission (Unscheduled Interchange Charges and related matters) Regulations, 2009, as amended from time to time."

(D) Prior approval of RLDC

15. RLDCs have submitted that the onus should be on the generator to satisfy the RLDC concerned that the injection is for the purpose of testing and commissioning. We agree with the submission of RLDCs. However, the concerned RLDC would need to satisfy itself that the injection of infirm power is actually for the purpose of testing, before granting such permission. For this, the generator shall be required to provide sufficient details of specific testing and commissioning activity, its duration and intended capacity to be injected to the concerned RLDC.

16. In view of the above discussion, clause (7) of Regulation 8 of Connectivity Regulations shall be as under:

"(7) Notwithstanding anything contained in clause (6) of this regulation and any provision with regard to sale of infirm power in the PPA, a unit of a generating station, including a captive generating plant which has been granted connectivity to the grid shall be allowed to inject infirm power into the grid during testing including full load testing before its COD for a period not exceeding six months from the date of first synchronization after obtaining prior permission of the concerned Regional Load Despatch Centre:

Provided that the Commission may allow extension of the period for testing including full load testing, and consequent injection of infirm power by the unit, beyond six months, in exceptional circumstances on an application made by the generating company at least two months in advance of completion of six month period:

Provided further that the concerned Regional Load Despatch Centre while granting such permission shall keep the grid security in view:

Provided also that the onus of proving that the injection of infirm power from

the unit(s) of the generating station is for the purpose of testing and commissioning shall lie with the generating company, and the respective RLDC shall seek such information on each occasion of injection of power before COD. For this, the generator shall provide RLDC sufficient details of the specific testing and commissioning activity, its duration and intended injection etc.

Provided also that the infirm power so injected shall be treated as Unscheduled Interchange of the unit(s) of the generating station and the generator shall be paid for such injection of infirm power in accordance with the provisions of the Central Electricity Regulatory Commission (Unscheduled Interchange Charges and related matters) Regulations, 2009, as amended from time to time."

Amendment of Clause 8 of Regulation 8 of Connectivity Regulations

17. The proposed amendment provided for insertion of the following proviso after the first proviso to Clause (8) of Regulation 8 of Connectivity Regulations:

"Provided further that the construction of such dedicated transmission line may be taken up by the CTU or the transmission licensee in phases corresponding to the capacity which is likely to be commissioned in a given time frame after ensuring that the generating company has already made the advance payment for the main plant packages i.e. Turbine island and steam generator island or EPC contract in case of thermal generating station and major civil work packages or EPC contract in case of hydro generating station for the corresponding capacity of the phase or the phases subject to a minimum of 10% of the sum of such contract value:

Provided also that the transmission charges for such dedicated transmission line shall be payable by the generator even if the generation project gets delayed or is abandoned."

18. In response to the above proposed amendment, the CTU/PGCIL has submitted that pre-requisites need to be specified for Grant of Connectivity/LTA and for taking up actual implementation of Transmission system after Connectivity/LTA has been granted, in order to ensure that the transmission system, whether it be construction of dedicated line for connectivity of a generator or strengthening of transmission system for granting LTA to a generator, comes up only after sufficient progress in the process of setting up of a generating unit

has taken place. CTU has submitted that these pre-requisites have been evolved through extensive consultative process which has taken place in Standing Committee meetings on power system planning involving CEA, regional constituents and applicants of connectivity/LTA. These pre-requisites aim at segregating the “likely” from the “non likely” generation capacity additions in a given time frame. Accordingly, CTU has proposed that the following provisions be incorporated in the detailed procedure of CTU for grant of Connectivity/LTA and subsequent implementation of associated transmission system:

“Grant of Connectivity/LTA : Grant of Connectivity/LTA being initial stage, bare minimum pre-requisites have been considered that generation developers undertakes for initiation of generation projects.

After receipt of application for Connectivity / LTA, CTU shall carry out studies for evolving transmission system necessary for grant of connectivity / LTA. The evolved system is discussed in Standing Committee / LTA meeting attended by CEA, CTU, STUs, RLDC, Generation utilities and the concerned applicants wherein the status update of generation project is taken up. The application shall be considered for Grant of Connectivity for the generation projects that have achieved following milestones:

- a) Possession of 70% of the required land, including land for main plant
- b) Fuel linkage for 70% of the installed capacity or placement of EPC award for main plant
- c) Approval from appropriate authority for drawl of water of the project.
- d) Approved Term of Reference (1st Stage approval) for environment clearance in case of non-fulfillment of above milestones.

In case of non-fulfilment of above milestones:

- The application for Connectivity/ LTA shall not be returned but put on hold.
- The progress status review to be done in series of LTA / Standing Committee meetings thereafter and as & when above milestones are achieved the same shall be considered for grant of connectivity.
- Further, to avoid piling up of un-cleared Connectivity/LTA applications of generation project not progressing ahead, it is proposed to close the

Connectivity/LTA applications if applicant fails to achieve any of the milestones within a period of 12 months from date of application. The application fee shall not be refunded/ adjusted and the application bank guarantee (if any) shall be encashed.

The connectivity/LTA applicant shall be issued "Grant of Connectivity/LTA" indicating therein the necessary details and shall be asked to sign Long-term Open Access Agreement and submit BG within prescribed time [say 3 months or any other time Hon'ble Commission may deem fit] failing which the grant of Connectivity/LTA shall be considered withdrawn. The application fee shall not be refunded /adjusted and the application bank guarantee (if any) shall be encashed.

The Date of submission of BG shall be reckoned as "Zero date" for implementation of transmission system for connectivity.

For implementation of Transmission System for Grant of Connectivity / LTA
Status for generation project granted Connectivity / LTA shall be reviewed in six months for achievement of following additional milestones to undertake implementation decision.

- a) Fuel linkage for 70% of the installed capacity,
- b) Award of EPC contract for main plant,
- c) Environment clearance,
- d) Forest clearance and
- e) Financial closure.
- f) Payment of advance for the main plant packages

- In case of non-fulfilment of any of the above milestones, the zero date is shifted by six months and project status would be reviewed periodically.
- In case of non-fulfilment of any of the above milestones after another six months (i.e. 12 months after zero date), no further action on implementation would be taken. The expenditure, if any, made by the CTU shall be recovered through encashment of bank guarantee and any further progress on implementation of connectivity shall start only after submission of fresh bank guarantee and completion of all the inputs necessary inputs/ clearances."

19. CTU has submitted that the proposed amendment to Regulation 8(8) of Connectivity Regulations requires the CTU to (a) grant Connectivity/LTA to one and all applicants without insisting on pre-requisites; (b) to monitor the progress made in the generation development by applicants granted connectivity/LTA; and (c) the CTU or transmission licensee to take up augmentation of the transmission

system for Connectivity/ LTA in phases corresponding to the capacity which is likely to be commissioned in a given time frame after ensuring that the generating company has released the advance for the main plant packages. CTU has submitted that the formulation in the proposed amendment has not addressed the problems like sub-optimal planning of the transmission system and the timeframe for construction. It has been submitted that to ensure optimal planning pre-requisites are necessary. CTU has proposed addition of the following proviso to Regulation 8(3) of Connectivity Regulations:

“Provided that the nodal agency shall grant connectivity to the applicant subject to fulfilment of project activities as specified in the detailed procedure”.

CTU has further proposed the following amendment to Regulation 8(8) of Connectivity Regulations:

“Provided that the construction of such dedicated transmission line may be taken up by the transmission licensee after fulfilment of the project activities as specified in the detailed procedure of the nodal agency.

Provided also that in case of delay in generation project, the generator shall pay the applicable transmission charges of such dedicated transmission line from its COD till the commissioning of the generation project and after commissioning of the generation project, the transmission charges shall be pooled with the YTCof ISTS.

Provided also that in case generation project does not start payment of transmission charges in accordance with the second proviso above during the period of delay, then project shall be considered as abandoned and generation developer shall be liable to pay compensation in line with Regulation 18 of principal regulations.”

20. We have considered the submission of the CTU. The Commission is of the view that the very genesis of granting connectivity to the generator and the bulk consumers is the development of the power

sector by facilitating the capacity addition in generation and facilitating open access to the generator as well as the consumers. Earlier there was no provision for connectivity separately and connectivity used to go concurrently with the execution of the transmission system and later with the grant of long term open access. With liberalisation of generation and introduction of short term and medium term open access, it became necessary to introduce the concept of connectivity separate from open access and execution of transmission system. The connectivity for a generator is a basic input like fuel and water and firming up of connectivity and the pooling point facilitate generator in finalising the scope of the project, firming up the capital cost and in financial closure of the project. Tying up these requirements within a year of grant of connectivity would be difficult and cancellation of connectivity on failure of achieving the same would leave generator in a precarious situation. This approach is not reasonable apart from being non-conducive to capacity addition.

21. We do not agree with the CTU that for granting connectivity there should be any pre-requisites. The pre-requisites would only matter when actual construction of the transmission system has to be undertaken. We notice that the CTU has proposed that the pre-requisites be incorporated in the detailed procedure. We would therefore consider these points on merit when the revised detailed procedure is put up to the Commission for approval. At this stage,

suffice it to say that connectivity and Long Term Access sought by the generators/loads is to be facilitated and sufficient safeguards have been built in to ensure that the generator/load that has sought connectivity and Long Term Access is a serious player and that the transmission system comes up in the most optimal manner, matching with requirements of capacity addition in generation. We therefore direct the CTU to put up a revised detailed procedure for approval of the Commission.

22. In our view, in case the dedicated line is to be constructed through the coordinated planning, then the construction of dedicated line and the augmentation of the pooling point/substation should be taken up only after release of the advance payment for the main plant packages i.e. Turbine island and steam generator island or EPC contract in case of thermal generating station and major civil work packages or EPC contract in case of hydro generating station for the corresponding capacity of the phase or the phases subject to a minimum of 10% of the sum of such contract value. In our view this would adequately take care of the concerns of the CTU/transmission licensees.

23. The CTU has further pointed out vide its submission dated 27.10.2011 that the construction of dedicated transmission line identified through coordinated planning are to be constructed by CTU/Transmission licensees under competitive bidding route after

5.1.2011. It would be desirable if the bidding process for the construction of dedicated line or the transmission system is completed before the release of advance by the generator. The validity of the bid cannot be for indefinite period and therefore, it would be desirable that certain limited milestone is specified to start the bidding process for the construction of the dedicated line or the transmission system as the case may be.

24. As per the CTU following activities are involved in the bidding process of the transmission projects:

- After getting the application from any applicant CTU shall have to first evolve the system requirement and decide on the pooling point/pooling substation,
- Get it approved in the planning process including approval in Standing Committee and RPC (1-3 month),
- The empowered committee to allocate it to BPC (1 month),
- Bid Process Coordinator (BPC) to issue RfQ and RfP duly following bidding process (of the order of 8-10 months) and
- Finally the same has to be implemented by the successful bidder inter-alia involving route survey, land acquisition, Right of Way securing and its construction.

25. From the above, it emerges that it would take about one and half years to complete the bidding process. It is therefore necessary that the generator should achieve following milestones at least one

and half year before the release of advance:

- Possession of 70% land including land for main plant
- Fuel procurement Plan
- Allocation of water required for the project
- Approved terms of reference (1st Stage approval) for environment clearance

26. Since the issues mentioned above requires involvement of the Empowered Committee on Transmission and the Bid Process Coordinators which are constituted/appointed under the aegis of the Government of India, the Commission does not intend to lay down the timelines for construction of dedicated transmission lines in isolation. We understand that the Ministry of Power/CEA are seized of the matter and we expect that the revised Standard Bidding Documents and Implementation Agreement through competitive Bidding which are under formulation would take care of the requirement.

27. Other stakeholders have made the following suggestions/comments on the proposed amendment to Regulation 8(8) of the Connectivity Regulations:

(a) MB Power (MP) Limited has supported the provision in the draft amendment that the construction of dedicated transmission lines should be taken up by the CTU or the transmission licensee in phases corresponding to the capacity which is likely to be commissioned in a given time frame and the generator should be liable for payment of transmission charges towards dedicated transmission lines even if the

generation project gets delayed or is abandoned. MB Power has however submitted that requirement of advance payment of minimum 10% of contract value is substantially on higher side. It has been submitted that release of 10% advance is a practice being followed by PSUs or multilateral agencies funded by World Bank and ADB etc., whereas in case of the development of large power projects by private developers, release of advance is governed by contractual agreements and the amount/percentage of advance payments varies on case to case basis and in many instances, may be lower than 10%. MB Power has requested that 10% advance should be reduced to 5%. MB Power has also requested the Commission to clarify that the transmission line(s) that are being constructed, owned and operated by CTU and ISTS Licensee shall always be treated as a part of the Inter State Transmission System (ISTS) and for the purpose of calculation of transmission charges and losses under "Point of Connection (PoC) Charging Method", such dedicated transmission lines are not treated differently or excluded from calculation of the transmission charges and losses.

(b) NTPC has submitted that CTU takes up the execution of any transmission system only after signing of BPTA/Transmission Agreement. Necessary provisions are already available in the Connectivity Regulations for indemnifying CTU like Bank Guarantee etc. The draft Transmission Agreement at Format CON-8 of procedure for connectivity to ISTS effective from 1.1.2010 also provides that applicant

shall bear the transmission charges from the date of commercial operation of transmission system. The Commission has provided for deemed COD for transmission elements even when they are not in regular service in the 2009 Tariff Regulations. Since ample safeguards for servicing of the transmission system are available, such a provision is not required in the proposed amendment of Regulation 8(8) of Connectivity Regulation. It should be part of commercial agreement between CTU and the Generator /Beneficiary. The proposed provision of release of 10% contract values will unnecessarily delay the execution of transmission system and may lead to stranding of generator for want of transmission. However, if such a condition needs to be introduced, the groundwork for line construction activities (i.e. preparation of FR, tendering process, placement of awards etc. Should be completed beforehand and should not be linked to 10% advance payment by the generator. With the execution of transmission lines through competitive bidding, the pre-construction activities like formation of SPV, issuing of RFP/RFQ etc. Would consume considerable time.

(c) NHPC has submitted that the above clause should not be applicable to central generating stations, where beneficiaries are identified and long term PPAs have been signed.

(d) Torrent Power Limited has submitted that the time frame for laying the line by CTU should be maximum of 2 years for Gas based stations

and 3 years for Coal based stations. However, in case of delay in commissioning of transmission lines by CTU, alternate arrangement for evacuation of power need be extended by CTU. It has been suggested that the word “and completion” should be inserted after the word “construction” in the proposed second proviso to Regulation 8(8) of Connectivity Regulations. It has been further suggested that another proviso should be added under Regulation 8(8) as under:

“Provided that when the CTU is not able to lay such line within the commissioning schedule of Generator and if the Generating station is ready to lay the line, then the transmission line so laid should also be considered under the coordinated Transmission planning and the cost of such line should be brought under the regional pool.”

(e) Hindustan Electricity Generation Company Pvt. Ltd (HEGCL) has submitted that with regard to the liability of the generator to pay the transmission charges even if the project gets delayed or abandoned, delays in COD can be attributable to both parties and can also be due to Force Majeure events which may be out of control of both the parties. Moreover, the abandonment of project could happen due to reasons not attributable to the Generator, e.g. due to act of Government Instrumentality. The Generator should not be liable to pay transmission charges in such cases.

(g) Adani Power Limited has submitted that looking at the technical and execution capabilities of CTU, the Commission has proposed construction of dedicated transmission line by the CTU. Adani Power

has submitted that since CTU is already occupied in execution of so many important projects, there is possibility that construction of such lines gets delayed. Therefore, the IPPs should have the option of execution of the dedicated transmission line by themselves in consultation with CTU.

28. We have considered the views of the stakeholders as discussed in the preceding para. As regards the submission of MB Power to reduce the advance amount to 5%, we are of the view that for starting the construction of dedicated transmission line or the transmission system, it is necessary that the CTU/transmission licensee draws sufficient comfort that the generation project is going to come and their investment would not get stranded. Hence, release of 10% advance is a reasonable condition and should be retained. As regards the other submission of MB Power that the dedicated transmission lines constructed, owned and operated by CTU or ISTS licensees should be considered for the purpose of calculation of transmission charges and losses under PoC method, it is clarified that in view of the provisions in Regulation 8(8) of the Connectivity Regulations, Regulation 7.1(c) of Sharing Regulations and para 3.4.6 of Statement of Reasons to Sharing Regulations, the dedicated transmission lines constructed by the CTU or ISTS licensee through coordinated planning process shall be considered as part of the regional pooled assets and shall be

considered in the pooled yearly transmission charges under the PoC method. As regards the submission of NTPC and NHPC that the proposed provision is not necessary in case of CPSU where BPTAs or PPAs has been signed, it is clarified that in the new scenario, it may be difficult for the generator including CPSUs to identify the beneficiaries after 5.1.2011 where projects are to be implemented through competitive bidding. We reiterate that the CTU/transmission licensee should draw sufficient comfort about completion of generation project before taking up the construction of the dedicated line or the transmission system. Further it is expected that the coordinated transmission planning would adequately take care of any mismatch in the completion of dedicated transmission line or the transmission system which is within the control of the CTU/transmission licensees. As regards the contention of Torrent Power Limited that the dedicated transmission line should be treated as part of as regional pooled asset even if constructed by the generator, it is clarified that this is not in line with Regulation 7.1(c) of the Sharing Regulations which provides that a dedicated transmission line constructed, owned and operated by the generator shall not be considered as part of the Basic Network and hence cannot be included under PoC charges. This issue has also been discussed and decided by the Commission in para 11 of the order dated 19.12.2011 in Petition No.116/2011. As regards the submission of Adani Power Limited that the generator should have the option of building the dedicated transmission line on their own in

consultation with CTU, it is clarified that Regulation 8(8) of Connectivity Regulations does not bar the generator from constructing its dedicated transmission line if it so wishes.

29. In the light of the above discussion, we have decided that the amendment Regulation 8(8) of Connectivity Regulations shall be notified as under:

“Provided further that the construction of such dedicated transmission line may be taken up by the CTU or the transmission licensee in phases corresponding to the capacity which is likely to be commissioned in a given time frame after ensuring that the generating company has already made the advance payment for the main plant packages i.e. Turbine island and steam generator island or the EPC contract in case of thermal generating station and major civil work packages or the EPC contract in case of hydro generating stations for the corresponding capacity of the phase or the phases to be commissioned, subject to a minimum of 10% of the sum of such contract values:

Provided also that the transmission charges for such dedicated transmission line shall be payable by the generator even if the generation project gets delayed or is abandoned.”

Condition for undertaking construction of transmission lines for Long Term Access through coordinated transmission planning (Regulation 12)

30. Third proviso to clause (1) Regulation 12 of Connectivity Regulations was proposed to be substituted by the following proviso and three other provisos:

“Provided also that the construction of such augmentation of transmission system may be taken up by the CTU or the transmission system or the transmission licensee in phases corresponding to the capacity which is likely to be commissioned in a given time frame after ensuring that the generating company has released the advance for the main plant packages i.e. Turbine island and steam generator island or the EPC contract in case of thermal generating station and major civil work packages or EPC contract in case of hydro generating station for the corresponding capacity of the phase or the

phases subject to minimum 10% of the sum of such contract value.”

31. Comments of the stakeholders like CTU and NTPC are same as in case of construction of dedicated lines and have already been dealt there.

32. Since this provision is similar to provisions for the construction of dedicated transmission line through coordinated planning under Regulation 8(8) of Connectivity Regulations, which has already been discussed at length, this provision has been retained.

33. As discussed earlier regarding construction of dedicated transmission lines through coordinated planning, the construction of transmission system identified through coordinated planning for the Long Term access are to be constructed by CTU/Transmission licensees under competitive bidding route after 5.1.2011. It would thus be desirable that the bidding process for the construction of the transmission system is completed before the release of advance by the generator. The validity of the bid cannot be for indefinite period and therefore, it would be desirable that certain limited milestone be specified in the detailed procedure to start the bidding process for the construction of the transmission system.

Provision for offsetting of Short Term and Medium Term Open Access Charges paid by the generator in the transmission charges payable by the generator – Regulation 12

34. The amendment to Regulation 12 also proposed to insert following provisos:

“Provided also that if the long term customer has not identified the buyer for the capacity in full or in the part under long term access and sells such power under short term or medium term open access, then the short term or medium term transmission charges paid or payable for the period of such short term or medium term open access for the given capacity shall be offset against the transmission charges for the long term access granted without identified beneficiaries , only if such short term or medium term open access is taken to the same region.

Provided also that the electricity traders, who have a portfolio of generators in a State for which Long Term Access has been obtained to a target region, shall not be allowed to offset charges for short-term or medium-term open access against the transmission charges for the long term access obtained without identified beneficiaries.”

35. Comments were received from PTC, Jindal Power, Hindustan Electricity Generation Company Pvt. Ltd., GMR, Adani Power Ltd., MB Power Ltd. on the proposed amendment.

36. Similar provisions also formed a part of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses)(First Amendment) Regulations, 2010. In response to the draft amendment to the said regulations, Adani Power, MB Power and Jindal Power had submitted similar comments. The provision has been finalized after considering the comments of all stakeholders in those Regulations and amendment made in those Regulations, which is

already on the website of the Commission. We therefore do not propose to deal with the issue in these Regulations, but rather refer to those Regulations in respect of this issue.

Provision for construction of the last leg of transmission line by CTU in the destination region in such time period as estimated by CTU for augmentation of such line segment subject to a maximum of 3 years from the date of notifying by the long-term customer (Regulation 12)

37. The proposed amendment provides for substitution of 3rd proviso to Regulation 12 of Connectivity Regulations with the following provisos:

"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.

Provided also that the Central Transmission Utility shall be required to construct the last leg of transmission line in the destination region in such time period as estimated by Central Transmission Utility for augmentation of such line segment subject to a maximum of 3 years from the date of notifying by the long-term customers".

38. The CTU has submitted that the following with regard to above provision:

- a) Post 5th Jan 2011, the new transmission systems are to be implemented through tariff based competitive bidding process; so it would not be correct to stipulate that the construction shall be required to be done by CTU.

- b) The maximum period 3 years after the long term customer notifies firming up of transmission system is too less for implementation on realistic basis.
- c) After the notification of firming up of beneficiaries by any applicant, the CTU shall have to first evolve the system strengthening requirement, get its approved in the planning process including approval in Standing Committee and RPC (1-3 month), the empowered committee to allocate it to BPC (1 month), BPC shall to issue RFQ and RFP duly following bidding process (of the order of 8 - 10 month) and finally the same has to be implemented by the successful bidder inter-alia involving route survey, land acquisition, RoW securing and its construction.
- d) Accordingly, CTU has suggested that upper limit for 3 years may not be specified

39. There is merit in the submission of CTU under the changed scenario and therefore we are not inclined to amend the provision in the existing Regulations.

Provision for intimating the nodal agency about the signing of PPA and termination of PPA on the basis of which LTA is intended or was taken and assigning of such transmission capacity to any other open access customer (Supplementary amendment dated 25.7.2011)

40. The Commission through supplementary amendments issued on 25.07.2011 had proposed insertion of a proviso under regulation 12,

insertion of a new regulation 15 (A) and amendments to Regulation 16 of Connectivity Regulations as follows.

(a) Proviso to Regulation 12(1)

“Provided that where the quantum of supply or procurement of power has been firmed up through signing of long term Power Purchase Agreement(s), the same shall be submitted to the nodal agency alongwith the application for long term access;”

(b) Regulation 15A

“15. (1) Where the entire or part of the Power Purchase Agreement(s) on the basis of which long term access has been granted under these regulations are terminated by either party in accordance with the provisions of the said agreement(s) or through determination by a court or tribunal or commission of competent jurisdiction, it shall be incumbent on the long term customer to give intimation about the termination to the nodal agency immediately but not later than two weeks from the date of such termination;

(2) The nodal agency on receipt of the intimation in accordance with clause (1) of this regulation may cancel the entire long term access or part thereof, subject to provisions of Regulation 18 of these regulations. In the event of cancellation of long term access, the nodal agency shall consider the applications of other applicants, if any, for grant of long term access and medium term open access to the whole or part of the same transmission corridor, as the case may be.”

(c) Proviso to Regulation 16:

“Provided that where long term access has been cancelled in accordance with clause (2) of Regulation 15A of these regulations, the nodal agency shall inform the Regional Load Despatch Centre and State Despatch Centre concerned to consider the said capacity for processing the request for short term open access in accordance with the Central Electricity Regulatory Commission (Open Access in inter-State transmission) Regulations, 2008 till long term access or medium term open access is granted to some other applicant.”

41. No comments have been received on the proposed amendments. However, the Commission on reconsideration of the proposed amendment has decided as follows.

(a) Termination of Power Purchase Agreement (PPA) by either party should not automatically lead to termination of Long Term Access (LTA) granted. However, in case the PPA is mutually terminated by both parties or the court determines that the PPA stands terminated, then the transmission capacity of the LTA vacated on account of this termination may be given to another applicant for LTA for this transmission capacity, and up till the time it is vacant, MTOA and on further spare capacity, STOAs may be given by the concerned nodal agency. In order to ensure that termination of the PPA does not lead to increase in the burden of transmission charges to other users, such LTA holder should be required to pay the injection charges as well as demand charges for the stranded capacity in accordance with the provisions of Regulation 18 of the Regulations.

(b) The regulation, however, should provide for the requirement of intimation to CTU about termination of PPA by the LTA holder.

(c) In the event of the LTA holder not using the Long Term Access for a period exceeding one year, the CTU can ask such LTA holder

to surrender the LTA, if it is satisfied that because of such LTA holder any other generation project is likely to get stranded.

(d) The CTU may also approach the Commission for remedial measures in this regard.

42. Accordingly, the proposed amendments shall be included in the final regulations as under:

(a) The following proviso has been added after third proviso to clause (1) of Regulation 12 of Connectivity Regulations:

"Provided that a generating company after firming up the beneficiaries through signing of long term Power Purchase Agreement(s) shall be required to notify the same to the nodal agency along with the copy of the PPA."

(b) Regulation 15A has been modified as under:

"15A. Intimation regarding termination of Power Purchase Agreement: (1) Where the entire or part of the Power Purchase Agreement (PPA) of the long term access customer is terminated in accordance with the provisions of the said agreement or through determination by a court or tribunal or commission of competent jurisdiction, it shall be incumbent on the long term access customer to give intimation about such termination of PPA to the nodal agency immediately but not later than two weeks from the date of such termination;

Provided that in the event of mutual termination of PPA or non utilization of long term access by the long term access customer for a period exceeding one year from the scheduled date of commencement of long term access, the Central Transmission Utility or the transmission licensee, as the case may be, may ask such long term customer to surrender the long term access after being satisfied that because of such long term access, any other generation project, which has applied for long-term access, is likely to get stranded:

Provided further that Central Transmission Utility or the transmission licensee, as the case may be, may approach the Commission for appropriate directions in this regard:

Provided also that on termination of the Power Purchase Agreement or surrender of long term access in terms of the preceding two provisos, the long term access customer shall be liable to pay the transmission charges

as required under Regulation 18 of these regulations.

(2) The nodal agency on receipt of intimation in accordance with clause (1) of this regulation may consider the applications of other applicants, if any, for grant of medium term open access for the whole or part of the same transmission corridor, as the case may be.”

(c) Proviso to Regulation 16 in the draft amendment regulations has been included as an independent Regulation as Regulation 16A as under:

“16A. On receiving the intimation regarding termination of Power Purchase Agreement, or surrender of long term access in accordance with the provisions of Regulation 15A of these regulations and after considering the applications for long-term access and medium-term open access, if any, as mentioned therein, the nodal agency shall inform the Regional Load Despatch Centre and State Despatch Centre concerned to consider the remaining capacity for processing the request for short term open access in accordance with the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008, as amended from time to time, till long term access or medium term open access is granted to some other applicant.”

43. We direct that the second amendment to 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 shall be finalized in terms of our decision above and notified accordingly.

| | | | |
|--|--|--|---|
| Sd/- (M.DEENA DAYALAN) MEMBER | sd/- (V.S.VERMA) MEMBER | sd/- (S.JAYARAMAN) MEMBER | sd- (Dr. PRAMOD DEO) CHAIRPERSON |
|--|--|--|---|