

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Date of Hearing : 9.4.2015

Date of Order : 3.7.2015

Petition No. 92/MP/2015

With I.A. No. 19/2015

In the matter of

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

And In the matter of

Power Grid Corporation of India Ltd.

Saudamini,

Plot No. 2, Sector 29,

Gurgaon, Haryana-122 001

...Petitioner

Vs

1. Kerala State Electricity Board,
Vaidyuthi Bhavanam,
Pattom,
Trivandrum – 695 004, Kerala
2. PTC India Limited,
2nd Floor, NBCC Tower,
15 Bhikaji Cama Place,
New Delhi-110066
3. NTPC Vidyut Vyapar Nigam Ltd.,
NTPC Bhawan, Core-7, Scope Complex,
7 Institutional Area, Lodhi Road,
New Delhi-110003
4. DB Power Limited
Office Block IA, 5th Floor,



Corporate Block, DB City Park,
DB City, Arera Hills, Opp MP Nagar,
Zone-I, Bhopal-462 016

5. EMCO Energy Limited
IBC Knowledge Park,
4/1, Bannerghatta Road,
Bangalore-560 029
6. KSK Mahandi Power Co. Limited
8-2/293/82/A/431A, Road No. 22,
Jubilee Hills, Hyderabad-500 033
7. Jindal Power Limited
Plot No. 2, Tower-B
Sector-32, Gurgaon, Haryana-122 001
8. Karnataka Power Transmission Company Limited
Cauvery Bhawan, K.G. Road,
Bangalore-560009, Karnataka
9. Tamil Nadu Generation and Distribution Corporation Ltd.,
NPKRR Maaligai,
44, Anna Salai,
Chennai-600 002
10. Essar Power MP Limited,
Equinox Business Park,
Off BandraKurla Complex, LBS Marg, Kurla (West),
Mumbai-400 070
11. National Load Dispatch Centre
B-9, Qutab Institutional Area, Katwaria Sarai,
New Delhi-110 016
12. Western Regional Load Despatch Centre
F-3, M.I.D.C. Area, Marole,
Opp SEEPZ, Central Road,
Andheri (East), Mumbai-400 093
13. Central Electricity Authority,
Sewa Bhawan, R.K. Puram,
New Delhi-110 066
14. Bharat Aluminium Company Ltd
1200 MW O&M Office, PO-BALCO Nagar,

District-Korba, Chhattisgarh-495684

15. Ind-Barath Energy (Utkal) Limited
Plot No. 30-A, Road No. 1
Film Nagar, Jubilee Hills
Hyderabad-500 033
16. Dhariwal Infrastructure Limited
CESC House, Chowringhee Square
Kolkata- 700 001
17. Adhunik Power and Natural Resources Limited
701, 7th Floor, World Trade Tower
Barakhamba Lane, New Delhi-110001
18. MB Power (Madhya Prades) Limited
239, Okhla Industrial Estate
Phase III New Delhi-110020
19. Jhabua Power Limited
Avanta Power & Infrastructure Limited
6th & 7th Floor, Vatika City Point
M.G. Road, Gurgaon-122002
20. Jindal India Thermal Power Limited
Plot N. 12 Local Shopping Complex
Sector B-1, VasantKunj
New Delhi-110070
21. GMR Kamalanga Energy Limited
Plot No. 29, Satya Nagar
Bhuaneswar, Odhisha-751007
22. Monnet Ispat & Energy Limited
Mohta Building, 3rd Floor
4, Bhikaji Cama Place
New Delhi-110066
23. Jal Power Corporation Limited
A-102, Secor-65
Noida-201307
24. EPJL, Essar Power Complex
Kanchan Nagri, Chandwa
District-Latehar
Jharkhand-829203

25. Lanco Babandh Power Pvt. Ltd.
Plot No. 397, Phase-III
Udyog Vihar, Gurgaon-122016
26. TRN Energy Pvt. Ltd.
7th Floor, Ambience Office Block
Ambience Mall, NH-8
Gurgaon, Haryana-122001
27. Maruti Clean Coal & Power Ltd
Hira Arcade, Ground Floor
New Bus Stand
Pandri, Raipur-492001 (C.G)
28. Jaiprakash Power Ventures Limited
Sector-U8, Noida-201304

I.A. No. 17/2015
In Petition No. 92/MP/2015

TRN Energy Private Limited

.....Applicant

Petition No. 99/MP/2015
with I.A. No. 11/2015

In the matter of

Petition for directions in regard to the allocation and operationalization of Long Term Open Access by Power Grid Corporation of India Limited, CTU for the applications received in the month of November, 2013.

And In the matter of

KSK Mahanadi Power Company Limited,
8-2-293/82A, Road No. 22,
Jubilee Hills,
Hyderabad-500033

..... Petitioner

Vs

- 1) Power Grid Corporation of India Ltd.
B-9, Qutab Institutional Area,
Kawarai Sarai, New Delhi-110016
- 2) Ministry of Power
Government of India

Shram Shakti Bhawan
New Delhi-110001

- 3) Central Electricity Authority
Sewa Bhawan, Ramakrishna Puram
New Delhi-110066
- 4) Power System Operation Corporation Ltd.
National Load Despatch Centre
B-9, Qutab Institutional Area
Katwaria Sarai, New Delhi-110016

.....Respondents

IA No. 12/2015

In the matter of

Emco Energy Limited
New Shakti Bhawan
Building No. 302, First Floor
Opposite Terminal-3
IGI Airport, New Delhi-110037

.....Applicant

Parties present:

1. Shri Sandeep Kumar Verma, Advocate
2. Shri Sanjay Sen, Senior Advocate, KSK
3. Shri Anand K. Ganesan, Advocate, KSK
4. Shri C. Narasimha, KSK
5. Shri N. Ramakrishana, KSK
6. Ms. Prerna Priyadarshini, Advocate, PGCIL
7. Shri Swapnil Verma, PGCIL,
8. Ms. Jyoti Prasad, PGCIL
9. Shri Anil Kumar Meena, PGCIL
10. Ms. Suparna Srivastava, Advocate, KSEB
11. Shri Sitiesh Mukherjee, Advocate, EMCO
12. Shri Jafar Alam, Advocate, EMCO
13. Shri Payal Chandra, Advocate, EMCO
14. Shri Aditya Mathur, Advocate, EMCO
15. Shri Deepak Khurana, Advocate, DB Power
16. Shri Vikas Adhia, DB Power
17. Shri Sanjay Kaul, JPL
18. Shri P.V. Siva Prasad, KSEBL
19. Shri Prashant Parela
20. Shri S. Thirunavukkarasa, TNEB
21. Shri K. Seshadri, TNEB

22. Shri Hemant Sahai, Advocate, Essar Power MP Ltd./MB Power Ltd./ Jal Power Corporation Ltd.
23. Ms. Esha Shekhar, Advocate, Essar Power MP Ltd./MB Power Ltd./ Jal Power Corporation Ltd.
24. Shri Vineet Sarawagi, MB Power (MP) Limited
25. Shri Abhishek Gupta, MB Power (MP) Limited
26. Ms. Pragya Singh, POSOCO
27. Ms. Abilia Zaidi, POSOCO
28. Ms. Jayantika Singh, POSOCO
29. Shri Prashanto Chandra Sen, Advocate, BALCO
30. Shri T. Srinivasamurty, Advocate, Ind-Barath Energy Ltd
31. Ms. Divya Chaturvedi, JPL
32. Shri Vikas Saxena, JPL
33. Ms. Gunjan Thakri, JPL

ORDER

The Commission vide its order dated 16.2.2015 in Petition No.92/MP/2014 and related petitions had issued certain directions regarding the treatment of allocation of power by Ministry of Power, Government of India while considering the applications for LTA and the principles for processing of the applications for MTOA and LTA received by the Central Transmission Utility (CTU) in the light of the provisions of Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Open Access to inter-State Transmission System and related matters) Regulations, 2009 (Connectivity Regulations). CTU has filed Petition No.92/MP/2015 to bring to the notice of the Commission the following difficulties encountered by CTU to give effect to some of the directions of the Commission:

- (a) Priority of allocation by Ministry of Power vis-à-vis the MTOA/LTA applications under consideration with CTU;
- (b) Declaration of ATC /TTC on a month-wise basis, especially for the year 2015-16 within the stipulated period (i.e. by 15.03.2015);

- (c) Operationalization of online MTOA/LTA applications and payment through RTGS/NEFT;
- (d) Procedure for determination of relinquishment charges in terms of Connectivity Regulations;
- (e) Subsequent development with respect to processing of LTA/MTOA applications for the month of November 2013 onwards;
- (f) Subsequent development with regard to grant of MTOA to PTC in terms of the order dated 16.2.2015.

2. The Commission in its interim order dated 12.3.2015 in Petition No. 92/MP/2015 issued the following directions/clarifications:

“4. We have heard the representatives of the petitioner and NLDC and the learned counsel for the respondents. CTU has filed this petition for clarification on six issues. Our clarification/directions on these issues are as under:-

(a) As regards the difficulty regarding handling MoP allocation, CTU during the hearing explained the difficulties faced by it for the treatment to be given to the allocation by MoP with the help of three examples. The submission of CTU requires detailed examination and deliberation. At this stage, it is clarified that where the decision for grant of LTA/MTOA has been taken by CTU but the formal intimation has not been issued, the capacity covered under such decision for MTOA/LTA cannot be utilized for accommodating the allocation by MoP.

(b) As regards the request for extension of timeline for publication of ATC for the year 2014-16, till CEA's data regarding LGBR is available, LGBR data for the year 2015-16 available on the website of RPCs, may be taken into consideration by CTU for monthly publication of TTC/ATC. In our view, one week time is sufficient to publish the results of TTC/ATC and accordingly, CTU is directed to publish the TTC/ATC for 2015-16 by 22.3.2015.

(c) As regards the extension of time for making effective the online mechanism for handling the applications, time is allowed till 30.4.2015. It is clarified that the online mechanism should be made effective from 1.5.2015.

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

(e) As regards the request of CTU for extending the deadline of 15.3.2015 for processing the LTA/MTOA applications on account of the judgment of the Hon'ble High Court of Madras in the Writ Petitions filed by Ind-Bharat (Utkal) Limited, it is observed that the copy of the judgment of the Hon'ble High Court is still awaited. CTU may go ahead with the grant of LTA as per the directions of the Commission, subject to the modification as may be required as per the directions of the Hon'ble High Court.

(f) As regards the non-operationalization of MTOA by PTC on account of the delay in the commercial operation of the generating units of Balco, we direct issue of notice to PTC, Balco and KSEB on this issue."

3. The procedure for accepting applications online has been approved by the Commission which will come into force with effect from 1.7.2015. At this stage, only three issues survive which need consideration by the Commission i.e. priority of allocation of Ministry of Power vis-à-vis MTOA/LTA applications under consideration by CTU, procedure for determination of relinquishment charges, subsequent development with regard to grant of MTOA to PTC in terms of the order dated 16.2.2015. As directed by the Commission in para 4(b) of the order dated 12.3.2015, CTU has made the following generators as parties to the petition:

- (a) Emco Energy Limited
- (b) GMR Kamalanga Energy Limited
- (c) Dhariwal Infrastructure Limited
- (d) DB Power Limited
- (e) KSK Mahanadi Power Limited
- (f) MB Power (Madhya Pradesh) Limited
- (g) Ind-Bharath Energy (Utkal) Limited
- (h) Jindal Power Limited

- (i) Essar Power (MP) Limited
- (j) Adhunik Power and Natural Resources Limited
- (k) Jhabua Power Limited
- (l) Monnet Ispat & Energy Limited
- (m) Jal Power Corporation Limited
- (n) Lanco Babandh Power Pvt. Ltd.
- (o) TRN Energy Pvt. Ltd.
- (p) Maruti Clean Coal & Power Ltd.
- (q) Jaiprakash Power Ventures Ltd.

4. The respondents have made their replies on both points i.e. priority of MoP allocations and relinquishment charges. POSOCO/NLDC has made submissions on the non-operationalization of MTOA by PTC. Since the hearing was complete in respect of all outstanding issues raised by CTU except relinquishment charges and order was reserved, the issue of relinquishment charges has not been dealt with in this order and will be taken up separately.

5. The submissions of the respondents on the issue of MoP allocation have been discussed in brief as under:

(a) Jindal Power Limited has submitted that not only LTA/MTOA allocations should not be interfered with in the process of treating MoP's unallocated capacity but also MoP's allocation in case of surrendered power or allocation from unallocated quota to beneficiaries in another region should be considered only after disposing of the earlier received LTA/MTOA applications. Jindal Power has submitted that priority should not be afforded to MoP's unallocated capacity over the existing LTA/MTOA customers as well as over the existing/pending applications for LTA/MTOA.

(b) Dhariwal Infrastructure Limited submitted that though MoP may re-allocate the unallocated capacity of CSGS but entertaining such re-allocation on priority basis by CTU will

introduce further uncertainties and for smooth operation of the transmission system. It is imperative that endeavor should be made to reduce the factors of uncertainties to the best of circumstances. It has been further submitted that the priority should not be afforded to the MoP's unallocated capacity over the existing LTA/MTOA customers as well as over the existing/pending applications for LTA/MTOA.

(c) DB Power Limited has submitted that the allocation of power by MoP from IGSTPS is not entitled to any priority to LTA vis-à-vis the existing LTA applications that have been made to CTU prior to date of request for MoP allocation. DB Power has submitted that MoP cannot be given unilateral and unbridled power to override the Connectivity Regulations which have force of statute, to the prejudice of other LTA applicants who have made their applications in accordance with the Connectivity Regulations. It has been further submitted that Regulation 2 (m) of the Connectivity Regulations, the beneficiaries of MoP allocation can be considered long term customer only if the power is being supplied from a generating station owned or controlled by the Central Government. In the present case, IGSTPS is a generation station owned by Aravali Power Company Pvt. Ltd and the said company is neither owned nor controlled by the Central Government. Therefore, the said MoP allocation and/or the beneficiaries of the same do not come under the purview of Regulation 2 (m). DB Power has further submitted that under the policy, MoP has power to allocate 15% of the unallocated power from a generating station. The installed capacity of IGSTPP is 1500 MW and allocation of 693 MW is way beyond the prescribed limit of 15% allocation permissible under the policy of MoP and such an allocation itself is not in accordance with MoP's own policy and is without authority of law. Therefore, the beneficiaries of excess allocation cannot be treated as deemed LTA customers. DB Power has submitted that MoP allocation

in case of surrendered power or allocation from unallocated quota to beneficiaries of another region should be considered only after deciding LTA applications received prior in point of time.

(d) KSKMPCL has submitted that the consideration of capacity for allocation of long term open access for the November 2013 applicants has to be as per the capacity that was available for allocation in November 2013. The subsequent events of allocation of capacity to short term, medium term and also pursuant to the directions of Government of India cannot affect the allocation of long term access. The only effect would be that the operationalization of the LTA granted to November 2013 applicants would be postponed till after the expiry of the open access subsequently issued for a short period. KSKMPCL has further submitted that the Commission in para 139(o) of the order dated 16.2.2015 had directed that MoP shall seek prior confirmation of the CTU regarding availability of capacity before allocating power out of the unallocated power or power surrendered by the beneficiaries in the Central Generating Stations. KSKMPCL has submitted that there was nothing on record to demonstrate that any such prior confirmation was obtained by MoP from CTU and therefore, MoP intimation to CEA on 19.3.2015 requiring the CEA to implement its allocation decision has only been a unilateral decision in violation of the specific directions of the Commission. KSKMPCL has submitted that transmission capacities allocated / facilitated by CTU to various States i.e. Andhra Pradesh, Telengana and Kerala, which was initially for a period of 31.3.2015 and further will be extended upto 31.3.2016 for a capacity of above 693 MW is in gross violation of KSKMPCL's right to LTA after having followed and confirmed to the established procedure. KSKMPCL has submitted that it is incumbent upon the Commission to cancel 693 MW of open access

provided to the three States and allow the same to LTA applicants of the Connectivity Regulations.

(e) EMCO Energy Ltd. in its affidavit has submitted that none of the LTA applicants who submitted their applications in November, 2013 are entitled to raise any objection to MoP allocations since they had not raised any issue at the time of allocation of the said 693 MW of power on 1.4.2014 and 1.6.2014 and have thereby waived their objections to or acquiesce in the said MoP allocations. With regard to the related priority of MoP allocation and LTA application, EMCO has submitted that both fall in different classes and the question of their relative priority does not arise at all. EMCO has submitted that the MoP allottee is a long term customer in terms of Regulation 2(i)(m) of the Connectivity Regulations and therefore has a right to long term open access to ISTS, whereas LTA applicants do not have any right on the ISTS, until their applications have been processed and LTA granted to them. EMCO has further submitted that pending LTA applications are not a relevant consideration for the CTU, when CTU is called upon to give effect to MoP allocations, as LTA applicants have no right on the transmission capacity. EMCO has submitted that the differential status accorded to MoP allocates vis-à-vis other long-term customers under the Connectivity Regulations is justified as the ISTS was built taking into account the generation capacities of the CSGs. Moreover, MoP allocations are necessary to address certain exigencies that arise from time to time. Therefore, MoP allocations must be given effect to as and when made, without the ado of procedural hurdles. EMCO has further submitted that the Connectivity Regulations prescribe only one prerequisite in respect of a MoP allocation, namely that the allocation can be made only from a generating station owned or controlled by Central Government. In the instant case, the concerned

generating station, IGSTPP, is controlled by the Central Government and therefore, the MoP allocation comply with prerequisite of the Connectivity Regulations. EMCO has also submitted that the Commission in its order dated 16.2.2015 has not made the requirement of prior consultation by MoP with CTU a mandatory requirement and therefore, the absence of prior consultation with CTU does render the MoP allocation void. It has been further submitted that the Connectivity Regulations do not limit the proportion of power from a Central Sector Generating Station that the MoP can allocate, whether to 15% of the generation capacity or any other. Therefore, MoP allocations in the instant case do not suffer from any irregularity or deficiency. As regards the contentions that the applications of November applicants must be processed based on the ATC declared as of December, 2013, EMCO has submitted that in the absence of any observation of the Commission to that effect in the order dated 16.2.2015, the November applicants have no claim in law to any right over the ATC that existed in November, 2013 or December, 2013.

(f) TANGEDCO has submitted that in para 132 of the order dated 16.2.2015, the Commission had observed about the requirement of prior consultation by MoP with CTU before MoP allocates the unallocated capacities at its disposal or reallocates the surrendered power from the Central Generating Stations. CTU issued an agenda for processing of LTA and MTOA applications received during November, 2013 and convened a meeting on 18.3.2015 in which it was informed that the communication had been received from Ministry of Power regarding extension of period of allocation of 693 MW of power from IGSTPS for a further period. According to TANGEDCO, there was no prior consultation with CTU regarding MoP allocation before 31.3.2015, which was contrary to the directions of the Commission with the order dated 16.2.2015. As regards the contention of MoP that MoP

allocation is a matter of public policy, TANGEDCO has submitted that the MoP allocations are as per the guidelines and are not covered under the National Tariff Policy. TANGEDCO has submitted that if MoP allocations are given priority overriding the LTA applicants, it would result in encouraging public sector at the cost of private sector in contravention of the Electricity Act, 2003, discrimination in granting open access and not distancing the regulatory responsibilities from the Government in contravention of the Electricity Act, 2003. TANGEDCO has submitted that the present MoP allocation of Jhajjar Power is not an unallocated power, but surrendered power to the tune of 45% of its capacity far exceeding the 15% level of unallocated power. TANGEDCO has also submitted that the present transmission corridor of 2X765 kV Sholapur-Raichur line could not have been planned in anticipation for evacuating the surrendered power of Jhajjar station to the Southern Region. TANGEDCO has sought a direction to the CTU to allocate the long term access as per the order of the Commission.

6. CTU in its affidavit dated 22.4.2014 has filed its response to the various objections and issues raised by the respondents. CTU has submitted as under:

(a) Allocation of power to States and Union Territories by the MOP is a matter of policy decision. Traditionally, the inter-State transmission system in the country has been developed to cater to the need for transmission for power in sync with the expanding generation capacity of Central Sector Generating Stations. Accordingly, the majority of the ISTS network, to the extent of almost 80-90% has been developed pursuant to the expansion in the CGS's generation capacity. It is only in the last 5-6 years that with the increase in the generating capacity of Independent Power

Producers (IPPs) that the CTU has augmented the transmission capacity in the country on the basis of applications for evacuation of power received from IPPs. Hence, it is not justified for the LTA applicants to claim right over the entire transmission capacity and to contend that the grant of transmission access to MOP allocatees are in contravention of their right of priority.

(b) As a matter of policy, 85% of the power of Central Generating Stations is towards firm allocation, in respect of which these generating stations have long term access while the remaining 15% is kept as unallocated capacity to be allotted by MOP, in view of the urgency requirements of States. The allocation of this 15% power is done by the MOP on the basis of the notification dated 27.04.2000 and the guidelines prescribed therein by the Central Government to meet the seasonal and overall power requirements of the States. The allocation of power to States by the Central Generating Stations is therefore a matter of policy guided by factor like exigency and necessity. Such policy decisions of the Central Government are not amenable to challenge except on the ground of malafide and arbitrariness which is not the case of the respondents in the instant case.

(c) The Commission in its order dated 11.10.2013 in Petition No. 93/MP/2013 has clarified that the allocation of power from the unallocated capacity may be for a short period in view of the urgency requirements, but their evacuation is against the long term access to the ISTS and these allocations get priority as long term access in accordance with provisions of Connectivity Regulations. The beneficiaries of the MoP allocation from the CGS are LTA customers and therefore, MoP allocatees have the

right to extension of LTA in terms of Regulation 17 of the Connectivity Regulations. However, keeping in view the exigent conditions in which MOP allocations are made and the short period for which they are made, the requirements of making a written request at least 6 months prior to the date of the expiry of the LTA under Connectivity Regulation may be inapplicable in case of MOP allocations, inasmuch as such requirements may defeat the very purpose of MOP allocations. This view is also consistent with this Hon'ble Commission's view that the beneficiaries of MOP allocations are not required to make an application for LTA in terms of the Connectivity Regulation as held in the 16.02.2015 order.

(d) In response to the argument that MoP allocation cannot override the vested rights of the LTA applicants to the applications which are pending at the relevant type, CTU has submitted that mere application for LTA does not create vested rights in favour of the applicant to get LTA from a particular date. CTU is required to process the applications for LTA and grant access in accordance with the Connectivity Regulations and the clarification issued by the Commission in the order dated 16.2.2015 giving due considerations to factors like inter se priority vis-a-vis of the applications. With regard to the contention that CTU is mandated to provide non-discriminatory open access to any licensee or generating company in terms of Section 38 (2) (d) of the Electricity Act, 2003, CTU has submitted that the right to get non-discriminatory open access of a licensee or a generating company is not an absolute right that entitles the LTA applicant to grant of access from the particular date for which the demand is made overriding any other grant/allocation, upon mere

making of the application. CTU has further submitted that its function to grant such access cannot be read to imply that the Respondents can claim an absolute right as to the time frame from which such access can be granted without adherence to other factors like availability of capacity, time taken to augment the ISTS for the required capacity, applications made in the previous month which have priority over those made in the subsequent month, etc.

(e) There is no express or implied prohibition on priority to MOP allocation under the statute or the regulations. In the absence of any such provision, it is completely incorrect to contend that the priority to MOP allocations is in contravention of the statutory provisions and regulatory framework. Moreover, the priority of MoP allocation will not lead to any uncertainty for other LTA applicants who have not yet begun scheduling of power. The maximum uncertainty that it could lead to would be in terms of some delay in the operationalization of the access for other LTA applicants.

(f) The MOP allocation dated 18.3.2015 has not been made by curtailing or overriding any existing MTOA/LTA grants. On the date i.e. 18.3.2015 on which the decision to extend the MOP allocation was communicated to the CTU, no decision had been taken by the CTU relating to grant of MTOA/LTA in respect of November 2013 applicants. The CTU could not have taken any such decision for granting LTA on the said date, in view of the interim order passed by the Appellate Tribunal from taking any final decision in this regard for a period of 2 weeks. Further, from the plain reading of Regulations 17 of the Connectivity Regulations, it may be inferred that

LTA can be extended by making a written request for the same. CTU has sought clarification of the Commission as to whether (a) the instant MOP allocation may be treated as an extension of the existing allocations rather than a fresh allocation and (b) the position with respect to priority to the assigned to MOP allocations vis-à-vis pending LTA applications before the CTU.

7. CTU has stated in the petition that it has complied with the directions in para 136 (b) of the order dated 16.2.2013 pertaining to grant of MTOA by 25.2.2015 to the eligible applicants. Subsequent to the grant of MTOA, the pre-operationalization formalities including signing of MTOA agreement and opening of LC were completed by 27.2.2015 and the MTOA was to be operationalized from 1.3.2015. CTU has submitted that as per the communication dated 28.2.2015 received from WRLDC, as the COD of the generation units has not been achieved, the MTOA has not been operationalized, though, CTU in line with Para 46 of the order dated 16.2.2015 has obtained an affidavit from PTC that it was ready and willing to operationalize MTOA immediately if MTOA was granted based on its priority. Though, notice was issued to PTC and Balco, no reply has been filed on their behalf. NLDC and WRLDC in their joint affidavit have submitted that on 28.2.2015, Balco informed WRLDC that one unit of its generating station has tripped due to stator problem and 300 MW IPP of Balco has not declared COD, and therefore, there was no surplus power to commence the MTOA. It has been further submitted that Balco requested WRLDC for permission to buy power from its Jharsuguda plant in order to operationalize the MTOA. As the plant of Balco was not ready, it applied for STOA from Sterlite to Balco for operationalizing the MTOA to KSEB and applied for STOA from Sterlite to Balco. However, this was not permitted as it would have resulted in trading of power by a generator without

licence, resulting in possible violation of Section 2(71) read with Section 12 of the Electricity Act, 2003. Balco started scheduling 58 MW MTOA to KSEB w.e.f. 0500 Hrs. of 11.3.2015 having sufficient surplus power after meeting its captive load, but from 1200 Hrs, Balco revised MTOA to zero due to non-availability of surplus power. Once again Balco commenced the MTOA from 0245 Hrs. on 17.3.2015. NLDC has submitted that since availability of surplus power was not enough to meet the MTOA after meeting its captive load, Balco MTOA schedules were being revised intermittently till 1.4.2015. NLDC has further submitted that vide its letter dated 10.3.2015, it has highlighted the need for appropriate expansion of the regulation of the Commission to address the issues related to purchase of power by the generator from the short term market in case of partial or complete outage of their units.

Petition No. 99/MP/2015 filed by KSK Mahanadi Limited

8. KSK Mahanadi Power Company Limited (KSKMPCL) has filed this petition on 24.3.2015 challenging the Agenda Note circulated by CTU for processing of LTA and MTOA applications received during November 2013 to implement the Commission's directions dated 16.2.2015 in Petition No.16/MP/2014.

9. KSKMPCL has submitted that it is a generating company in the State of Chhatisgarh having a total installed capacity of 3600 MW out of which first two units of 600 MW each have been commissioned. KSKMPCL has entered into a Power Purchase Agreement dated 27.11.2013 with Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) pursuant to a Case-1 competitive bid process. KSKMPCL has submitted that it filed an LTA application in November 2013 seeking LTA with effect from

1.8.2014. However, due to delay in decision on the LTA, the generating units of KSKMPCL have been shut and supply to TANGEDCO has not been commenced.

10. KSKMPCL has submitted that the Commission in para 139(m)(v) of the order dated 16.2.2015 had directed CTU to identify the capacity which can be granted to LTA applicants after taking into account the transmission capacity commissioned/planned in the timeframe of desired long term access and if the capacity so identified is expected to be available from a prospective date and is adequate to accommodate all LTA applications made during a month for a particular direction, the capacity for LTA shall be earmarked and blocked and CTU shall start the process in accordance with the Detailed Procedure. KSKMPCL has submitted that as per the said directions, CTU is required to consider the capacities getting free on the existing commissioned lines plus the new capacity based on scheduled date of commissioning and once these two together exceed the LTA capacity applied for, such capacity becomes the base for cut-off, earmarking and allocation. KSKMPCL has submitted that for the November 2013 applicants, the new capacity being commissioned was ATC of 1250 MW with effect from 1.8.2014 which was also declared by CTU on 9.12.2013 and has been recognized by the Commission in the order dated 16.2.2015. KSKMPCL has submitted that the existing capacity of 316 MW was getting freed on 1.6.2014 and thus, with effect from 1.8.2014, the capacity getting available for consideration was 1550 MW which was sufficient to accommodate the LTA applicants of November 2013 and CTU ought to have allocated such capacity in December 2013 with scheduled date of operationalization as 1.8.2014.

11. KSKMPCL has submitted that in order to give effect to the directions of the Commission in order dated 16.2.2015 in Petition No.92/MP/2014,CTU has circulated an Agenda Note for processing the LTA and MTOA applications received during November 2013 and as per the said agenda note, ATC for November, 2013 applications is only 900 MW w.e.f. 1.4.2015 and 1197 MW w e f 1.6.2015 which is based on the ATC determined as on 15.3.2015, and not as on 9.12.2013 which is contrary to directions of the Commission. KSKMPCL has submitted that ATC of 1250 MW declared by CTU on 9.12.2013 effective from 1.8.2014 was considered for grant of LTA. On 20.12.2013, CTU had allocated LTA to August 2013 letter applicants which was required to be corrected to November 2013 applicants. Subsequent events including allocation by MoP from Jhajjar Power cannot curtail or restrict the allocation of the said capacity of 1250 MW. As about 316 MW was getting freed prior to 1.8.2014, a total capacity of 1550 MW should be considered for LTA applicants for the month of November 2013 without being influenced by the subsequent allocations by MoP. KSKMPCL has submitted that the decision of the Commission in order dated 16.2.2015 is clear and does not mandate CTU to consider the present capacity available for the November 2013 allocations to be made. KSKMPCL has submitted that the ATC to be considered has to be of the relevant time, and the only effect of the capacity being presently available is that LTA would get operationalized in stages as per the principle set out in para 139(n) of the order dated 16.2.2015.

12. In view of the above, KSKMPCL has made the following prayers:

“(a) Hold, direct and clarify that ATC to be considered for Nov 2013 LTA applications is based on the capacity available then for allocation and the subsequent events pending proceeding before CERC cannot affect the vested rights of petitioner for LTA allocation;

(b) Hold and direct that allocation of LTA for Nov 2013 LTA applications has to be based on the ATC communicated on 9.12.2013 and based on the scheduled date of operationalization and the subsequent events can only enable part LTA operationalization, which is permitted;

(c) Pass an ad-interim parte order restraining any allocation/ operationalization to be made including any proposed allocation/ further extension / operationalization by MoP which requires transmission capacity to be allocated/ blocked pending decision of CERC;

(d) Confirm the interim order in terms of prayer (c) above after notice to the Respondent.”

13. The petition was heard on 26.3.2015 for admission. Learned senior counsel for the KSKMPCL requested the Commission to pass an ad-interim order restraining any allocation/operationalization to be made including any proposed allocation/further extension/operationalization by the Ministry of Power till pending decision in the petition. The Commission directed that operationalization of allocation of power by Ministry of Power, if any, shall be subject to the outcome of this petition. The Commission directed KSKMPCL to implead Ministry of Power, CEA and POSOCO as parties to the petition and directed all respondents to file their replies. KSKMPCL vide its affidavit dated 8.4.2015 filed amended memo of parties which has been taken on record.

IA No. 11/2015 in Petition No.99/MP/2015

14. KSKMCL filed the IA/2015 on 30.3.2015 seeking a stay on any allocation of transmission capacity by CTU pursuant to the allocation dated 19.3.2015 made by Ministry of Power. KSKMPCL has submitted that CTU convened a meeting on 18.3.2015 for allocation of long term access pursuant to the Agenda Note circulated. However, when the meeting was convened on 18.3.2015, CTU informed that it had received a communication from the MoP, Govt of India about the allocation of 693 MW of power from M/s Aravali Power Pvt. Ltd. to the Southern States of Andhra Pradesh, Telengana and Kerala for the period from 1.4.2015 till 31.3.2016. KSKMPCL has submitted that MoP Govt. of India

proceeded to intimate the allocation to the Central Electricity Authority by communication dated 19.3.2015 i.e. one day after the meeting held by CTU. KSKMPCL has submitted that this communication from MoP has been received by CTU well after CTU had taken a decision to award 1208 MW to LTA customers in December 2013 and once again in 13.3.2015. According to KSKMPCL, when the capacity has been already designated for the November 2013 applicants, it cannot be used for other purposes including allocation by Ministry of Power. KSKMPCL has submitted that the entire process contrary to the specific finding, decision and directions of the Commission, is being made to the severe prejudice of the other stakeholders who have been waiting for the allotment of the open access corridor for transfer of power. KSKMPCL has sought a stay on the allocation of the transmission capacity pursuant to the allocation by MoP and a direction to CTU to maintain status quo with regard to the transmission capacity allocation/operationalization/scheduling particularly the allocation sought to be made by the Ministry of Power from 1.4.2015 pending decision on the allocation to November 2013 applicants.

15. IA No. 11/2015 was heard on 31.3.2015. After hearing the learned senior counsel for the petitioner, notice was issued on the IA. The Commission reiterated its direction made in the ROP dated 26.3.2015 in Petition No.99/MP/2015 that operationalization of allocation of power by Ministry of Power shall be subject to the outcome of the petition. The Commission further directed that since the Petition Nos. 92/MP/2015 and 99/MP/2015 were listed for hearing on 9.4.2015, no final decision shall be taken by CTU for grant of long term open access till that date. In the hearing held on 9.4.2015, CTU was directed to share copy of reply filed by the Ministry of Power in Petition No. 99/MP/2015 with the respondents who were permitted to file their replies. Emco Energy Limited sought impleadment in the petition

which was not allowed. However, Emco was permitted to file its submission. It was brought to the notice of the Commission that KSKMPCL has filed a petition before the Hon'ble High Court of Delhi challenging the priority given to the allocation power by MoP. The Commission directed KSKMPCL to place on record the copy of Writ Petition filed before the Hon'ble High Court of Delhi in order to enable the Commission to take a view on the maintainability of the Petition No. 99/MP/2015. The Commission decided that the issue with regard to determination of relinquishment charges would be dealt with in due course and parties were directed to file their replies on this issue by 25.4.2015. Order was reserved in both Petition Nos. 92/MP/2015 and 99/MP/2015 on all issues except the relinquishment charges. The interim direction in ROP dated 31.3.2015 in Petition No. 99/MP/2015 was allowed to continue till further orders.

Replies to Petition No.99/MP/2015

16. Responses to Petition No.99/MP/2015 have been filed by Ministry of Power, CTU, DB Power Limited and Emco Energy Limited. The responses in brief are discussed as in the succeeding paragraphs.

17. MoP vide Office Memorandum No. 21/1/2015-PG dated 8-4-2015 has submitted the following in response to the petition filed by KSKMPCL:

"5. Following submissions are made to highlight the basis and justifications for MoP allocations:

- a. The Ministry of Power allocation challenged by KSK Mahanadi Power Limited is a matter of public policy. As such, the courts follows a practice of refraining from interfering in the policy decision of the government, as there is a presumption in favour of the constitutionality and legality of the executive action.

- b. The beneficiaries of the MoP allocations are treated as long term customers under Connectivity Regulations, 2009 and it is the right of a LTA customer under Regulation 17 of Connectivity Regulations, 2009.
- c. The referred MoP communication is not a fresh allocation, but an extension of already allocated capacity. In terms of Regulation 17 of the Connectivity Regulations, 2009 which provides that “On the expiry of the period of long-term access, the long term access shall stand extended on a written request provided by a long term customer in this regard to the Central Transmission Utility mentioning the period of extension that is required”. In this regard, it is further submitted that though Regulation 17 also requires that requires that “written request shall be submitted by the LTA customer to Central Transmission Utility at least six months prior to the date of expiry of long term access.” However, since the Order dated 16.2.2015 of the Hon’ble Commission notes that “Allocation of power from the unallocated capacity may be for a short period, but their evacuation is against the long term access to the inter-State transmission system.” Thus keeping in mind the exigencies situations under which MoP allocations are made and the short period for which they are allocated, it shall defeat the purpose of MoP allocations, if their extension can be made only upon a written request made six months in advance.
- d. Power from Central Generating Stations to beneficiary States/Union Territories is allocated in accordance with formula for allocation of power which is being treated as guidelines from April, 2000. As per these guidelines, allocation of power is being made to the States/UTs from the 15% unallocated power from Central Generating Stations for allocation by the Government for meeting the urgent/overall requirement.
- e. This 15 % unallocated Power in Central Generating Stations (CGSs) available at the disposal of the Government is redistributed on a dynamic basis to meet the seasonal and overall requirements of States/UTs/emergency conditions. As most of the States/ UTs, more so Southern Region due to non-availability of gas and issues with nuclear project, have been facing power shortages, requests for additional allocation of unallocated power are received from time to time. As such, in case of fresh allocation/extension of an allocation, the provision of 15% allocation of power as per the State’s exigencies and power shortages is a mark of quasi-federal structure of the Constitution of India wherein the Centre has been imparted both the power as well as duty to provide for State's needs.
- f. The issue was considered by the Commission in its order dated 11.10.2013 in Petition Nos. 93/MP/2013 and 96/MP/2013 and in para 40 of the said order, the Commission directed as under:

“40. It is clarified that the inter-State transmission system network has been planned traditionally to evacuate the power from the Central Sector Generating Stations owned or controlled by the Central Government. The entire capacities of these generating stations have been taken into account in the planning of the transmission corridors. Therefore, these generating stations have the long term access for their entire capacity, though there is firm allocation for about 85% and remaining 15% has been kept as unallocated capacity which is allotted by the Ministry of Power, Government of India keeping in view the urgency of requirement of any State. Allocation of power from the unallocated capacity may be for a short period, but their

evacuation is against the long term access to the inter-State transmission system. Once the power is allocated from unallocated capacity of a particular generating station to a particular State, the bus bar of the generating station becomes the firm point of injection and the inter-connection point between that State and ISTS becomes the drawal point. These allocations get priority as long term access in accordance with the provisions of Connectivity Regulations. In Regulation 2(1)(m) of the Connectivity Regulations, a long term customer has been defined as under:

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

- g. Power is not only a commercial good but a national commodity having significant impact on social, cultural and political spheres. Thus, commercial consideration alone ought not to govern the allocation of transmission corridors for transfer of power.
- h. Without prejudice to individual merit of each of the grounds stated above, there is a case for differential treatment of MoP allocation as against the LTA applications made in an ordinary course on ground of public policy considerations highlighted above.

6. Keeping the aforesaid submissions in view, it is submitted to CERC that MoP allocation should have an overriding priority over the pending LTA/MTOA applications in line with the directions by CERC vide its order dated 20.03.2015 in Petition No.92/MP/2015.”

18. Replies of CTU, DB Power and EMCO are briefly capitulated as under:

(a) CTU in its affidavit dated 7.5.2015 has submitted that the primary grievance agitated by the petitioner in the petition as also in the writ petition filed before the Hon’ble High Court of Delhi is with respect to the MoP allocation and their operationalization. CTU has submitted that the petition be dismissed on the ground of multiplicity of litigation. CTU has submitted that in compliance with the directions of the Commission dated 12.3.2015 to go ahead with grant of LTA/MTOA, CTU processed the applications received during November 2013 by issuing a notice dated 13.3.2015 inviting the SR and WR constituents, CEA, POSOCO and eligible LTA applicants for a meeting on 18.3.2015. In the accompanying Agenda Note, CTU declared the capacity available for grant of LTA to the applicants of November 2013

as 900 MW from 1.4.2015 and 1197 MW from 1.6.2015. CTU has submitted that during the meeting on 18.3.2015, it received a communication that the Appellate Tribunal for Electricity in I.A. No.111 of 2015 in Appeal No.50 of 2015 has directed CTU not to take decision pertaining to grant of LTA for a period of two weeks which was listed with the Appellate Tribunal issuing the final judgement in the said appeal. However, on 31.3.2015, KSKMPCL obtained a stay from the Commission on long term access in the present petition which is still continuing. CTU has submitted that KSKMPCL has primarily challenged the MoP allocation and its impact on processing LTA applications received during March 2013. CTU has submitted that the issue with regard to MoP allocation vis-a-vis pending LTA/MTOA applications has been specifically raised by CTU in Petition No. 92/MP/2015 and parties have addressed the issue by making oral and written submissions. CTU has submitted that the present petition was filed only for the purpose of obtaining the stay on processing of applications and therefore, there is no fresh merit in the petition and the same is liable for rejection.

(b) DB Power in its written submission dated 20.4.2015 has submitted that DB Power has set up 1200 MW (2X600) Thermal Power plant at village Badadarha, in District Janjgir Champa, Chhattisgarh and has executed long term PPA dated 19.8.2013 with TANGEDCO for supply of 208 MW power from 1.2.2014 to 30.9.2028, pursuant to competitive bidding process. DB power applied for LTA in November, 2013 for the said quantum of power and was granted LTA by PGCIL on 20.12.2013. However, CTU in the Agenda Note has considered KSKMPCL, Jindal Power Limited and Balco Ltd as November 2013 applicants to the exclusion of DB Power Ltd and

has proposed to grant LTA to them. DB Power has submitted that the Appellate Tribunal for Electricity in its judgement dated 30.3.2015 in Appeal No.50/2015 has held that DB Power is a November 2013 applicant and therefore, CTU is now required to take into consideration DB Power as an November 2013 applicant for grant of LTA. DB Power has supported the contention of KSKMPCL that the total capacity that needs to be taken into account for November 2013 applicants should be 1556 MW.

(c) In response to the submissions of MoP in the letter dated 8.4.2015, DB Power has submitted that the issue raised before the Commission is not the legality or validity of the allocation but the priority to be given to such allocation vis-s-vis LTA within the framework of Connectivity Regulations and therefore, examination or adjudication of the priority to be given to MoP allocation would not amount to interference with policy decision. According to DB Power, allocation of power by MoP is not entitled to any priority for LTA vis-à-vis the existing LTA applications that have been made prior to the date of request for MoP allocation. In accordance with Regulation 10 of the Connectivity Regulations, CTU ought to treat the date/month of the request for MoP allocation as the date/month for the application for LTA and accordingly allocate the relative priority. DB Power has submitted that MoP allocation from unallocated quota or allocation in case of surrender of power to the beneficiaries of another region should be considered only after deciding the LTA applications received prior in point of time.

(d) Emco Energy Limited has submitted that pursuant to the order dated 16.2.2015 in Petition No.92/MP/2014 and order dated 20.3.2015 in Petition No.92/MP/2015, CTU was required to process LTA and MTOA applications based on system studies carried out by 15.3.2015 which was extended to 22.3.2015 and therefore, the ATC of SR for any date prior to 22.3.2015 including 1.8.2014 is irrelevant in determining whether any LTA ought to be granted to the November 2013 LTA applicants. Emco has submitted the Commission's orders dated 16.2.2015 and 20.3.2015 do not imply that ATC as on 9.12.2013 has to be the basis for processing of LTA and MTOA applications made in the month of November 2013. Emco has submitted that CTU has correctly declared ATC of 900 MW as of 1.4.2015 and of 1197 MW as of 1.6.2015. EMCO has submitted that since ATC is clearly inadequate to service 1208 MW of LTA as demanded by November 2013 applicants, MTOA applications made in November 2013 may be processed as per law till such time that full LTA may be granted to the LTA applicants.

19. KSKMPCL was directed to place the writ petition filed by it before the Hon'ble High Court of Delhi. KSKMPCL has placed the copy of the writ petition on record.

20. We have heard the learned counsel for the parties. On consideration of the pleadings of the parties and arguments during oral hearing, the following issues arise for our consideration:

(a) Whether the petition filed by KSKMPCL is maintainable in view of the writ petition filed by it before the Hon'ble High Court of Delhi?

- (b) What is the scope of the directions of the Commission in order dated 16.2.2015 with regard to the relative priority of allocation of MoP vis-à-vis LTA and MTOA applicants?
- (c) Whether MoP allocation can be considered as a matter of public policy and can have priority over the right of non-discriminatory open access by any generator or licensee?
- (d) Whether beneficiaries who have been allocated surrendered power can be treated as deemed Long Term Customers in terms of Regulation 2(1)(m) of Connectivity Regulations?
- (e) Whether the deemed LTA customers have a right to extension of their LTA in terms of Regulation 17 of the Connectivity Regulations and if so, whether prior application is necessary for extension of the period of allocation by MoP?
- (f) Whether the directions of the Commission with regard to treatment of MoP allocation have been complied with by CTU?
- (g) Whether CTU has calculated the ATC in its Agenda Note dated 13.3.2015 in conformity with the provisions of Connectivity Regulations and the Commission's directions in order dated 16.2.2015?
- (h) Whether non-operationalization of MTOA by PTC/Balco is in contravention of the directions of the Commission in order dated 16.2.2015 and the undertaking furnished by PTC/Balco, and if so what action should be taken against them?

These issues have been analysed and discussed ad seritam in the succeeding paragraphs.

Issue No.1: Whether the petition filed by KSKMPCL is maintainable in view of the writ petition filed by it before the Hon'ble High Court of Delhi?

21. KSKMPCL has filed the Petition No.99/MP/2015 challenging the calculation of ATC by CTU in the Agenda Note circulated on 13.5.2015 for consideration of the LTA applicants for the month of November 2013. KSKMPCL has submitted that on account of the intervening allocation made by MoP from IGSTPS, Jhajjar, CTU has calculated the ATC as 900 MW effective from 1.4.2015 and 1197 MW effective from 1.6.2015. KSKMPCL has sought directions and clarification that ATC for November 2013 applicants shall be based on the capacity then available for allocation and subsequent events pending proceedings before the Commission, cannot affect the vested rights of the petitioner for LTA allocation. During the hearing of the petition, both CTU and Emco Energy Limited raised objections regarding maintainability of the petition since KSKMPCL is pursuing the same issues before the Hon'ble High Court of Delhi and before the Commission. The Commission directed KSKMPCL to place on record a copy of the Writ Petition filed before the Delhi High Court for taking a view on maintainability of the petition. KSKMPCL has filed copy of the writ petition vide its affidavit dated 20.4.2015. In the written submission, KSKMPCL has submitted that the Writ Petition is directed against the out of turn allocation of power by Ministry of Power, the direction given by MoP to CTU and consequent allocation of capacity by CTU. However, in the petition before the Commission, the issue is regarding the wrong capacity considered by CTU for November, 2013 applicants by not applying the doctrine of relation back and the specific directions of the Commission and the capacity as declared on

9.12.2013. KSKMPCL has submitted that the issues and cause of action in the present petition are not the same as in the case of the Writ Petition before the High Court of Delhi. It has been further submitted that the said Writ Petition is still at registry stage with diary number and has not been listed.

22. We have considered the submissions of CTU, Emco and KSKMPCL. We have gone through the Writ Petition filed by KSKMPCL before the Hon'ble High Court of Delhi. From the records, it appears that KSKMPCL has filed the Petition No. 99/MP/2015 on 24.3.2015 before the Commission seeking directions and clarification regarding the ATC to be considered for November 2013 applicants by not considering the subsequent events including allocation by MoP. The Writ Petition signed on 26.3.2015 has been filed before the High Court of Delhi. As per the written submission of learned counsel for the petitioner, the Writ Petition is at the diary stage and has not been listed. The writ petition mainly challenges the following:

- “1. The petitioner by way of the present petition seeks to invoke the extraordinary writ jurisdiction of this Hon'ble Court, seeking an appropriate writ/order/direction restraining the Respondents from taking any action contravening/overriding the procedure and directions of the Central Electricity Regulatory Commission (CERC) contained in its orders dated 16.02.2015 and 20.03.2015 extending/granting out of turn allotments, under the directions of Respondent No.1, viz. immediately granting open access to its own generating stations ahead of other applicants, being de hors the express provisions as well as true intent and mandate envisaged by and under the Electricity Act, 2003 and CERC (Grant of Connectivity, Long-Term Access and Medium Term Open Access in inter-State Transmission and related matters) Regulations, 2009, and all other applicable Regulations of CERC. It is stated that such actions would deprive and deny the petitioner a reasonable opportunity of securing open access under the allotment process in accordance with Regulations, which the petitioner has been long awaiting since November, 2013.”

In the prayers, the petitioner has prayed for a writ of mandamus or any appropriate writ, order or directions restraining Respondent No.1 (MoP) from issuing any directions and acting in any manner that contravenes/overrides the procedure and directions of CERC by

orders dated 16.02.2015 and 20.3.2015 as well as the provisions of the regulations relating to LTA applicants of November, 2013.

23. The scope of the Writ Petition is different from the scope of the petition filed by KSKMPCL before this Commission. While KSKMPCL has sought directions to restrain MoP to make allocation contrary to the provisions of the Connectivity Regulations and orders of the Commission, the prayer before the Commission is to issue a clarification that MoP allocation cannot affect the rights of KSKMPCL for LTA allocation based on its applications made in November 2013. It is pertinent to mention that CTU has also raised certain issues regarding MoP allocation in which KSKMPCL has filed its reply. Moreover, the Writ Petition has been allotted a diary number only and has not been registered as yet. In our view, there is no legal bar to consider issues raised in the Petition No.99/MP/2015.

Issue No.2: What is the scope of the directions of the Commission in order dated 16.2.2015 with regard to the relative priority of allocation of MoP vis-à-vis LTA and MTOA applicants?

24. CTU has submitted that the Commission's order dated 16.2.2015 clarifies that there shall be no curtailment of existing LTA or MTOA for accommodating allocation by MoP of the unallocated power at its disposal or temporarily allocated firm share. It follows from the order that MoP allocations cannot displace the existing/granted LTA/MTOA. CTU has submitted that since MoP allocations are made during exigency situations wherein unallocated quota of power available with the Central Government or surrendered firm power are allocated to the needy States, priority of such MoP allocations with respect to such LTA/MTOA already submitted or under process needs further clarity.

25. In paras 131 and 132 of our order dated 16.2.2015, we have dealt with the issue of treatment of MoP allocation from the unallocated power and surrendered power as under:

“131. It is noticed that Ministry of Power allocated 376 MW power to Southern States for one month from 1.7.2014 to 31.7.2014 and subsequently from 1.8.2014 to 31.3.2015 has been a contentious issue among the parties. CTU has submitted that LTA has not been allocated by CTU for the said power. It is also not clear whether MoP had consulted POSOCO or CTU regarding the available transmission capacity before allocating such power. However, as per Regulation 2(m) of Connectivity Regulations, the person who is allocated such power is considered as a long term customer. In other words, there is no requirement of making application for LTA by the person who has been allocated power from central generating station by MoP. This issue was considered by the Commission in its order dated 11.10.2013 in Petition Nos. 93/MP/2013 and 96/MP/2013 and in para 40 of the said order, the Commission directed as under:

“40. It is clarified that the inter-State transmission system network has been planned traditionally to evacuate the power from the Central Sector Generating Stations owned or controlled by the Central Government. The entire capacities of these generating stations have been taken into account in the planning of the transmission corridors. Therefore, these generating stations have the long term access for their entire capacity, though there is firm allocation for about 85% and remaining 15% has been kept as unallocated capacity which is allotted by the Ministry of Power, Government of India keeping in view the urgency of requirement of any State. Allocation of power from the unallocated capacity may be for a short period, but their evacuation is against the long term access to the inter-State transmission system. Once the power is allocated from unallocated capacity of a particular generating station to a particular State, the bus bar of the generating station becomes the firm point of injection and the inter-connection point between that State and ISTS becomes the drawal point. These allocations get priority as long term access in accordance with the provisions of Connectivity Regulations. In Regulation 2(1)(m) of the Connectivity Regulations, a long term customer has been defined as under:

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

Thus a person who has been allocated power from the generating stations owned or controlled by the Central Government is recognized as a long term customer and gets priority at the bottom of other long term customers and over the medium term and short term customers who have been allotted access on account of the margin available due to non-utilization of the corridor by such long term customer.”

132. The issue is in what circumstances the allocations by MoP will be scheduled and its implications on the LTA, MTOA and STOA customers. There are no clear-cut guidelines in this regard in the Connectivity Regulations. We may consider the provisions in other regulations. Note 2 under Regulation 42 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 provides as under:

“Note 2

The beneficiaries may propose surrendering part of their allocated firm share to other States within / outside the region. In such cases, depending upon the technical feasibility of power transfer and specific agreements reached by the generating company with other States within/ outside the region for such transfers, the shares of the beneficiaries may be prospectively re-allocated by the Central Government for a specific period (in complete months) from the beginning of a calendar month.....”

Similar provision existed in Note 2 under Regulation 32 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009. Therefore, the main consideration for reallocation of power from the beneficiaries of a State to the beneficiaries of other States within or outside the region is the technical feasibility of power transfer. Further Regulation 15(2) of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 provides as under:

“(2) In case of inter-regional bilateral transactions, approved schedule may be revised or cancelled by the Regional Load Despatch Centre, if the Central Government allocates power from a central generating station in one region to a person in the other region and such allocation, in the opinion of the Regional Load Despatch Centre, cannot otherwise be implemented because of congestion in inter-regional link. The intimation about such revision or cancellation shall, as soon as possible, be conveyed to the affected open access customers.”

Thus as per the above provision, only short term open access can be curtailed in order to implement the allocation from one region to another region made by the Central Government. In other words, the capacity allocated under LTA and MTOA shall not be disturbed on account of allocation by MoP. Therefore, there is a requirement of prior consultation with CTU before MoP allocates the unallocated capacity at its disposal or reallocates the surrendered power from the Central generating Stations. In such cases, CTU shall clearly indicate the capacity that is available after MTOA and LTA to MoP to enable MoP to take an informed decision.

133. In the context of the order dated 11.10.2013 as quoted in para131 above, POSOCO vide its letter dated 26.8.2014 has submitted that during the curtailment of open access on account of transmission bottlenecks, STOA would be curtailed first, followed by MTOA and then followed by LTA and within a category, curtailment shall be carried out on pro-rata basis. Since one long term customer cannot be granted priority over another, POSOCO has sought clarification about the words “at the bottom of the other long term customer” used in para 40 of the order of the Commission. It is clarified that curtailment of LTA including the allocation by MoP will be governed by the provisions of Regulation 25 of the Connectivity Regulations which is extracted as under:

“25. Curtailment

(1) When for the reason of transmission constraints or in the interest of grid security, it becomes necessary to curtail power flow on a transmission corridor, the transactions already scheduled may be curtailed by the Regional Load Despatch Centre.

- (2) Subject to provisions of the Grid Code and any other regulation specified by the Commission, the short term customer shall be curtailed first followed by the medium term customers, which shall be followed by long term customers and among the customers of a particular category, curtailment shall be carried out on pro-rata basis.”

It is noticed that as per Connectivity Regulations, the power flow of long term customers shall be curtailed last but among the long term customers, curtailment shall be carried out on pro-rata basis. Since the person allocated central sector generation is deemed to be a long term customer irrespective of the period of allocation, such allocation shall be subject to pro-rata curtailment alongwith other long term customers in case of system constraints. Therefore, the use of the words “at the bottom of the other long term customers” shall not come in the way of curtailment of capacity as per the regulations.”

26. As per the above directions, the treatment of allocation by MoP from the Central Generating Stations owned or controlled by the Central Government shall be as under:-

- (a) As per Regulation 2 (1)(m) of Connectivity Regulations, a person who has been allocated Central Sector Generation is a long-term customer. There is no requirement of making application for LTA by the person who has been allocated power from the Central Generating Stations by MoP.
- (b) Allocation of power from the un-allocated capacity may be for a short period but their evacuation is against the long-term access to the inter-State transmission system. Once power is allocated from the un-allocated capacity of the particular generating station by MoP, the allocation get priority as long-term access in accordance with the provision of Regulation 2 (1) (m) of the Connectivity Regulations.
- (c) In the light of the provisions of Note-2 under Regulation 42 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014, the main consideration for re-allocation of power from the beneficiaries of a State to the beneficiaries of other State within or outside the region is the technical feasibility of power transfer.

- (d) As per Regulation 15 (2) of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008, only short-term open access can be curtailed in order to implement the allocation of MoP from one region to another region and the capacity granted under MTOA and LTA shall not be disturbed on account of allocation by MoP.
- (e) There is a requirement of prior consultation with CTU before MoP allocates the un-allocated capacity at its disposal or re-allocates the surrendered capacity from the Central Generating Stations. When such consultation is made by MoP, CTU is mandated to clearly indicate the capacity that is available after grant of MTOA and LTA to enable MoP to take an informed decision.
- (f) MoP shall seek prior confirmation from CTU regarding the availability of capacity before allocating power out of un-allocated power or power surrendered by beneficiaries in the Central Generating Stations as it is not permissible to curtail MTOA or LTA to accommodate such allocation of power by MoP.
- (g) Since the person allocated Central Sector Generation is deemed to be a long-term customer, such allocation shall be subject to the pro-rata curtailment along with other long-term customers in case of system constraints in terms of Regulation 25 of the Connectivity Regulations.

27. Our above directions are based on the premise that the transmission system is planned for an ISGS in the region(s) in which the supply of power from the ISGS is envisaged. The 15% unallocated power is generally allocated to the constituents of the

same region or to the constituents of the other region who have been allocated power from the ISGS as original beneficiary for whom the system was planned for the particular ISGS. However, MoP may also allocate power out of 15% unallocated power of an ISGS during exigencies, power shortage, etc. to a State which may not be original beneficiary of the ISGS. Therefore, in such situations as well as for surrendered firm share by a beneficiary, it is necessary that the Central Government should ascertain technical feasibility of transfer of this power from the ISGS to the beneficiary to whom it is being re-allocated. Both CTU and MoP are required to comply with the above procedure for grant of open access to inter-State transmission in respect of the allocations made by MoP out of the un-allocated share or re-allocation of surrendered shares in the Central Generating Stations.

Issue No. 3: Whether MoP allocation can be considered as a matter of public policy and can have priority over the right of non-discriminatory open access by any generator or licensee?

28. CTU in its written submission dated 22.4.2015 has submitted that allocation of power by MoP to the States/Union Territories is a matter of policy decision guided by factors like exigency and necessity and are not amenable to challenge. CTU has further submitted that beneficiaries of the MoP allocation from CGS are LTA customers and therefore, the LTA allocatees have a right to extension of LTA in terms of Regulation 17 of Connectivity Regulations but on account of exigencies, the requirement of six months' notice may be inapplicable in the case. CTU has further submitted that mere application for LTA does not create vested rights in favour of the applicants to get LTA from a particular date. There is no express or implied prohibition on priority to MoP allocation under the statute or the regulations. MoP allocation dated 18.3.2015 has not been made by curtailing or overriding any existing MTOA/LTA grants. On 18.3.2015, no decision had been taken by the CTU

relating to grant of LTA/MTOA in respect of November 2013 applicants since the Appellate Tribunal passed an interim order restraining CTU from taking a final decision for a period of two weeks.

29. Jindal Power Limited, Dhariawal Infrastructure Limited, DB Power Limited and KSKMPCL and TANGEDCO have submitted that MoP allocations cannot get priority over the November 2013 applicants for LTA. They have further submitted that there was no prior consultation by MoP before the power was allocated from the unallocated quota or surrendered power. DB Power has submitted that 693 MW allocated by MoP is beyond the 15% quota of unallocated power and the beneficiaries of excess allocations cannot be treated as deemed LTA customers. KSKMPCL has submitted that there was no prior consultation by MoP in terms of para 139(o) of the order dated 16.2.2015 before allocating 693 MW with effect from 1.4.2015. On the other hand, Emco has supported the contention of CTU by making a distinction between LTA applicants and LTA customers who have been allocated power by MoP and has contended that while the LTA customers have a vested right, the LTA applicants do not have any right until they are granted LTA. Emco has submitted that the Commission in its order dated 16.2.2015 has not made the requirement for prior consultation by MoP mandatory and therefore, lack of prior consultation does not make the allocation void.

30. MoP has submitted that MoP allocation is a matter of public policy and the courts should not interfere in such policy decision of the Government. As per the Guidelines of April 2000, allocation of power is being made to the States/UTs from the 15% unallocated power from Central Generating Stations for meeting the urgent/overall requirement. MoP

has submitted that keeping in mind the exigencies situations under which MoP allocations are made and the short period for which they are allocated, it shall defeat the purpose if their extension can be made only upon a written request made six months in advance. MoP has submitted that there is a case for differential treatment of MoP allocation as against the LTA applications made in ordinary course on the ground of public policy. MoP has submitted that in line with the directions of the Commission in order dated 20.3.2015, MoP allocations should have an overriding priority over the pending LTA/MTOA applications.

31. As MoP has relied upon the April 2000 Guidelines, let us first examine the “Formula for allocation of power from Central Sector generating Stations to the State/UTs” issued by Ministry of Power vide its OM No.8/1/96-OM dated 27.4.2000. The said OM is extracted as under:

“The allocation of power from central sector power stations to the States/Union Territories of the region is governed by a formula evolved in late seventies, in case of thermal/nuclear power stations, and early eighties, in case of hydel power stations. The formula was evolved at a time when the power sector was served almost fully by the public sector and the central power sector utilities(CPSUs) were entirely supported by the budgetary allocation of the Central Government or by external assistance. With Independent Power Producers (IPPs) entering the power industry in larger numbers, the operational environment of power sector changing very fast and the role of Central Government being substantially reduced, the allocation of power from new projects of CPSUs to the beneficiary States has lost its original relevance.

2. In recent times, allocation of power from the new projects tends to be guided by necessity and capacity to pay more than any other factor. In the context of cash and carry scheme and pressure of financial institutions on the utilities to recover their dues, the factors which have gained predominance over others are the necessity and financial capability of bulk consumers. Likewise, the surplus power in the Eastern Region is already being exported to Southern, Western and Northern regions.

3. In view of the background explained above, it has been decided to treat the present “formula” as “guidelines” for new central sector power stations. The implications of this change are enumerated below:-

(i) It will not disturb the allocation already made under the “formula”. There will be no change in the contents of formula.

(ii) Power from the new central sector power stations will be made in accordance with power purchase agreements (PPAs) to be signed between the CPSU and the State/UT or any of their authorised agency/Board.

(iii) First offer for purchase of power shall be made by the CPSU to each constituent (State/UT or any of their authorised agency) of the region as per their entitlement.

(iv) In case any constituent of the region does not buy its share or part thereof, the CPSU shall have the right to sell that power to any other State/UT in accordance with the PPA to be entered into by them. However, such offer by the CPSU shall first be made to the State(s)/ UT(s) within the region (where power station is located) before diverting the power to State(s)/UT(s) outside the region.

(v) Where there are more than one claimants to the surplus power, so offered, weightage in allocation shall be given to the power sector reforming State(s)/UT(s).

(vi) This does not affect allocation of 10% of the power to the State where the Central thermal power plant is located and the 12% free power from Central hydel power stations to the State(s)/UT(s) of the regions (including the state where the hydel project is located).”

32. As per the above guidelines, the CPSUs in the event of any constituent not buying the power shall have the right to sell that power to any other State/UT within the region first before diverting to other region and such sale shall be effected through the PPA to be entered into by them. Aravali Power Company Private Limited, a joint venture of NTPC Ltd., Haryana Power Generation Company Limited and Indraprastha Power Generation Company Limited owns and operates IGSTPS. The three units of IGSTPS were commissioned on 5.3.2011, 21.2.2012 and 26.4.2013 respectively. Some of the respondents have raised the issue that IGSTPS Jhajjar is not a CPSU and therefore, MoP guidelines regarding allocation of power are not applicable. We are not inclined to go into that aspect as MoP from the beginning has allocated power to different States from the generating station and has been reallocating the surrendered power by Delhi among the Southern States. The only thing we intend to point out that the reliance placed by MoP and CTU on the April 2000 Guidelines is misplaced as the said Guidelines do not require the

MoP to make allocation or re-allocation of surrendered power but leave it to the CPSU concerned to sell that power to other States/UTs within the region or outside the region.

33. The Commission in its order dated 11.10.2013 in Petition Nos. 93/MP/2013 and 96/MP/2013 has recognised that the entire capacities of the Central Generating Stations owned or controlled by the Central Government have been taken into account in the planning of the transmission corridors and therefore, these stations have the long term access for their entire capacities. The Commission has further recognised the necessity of 15% capacities of the Central Generating Stations at the disposal of the MoP in view of the urgency requirement of any State and has treated the evacuation of such power as against long term access. Consequently, the Commission has held in the said order that a person who has been allocated power from the generating stations owned or controlled by the Central Government is a long term customer as defined in Regulation 2(m) of the Connectivity Regulations and enjoys priority over medium term and short term open access customer. In other words, the allocations of power by MoP governed by the Guidelines of April 2000 have been statutorily recognised by the Commission by according the status of long term access to such allocations. Therefore, the argument that allocation of power by MoP is a matter of policy and is not amenable to challenge cannot be accepted. Allocation of power by MoP vests certain statutory rights on the allocatees in terms of the Connectivity Regulations and is therefore, amenable to the scrutiny by the competent legal forum. Section 38(2)(c) provides that the function of the CTU shall be to provide non-discriminatory open access to its transmission system for use by any licensee or generating company on payment of transmission charges. Similarly, Section 40(c) provides that it shall be the duty of a transmission licensee to provide non-discriminatory open access to its transmission

system for use by a licensee or generating company on payment of the transmission charges. Further, Section 2(47) of the Act defines open access as “the non-discriminatory provision for the use of the transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission”. Therefore, in view of the above provisions, non-discriminatory open access to the inter-State transmission system whether owned by CTU or an inter-State transmission licensee shall be regulated by the regulations specified by this Commission, in this case, the Connectivity Regulations. There is no provision in the Act or the National Tariff Policy or National Electricity Policy which provides that allocation by MoP from the unallocated share in the Central Generating Stations shall have priority over the open access granted in accordance with the Connectivity Regulations. In our view, priority of MoP allocations shall be decided strictly in accordance with the provisions of the Connectivity Regulations and the clarifications issued by the Commission from time to time.

Issue No.4: Whether the beneficiaries who have been allocated surrendered power in Central Generating Stations by MoP can be treated as Long Term Customers in terms of Regulation 2(1)(m) of Connectivity Regulations?

34. Some of the respondents like DB Power and TANGEDCO have argued that allocation of 693 MW of power from Jhajjar is beyond the unallocated share of 15% and are in fact surrendered power to the extent of 45% of the capacity of the generating station and therefore, beneficiaries of such excess allocation cannot be treated as deemed LTA customers. Emco has submitted that Connectivity Regulations do not limit the proportion of power from a Central Generating Station that MoP can allocate and therefore, MoP allocations in the instant case do not suffer from any irregularity. CTU has supported the

allocation of 693 MW by MoP for the period 1.4.2015 to 31.3.2016. It is pertinent to quote the MoP submission in this regard:

“This 15 % unallocated Power in Central Generating Stations(CGSs) available at the disposal of the Government is redistributed on a dynamic basis to meet the seasonal and overall requirements of States/UTs/emergency conditions. As most of the States/UTs, more so Southern Region due to non-availability of gas and issues with nuclear project, have been facing power shortages, requests for additional allocation of unallocated power are received from time to time. As such, in case of fresh allocation/extension of an allocation, the provision of 15% allocation of power as per the State’s exigencies and power shortages is a mark of quasi-federal structure of the Constitution of India wherein the Centre has been imparted both the power as well as duty to provide for State’s needs.”

It is apparent from the above submission of MoP that there is reference to the unallocated share of 15% at the disposal of MoP out of which allocation has been made to the Southern States based on their requests. There is no reference to surrendered power in this case, though 693 MW of surrendered power has been allocated to the Southern States of Andhra Pradesh, Telengana and Kerala and. It is therefore, the understanding and submission of MoP that allocations can be made by MoP out of the 15% unallocated shares to meet the State’s exigencies and shortage of power. In that case, even as per the submission of MoP, the surrendered power from Jhajjar cannot qualify for allocation by MoP in exigencies of the States. However, it is pertinent to mention that the Commission in para 132 of the order dated 16.2.2015 has observed that “there is a requirement for prior consultation with CTU before MoP allocates the unallocated capacity at its disposal or reallocates the surrendered power from the Central Generating Stations.” Therefore, the Commission has not made a distinction between the unallocated power and surrendered power in so far as MoP allocation is concerned. Therefore, the Commission at this stage cannot go into the question whether the beneficiaries of surrendered power can be treated as deemed Long Term Customer or not.

Issue No.5 :Whether the deemed LTA customers have a right to extension of their LTA in terms of Regulation 17 of the Connectivity Regulations and if so, whether prior application is necessary for extension of the period of allocation by MoP?

35. The next point of contention is that allocatees of MoP allocation which are deemed LTA customers are entitled for extension of LTA allocations in terms of Regulation 17 of the Connectivity Regulations. MoP has submitted that the referred MoP communication dated 19.3.2015 is not a fresh allocation. CTU has further submitted that beneficiaries of the MoP allocation from CGS are LTA customers and therefore, the LTA allocatees have a right to extension of LTA in terms of Regulation 17 of Connectivity Regulations but on account of exigencies, the requirement of six months' notice may be inapplicable in the case. CTU has submitted that the beneficiaries of MoP allocations from Central Generating Stations are LTA customers and therefore, MoP allocatees have the right of extension of LTA in terms of Regulation 17 of Connectivity Regulations; however keeping in view the exigencies in which allocations are made and the short period for which allocations are made, the requirement of making written request six months before expiry of the LTA may be inapplicable in case of MoP allocations, in as much as the requirement may defeat the very purpose of MoP allocations. DB Power has submitted that in terms of second proviso to Regulation 17, LTA granted for MoP allocation stands withdrawn with effect from the expiry of the respective dates for long term access and beneficiaries of this allocations are no more long term customers. Emco has submitted that since long term access does not inhere to the allocatee, but to the CSGS, and the CSGS has long term access without having to make a LTA application for its entire capacity, on the ISTS as a whole and without any specific time duration, such long-term access need not be renewed in terms of Regulation 17 of the Connectivity Regulations, nor does a fresh LTA have to be made each time there is a

change of allocatee. Emco has further submitted that the contention that MOP should have applied for a fresh LTA when it sought to transfer surrendered power to Southern Region is similarly misconceived on the same grounds.

36. We have considered the submissions of MoP, CTU and respondents. The basic contention of MoP and CTU is that allocation of 693 MW by MoP to the Southern States of AP, Telengana and Kerala is an extension of the allocation made in July 2014 and therefore, such extension is permissible under Regulation 17 of the Connectivity Regulations but the timeline under the said regulations cannot be made applicable since the MoP allocations are being made in exigencies only. In the light of the rival contentions, we have to first consider the provisions of Regulation 17 which is extracted as under:

“17. Renewal of Term form Long-term access

On the expiry of the period of long-term access, the long-term access shall stand extended on a written request provided by the long-term customer in this regard to the Central Transmission Utility mentioning the period for extension that is required:

Provided that such a written request shall be submitted by the long-term customer to the Central Transmission Utility at least six months prior to the date of expiry of the long-term access;

Provided further that in case no written request is received from the long-term customer within the timeline specified above, the said long-term access shall stand withdrawn.”

The above provision requires a long-term customer to apply for extension of access six months prior to the expiry of the access granted to it. Long-term customer has been defined as a person who has been granted long-term access and long-term access has been defined as the right to use the inter-State transmission system for a period exceeding 12 years but not exceeding 25 years. Therefore, the six months period of prior notice is relevant when the LTA is granted for a period exceeding 12 years. Long term customer

also includes the persons who have been allocated power by MoP from Central Generating stations. Thus the beneficiaries of MoP allocation are deemed long term customers and are not required to apply for long term access. It therefore follows that in case extension of allocation or re-allocation by MoP, the deemed long term customers are not required to apply for extension of LTA. Moreover, MoP allocation from un-allocated share or surrendered power is usually made by the MoP for a short period of one year or less and the deemed long-term customers may not be in a position to know six months in advance whether the MoP allocation would be further extended or not. The question then arises whether in case of MoP allocations, the provisions of Regulation 17 should be made applicable to MoP instead of the long term customers in the sense that MoP should make a request six months in advance if it is extending the period of allocation. In our view, Regulation 17 cannot be made applicable in case of MoP as it is not the long term customer of the power being allocated; secondly, the allocations are made in exigencies and a six months prior notice may not be possible. Considering the peculiar nature of allocation of power by MoP from Central Generating stations including the duration of allocation, the Commission in the order dated 16.2.2015 has only prescribed for a prior consultation with CTU before MoP allocates the un-allocated capacity at its disposal or re-allocate the surrendered powers from the Central Generating Stations. The purpose of such allocation is to ascertain the availability of ATC to accommodate such allocations as the existing LTA and MTOA allocations cannot be disturbed. Correspondingly, CTU has been directed to indicate to MoP the capacity that is available after grant of MTOA and LTA to enable MoP to take an informed decision. In our view, MoP is not required to seek extension of the period of allocation under Regulation 17 of the Connectivity Regulations. Every time, MoP

allocates or reallocates the power, it will have to make a formal reference to CTU for indicating the ATC available on the date of commencement of proposed allocation and CTU is required to give a formal communication to that effect in order to ensure transparency in the matter of allocation of corridor in a non-discriminatory manner. In our view, the directions of the Commission for prior consultation by MoP with CTU with regard to the ATC available before making allocation or reallocation of power from the Central Generating Stations cannot be scuttled by resorting to the provisions of Regulation 17 of the Connectivity Regulations.

Issue No.6: Whether the directions of the Commission with regard to treatment of MoP allocation have been complied with by CTU?

37. The respondents, particularly KSKMPCL, DB Power and TANGEDCO have submitted that the directions of the Commission with regard to the prior consultation by MoP with CTU have not been complied with while making allocation of 693 MW power from 1.4.2015 to 31.3.2016. It can be inferred from the submission of CTU and MoP that no prior consultation is necessary as allocation from the unallocated quota by MoP is a matter of public policy and being an extension of the existing allocation, prior consultation by MoP with CTU is not necessary.

38. The question is whether MoP's allocation carries with it the overriding priority in allocation of transmission corridor in disregard of the provisions of Connectivity Regulations and orders of the Commission. The Act vests in the Commission the power to regulate inter-State transmission of electricity. Further, the Act mandates the Commission to regulate open access through the regulation specified. In other words, it is the provisions of the regulations and the directions issued by the Commission in giving effect to the regulations

which will decide the grant of LTA and inter-se priority among various categories of LTA. Allocation of corridor for MoP allocation from Central Generating Stations will be strictly regulated by the provisions of Connectivity Regulations and the orders issued by the Commission.

39. The next question that arises is whether MoP has made prior consultation with CTU before making the allocation or re-allocation of power to AP, Telengana and Kerala vide its letter dated 19.3.2015. At the cost of repetition, it is reiterated that in Para 132 of the order dated 16.2.2015, the Commission after considering the provisions of Note-2 under Regulation 42 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 and Clause 2 of Regulation 15 of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 had observed that only short-term access can be curtailed in order to implement the allocation from one region to another region made by MoP and the capacity allocated under MTOA and LTA shall not be disturbed on account of such allocation. It is in that context that the Commission deemed it necessary that MoP should have prior consultation with CTU with regard to the capacity available after grant of MTOA and LTA. There may be cases where CTU has already granted MTOA or LTA to the applicants based on the capacity that is getting available after expiry of the period of allocation by MoP. In that case, if the consultation is not made and MoP further allocates or extends the existing allocation, this will result in curtailment of the already granted LTA or MTOA which will be in violation of the provisions of the Connectivity Regulations, Tariff Regulations and order of the Commission. In the present case, CTU convened the meeting on 18.3.2015 for allocation of MTOA and LTA for the November, 2013 applicants in compliance with the directions of the Commission

and copy of the minutes of the same meeting has been placed on record. Para 2.0 to 4.0 of the minutes are extracted as under:

“2.0 COO, CTU informed that a communication has been received today from Ministry of Power (MOP) that the MoP allocation of 693 MW from IGSTPS, Jhajjar to Southern States is being extended for further period.

3.0 It was further informed that CTU was apprised of a /mentioning’ in Appeal No. 50 of 2015 before the Hon’ble Appellate Tribunal for Electricity by the Petitioner DB Power on 17.3.2015. The matter was heard by the Hon’ble Tribunal on 18.3.2015 wherein the Petitioner filed I.A. No. 111 of 2015 seeking (i) an ex-parte ad interim order restraining the CTU from acting in furtherance of the meeting convened and (ii) an ex-parte ad interim order restraining the CTU from taking any final decision for grant/allocation/operationalization of LTA pursuant to the meeting convened. After hearing DB Power, the Hon’ble Tribunal directed that “Since pronouncement of Judgment is awaited without prejudice to the rights and contentions of the respondents, no final decision be taken for grant of open access for a period of two weeks” and a communication to that effect was received by CTU during the course of the meeting.

4.0 The same was immediately communicated to the participants and accordingly COO (CTU-Plg) informed that no decision for grant of open access can be taken in today’s meeting. However, the participants may express their views for deliberations so that the same may be considered at the time of grant of open access.”

On 18.3.2015, CTU informed the participants in the meeting convened for allocation of LTA/MTOA that a communication has been received on the same date regarding allocation of 693 MW from IGSTPS Jhajjar. However, no document has been placed on record regarding the communication from MoP to CTU made on 18.3.2015. It has been recorded in the minutes of 18.5.2015 that on account of ad interim stay granted by Appellate Tribunal, no final decision on the LTA/MTOA could be taken. Even though, CTU could not proceed with the decision on the allocation of LTA on account of the ex-parte ad interim order passed by Appellate Tribunal directing CTU not to take any final decision for grant of open access, the fact remains that had there been no interim injunction by the Appellate Tribunal, the CTU would have proceeded with allocation of LTA after deducting the capacity required to accommodate MoP allocation without there being any formal consultation and any formal

allocation by MoP. In our view, CTU has acted in blatant violation of our directions in order dated 16.2.2015. MoP has also not followed the protocol of prior consultation with CTU before reallocating power. MoP has communicated about the allocation vide its letter dated 19.3.2015 addressed to CEA with copies to CTU. The said letter is extracted as under:

“Keeping in view the surrendered share of Government of NCT of Delhi from IGSTPS, Jhajjar (693 MW) of Aravali Power Company Private Limited and the willingness of Govt. of Andhra Pradesh, Telangana and Kerala to extend it upto 31.3.2016, it has been decided to allocate 693 MW to Andhra Pradesh, Telangana and Kerala as under:-

State	1.4.2015 to 30.9.2015	1.10.2015 to 31.3.2016
Andhra Pradesh	304	0
Telangana	222	374
Kerala	167	319
Total	693	693

2. The beneficiary is required to maintain LC commensurate with allocated power.
3. CEA is requested to get the above re-allocation implemented.”

From the letter, it is apparent that MoP has allocated 693 MW of power to the States of AP, Telengana and Kerala out of the surrendered share of Government of NCT Delhi from IGSTPS, Jhajjar. Earlier, the allocation was for 376.83 MW from 1.8.2014 till 31.3.2015. There is capacity change from the earlier allocation. The said letter of allocation does not reveal that prior consultation with CTU was made regarding the availability of corridor before making the allocation vide letter dated 19.3.2015.

Issue No.7: Whether CTU has calculated the ATC in its Agenda Note dated 13.3.2015 in conformity with the provisions of Connectivity Regulations and the Commission’s directions in order dated 16.2.2015?

40. CTU during the hearing had submitted three scenarios for calculation ATC. The Commission in order dated 12.3.2015 had taken note of the submission of CTU and had observed that they require detailed examination and deliberation while clarifying that where the

decision for grant of LTA/MTOA has been taken by CTU but the formal intimation has not been issued, the capacity covered under such decision for MTOA/LTA cannot be utilized for accommodating the allocation by MoP. The Commission intends to deal with the examples given by CTU for the sake of clarity in calculation of ATC.

(A) Example 1 by CTU

January 2015

- ATC 1000 MW
- LTA Applications under process 1000 MW
- MTOA Applications under process 900 MW

March 2015, In Normal Process

- Entire ATC of 1000 MW shall be reserved for LTA
- MTOA Applications shall be closed March 10, 2015 as no ATC is available after LTA allocation.

April 2015

- MoP submits request for allocation of 200 MW anytime after March 10,2015 and before actual grant of LTA (i.e. by 31.05.2015 as per Regulation 7)
- If higher priority is given to such MoP allocation request, position changes as under:
 - 200 MW ATC allocation to MoP
 - No LTA can be granted as part/pro-rata LTA is not permissible
 - No MTOA can be granted as January applications for MTOA were already closed.

(B) Example 2 by CTU

January 2015

- ATC 900 MW
- LTA applications under process 1000 MW
- MTOA applications under process 900 MW

March 2015- In normal process

- CTU shall hold grant of LTA till additional 100 MW ATC is enhanced
- And grant 900 MW MTOA (by 10.03.2015) till enhanced ATC of 100 MW is available

MoP allocation request (300) received on 09.03.2015

- If higher priority is given to MoP allocation request made; Position changes as under
 - 300 MW ATC allocation to MoP
 - Balance 600 MW to be allocated to MTOA on pro-rata; even some of the MTOA applications may be denied if longer term having higher priority is applied. Earlier decision of grant of MTOA to applicants would already have been concurred by the constituents. A fresh agenda will be required.
 - Difficult to meet the deadline of 40 days in processing of MTOA applications
 - Hold LTA till additional ATC of 400 MW gets available.

(C) Example 3 by CTU

- Present ATC 4200 MW
- Present on-going LTA/MTOA 3654 MW
- Balance ATC 546 MW

LTA Applications to be processed

- Nov' 2013 - 1000 MW
- Dec' 2013 - 990.5 MW
- Jan' 2014 - 328 MW
- Mar' 2014 - 450 MW
- April 2014 - 233.75 MW

MoP allocations that are part of 3654 LTA above

- Upto 31st March, 2015 - 354 MW (after reducing aux. consumption)
- Upto 31st May, 2015 - 297 MW (after reducing aux. consumption)
- Total - 651 MW

If request for extension of MoP allocation is received now

- Should these be accorded higher priority compared to LTA applications received in Nov' 13, Dec' 13, Jan' 14 applications?
- If yes, then LTA for Nov' 13 application cannot be granted as balance ATC (564 MW) shall be less than 1000 MW LTA quantum and part LTA cannot be granted.

41. In the first example, the submission of CTU is based on the assumption that MoP makes a request for allocation of 200 MW anytime after 10.3.2015 (the date by which decision for allocation has to be taken) and before actual grant of LTA (120 days as per Regulation 7) and the request is accepted by giving priority to MoP allocation. In this connection, attention is drawn to the observation of the Commission in para 132 of the order dated 16.2.2015 that “the capacity allocated under LTA and MTOA shall not be disturbed on account of allocation by MoP”. It was also clarified in the order dated 12.3.2015 that “where the decision for grant of LTA/MTOA has been taken by CTU but the formal intimation has not been issued, the capacity covered under such decision for MTOA/LTA cannot be utilized for accommodating the allocation by MoP”. Therefore, if the allocation by MoP is received after the decision for allocation of LTA/MTOA has been made **(in the example, after**

10.3.2015), then MoP allocation cannot have priority over allocation of LTA/MTOA irrespective of the fact that actual grant of LTA has not been made. Therefore, the 'position changes' as projected by CTU shall not arise.

42. In the second example, ATC is insufficient to accommodate all applications for LTA and MTOA is granted till required capacity is available for grant of LTA. CTU would have consulted the constituents in terms of Para 14.2 of the Detailed Procedure. MoP allocation is received before the decision on the applications for MTOA is taken. CTU has submitted that in that event, there is no time for fresh consultation with the constituents for grant of MTOA. In our view, since MoP allocation is received prior to the decision on the MTOA applications, MoP allocation shall be given priority. The resultant capacity after accommodating MoP allocation shall be considered for grant of MTOA on due date and fresh consultation with constituents is not necessary. MTOA allocations shall be made as per the priority based on duration of the MTOA.

43. In the third example, ATC available as on March 2015 has been considered and the on-going LTA/MTOA (which includes MoP allocation upto 31.3.2015 and 31.5.2015) has been deducted to work out balance ATC to consider the applications for LTA received during November, 2013. CTU has submitted that capacity available (546 MW) is inadequate to meet the LTA quantum for November, 2013 applicants. In this case, CTU has proceeded on the assumption that even for considering the LTA/MTOA applications for the past period (November, 2013), the ATC as on date shall be considered. In our view, such an interpretation is not only against the provisions of the Connectivity Regulations and Detailed Procedure, but also against the directions of the Commission in order dated 16.2.2015.

ATC should be considered as visible in December, 2013 and subsequent MoP allocations cannot be taken into consideration.

44. Regulation 9 of the Connectivity Regulations deals with the criteria for grant of LTA and MTOA. It provides that before awarding long term access, CTU shall have due regard to the augmentation of inter-State transmission system proposed under the plans made by the Central Electricity Authority. It further provides that MTOA shall be granted if the resultant power flow can be accommodated in the existing transmission system or the transmission system under execution and no augmentation shall be carried out for the purpose. Regulation 13 of Connectivity Regulations provides that on receipt of the LTA applications, system studies shall be carried out by CTU as expeditiously as possible and on the basis of system studies, CTU shall specify the inter-State transmission system including augmentation of existing system that will be required to grant LTA. Regulation 20 provides that CTU on receipt of the applications shall carry out system studies as expeditiously as possible. Further, para 24.1.2 of the Detailed Procedure provides the scope of the system studies for the purpose of grant of LTA as under:

“24.1.2. The nodal agency i.e. POWERGRID shall carry out system studies in ISTS to examine the adequacy of the transmission system corresponding to the time frame of commencement of long-term access to effect the desired transaction of power on long-term basis, using the Available Transfer Capability (ATC).”

Therefore, CTU has to carry out the system studies considering the time frame of the commencement of long term access. In para 139(m) of the order dated 16.2.2015, the procedure for processing the LTA and MTOA applications received during a month has been discussed which is extracted as under:

“(m) The applications for grant of LTA and MTOA shall be dealt with by CTU as under:-

- i) For disposing the applications for LTA and MTOA, CTU shall make separate lists for MTOA and LTA applications received during the month. The inter-se priority will be applicable between the months in which applications for each category (LTA and MTOA) are received i.e. applications of an earlier month shall have priority over applications of a latter month. MTOA applications received during a month will have priority over the LTA applications received during the subsequent month(s).
- ii) Between the LTA and MTOA applications received during the same month, LTA application shall have higher priority if there is over-lapping in the period for which LTA and MTOA have been sought.
- iii) Among the MTOA applicants in a month, the inter-se priority will be determined on the basis of the durations for which MTOAs have been sought i.e. MTOA applications with a longer duration shall have priority over MTOA applications with shorter duration.
- iv) CTU shall carry out system study for the month of the application (1st month) by the 15th of 2nd month to examine the adequacy of transmission system corresponding to the timeframe of commencement of power through long term access and medium term open access.
- v) Based on the study, CTU shall identify the capacity which can be granted to LTA applicants after taking into account the transmission capacity commissioned/planned in the time frame of desired long term access. LTA applications shall be segregated based on the directions of flow of power. If the capacity so identified is expected to be available from a prospective date and is adequate to accommodate all LTA applications made during the month for a particular direction, the capacity for LTA shall be earmarked and blocked and CTU shall start the process in accordance with the Detailed Procedure. If any MTOA application of the same month can be accommodated before the start of LTA or in the time frame for which MTOA has been sought, then MTOA shall be granted.
- vi) Part LTA shall not be granted to LTA applicants where the available capacity is inadequate to accommodate all the LTA applications received during a month.
- vii) If the capacity is not adequate to accommodate all LTA applications received during the month, then the LTA applications shall be considered on six monthly basis for the purpose of system augmentation i.e. the applications received from January to June and from July to December, as the case may be. CTU shall carry out further studies to find out the system strengthening required and give intimation about the same to the LTA applicants as per the timeline given in Detailed Procedure. In the meantime, MTOA applications shall continue to be considered on the margin available. (Para 125)”

The above directions clearly provide that system studies shall be undertaken by 15th of the month following the month in which LTA and MTOA applications have been received keeping in view the timeframe of commencement of LTAs.

45. In para 137 of the order dated 16.2.2015, the Commission has issued specific directions with regard to the processing of the LTA and MTOA applications received in November 2013 and thereafter. Para 137 of the order dated 16.2.2015 is extracted as under:

“137. In November 2013, both LTA and MTOA applications have been received by CTU. CTU shall carry out system studies by 15.3.2015 to find out whether all the LTA applications received during the month of November, 2013 can be considered and the full LTA quantum can be granted without system augmentation. CTU had considered the capacity available on Raichur-Sholapur Transmission line on 9.12.2013 for calculating the ATC. Therefore, the capacity of Raichur-Sholapur Transmission line shall be considered while processing the LTA and MTOA applications received in November 2013. If as a result of system studies, it is found that the transmission capacity is adequate for accommodating all LTA applications, corresponding capacity shall be earmarked and blocked for grant of LTA and LTA applicants shall be informed accordingly for operationalization of LTA commencing from the date as determined by the CTU on the basis of system studies after completing all formalities as required under the Connectivity Regulations and Detailed Procedure. The balance capacity after allocation for the LTA applications made during November 2013 shall be considered for allocation of MTOA for the MTOA applications received in November 2013. The process shall be completed by 15.3.2015. If capacity is not available for accommodating the full quantum of LTA, the LTA applications made in November 2013 shall be considered alongwith the LTA applications of subsequent months for carrying out the system studies for system strengthening in accordance with the Connectivity Regulations and Detailed Procedure. The same process shall be adopted for the applications for LTA and MTOA received during December 2013 and subsequent months. The processing of applications for all the months upto December, 2014 shall be completed sequentially as early as possible. In the event of all the LTA applications for a month not getting accommodated in the available capacity, the LTA applications received during the month and subsequent months upto December, 2014 shall be processed for grant of LTA through system studies.”

The directions in the above para are clear that CTU shall consider the capacity of Raichur-Sholapur line available as on 9.12.2013 for the applications for November 2013. In other words, CTU should consider the capacity post Solapur-Raichur lines plus any additional capacity getting freed since 9.12.2013 and any other system under execution,

which would have impact on WR-SR flow. CTU should go back to December 2013 and visualize what was expected in near future upto the scheduled COD of the systems under execution keeping in view the timeframe of LTA and determine month wise ATC since Dec 2013 and when all the applications for November 2013 get accommodated, LTAs shall be granted from that date. If all applications cannot be accommodated, applications would be processed further to grant LTA with requirement of system augmentation under Regulation 12 of Connectivity Regulations. For MTOA applications, only margins of existing system should be considered. The directions in our order dated 16.2.2015 says that the same process shall be followed in processing the applications received in December 2013 and subsequent month sequentially. Since MoP allocations in July 2014 could not have been visualised till July 2014 and MoP allocations in March 2015 could not have been visualised before 19.3.2015, the same shall not be taken into consideration for calculation of ATC for considering the LTA/MTOA applications made in November 2013. Notional LTA shall be granted from the dates when all applications received during a month get accommodated, without considering the MoP allocations. However, operationalization of LTA shall be made with effect from 15.7.2015 in those cases where notional LTA falls before that date. Since power on the basis of MoP allocations made on 19.3.2015 have already started flowing, we direct that as an exceptional case, scheduling of power on the basis of MoP allocations shall not be disturbed and shall be accommodated by allowing operationalization of part LTA of the applicants who would be granted LTA. The resultant margin available shall be utilised for granting MTOA.

46. CTU vide its affidavit dated 7.5.2015 has placed on record the Agenda Note dated 13.3.2015 for considering the applications for LTA and MTOA received during November

2013. CTU has considered the total transfer capability/ available transfer capability across NEW Grid/SR Grid for allocation from April 2015 onwards as under:-

Sl. No	Interconnecting Links	TTC (MW)
1.	Talcher-Kolar bipole HVDC	2000
2.	Chandrapur back to back HVDC	1000
3.	Guzuwaka Back to Back HVDC	650
4.	Raichur-Sholapur 765 kV 2XS/c lines	1300
	Total	4950
5.	Transmission Reliability Margin (TRM)	(-) 750
6.	ATC available	4200

CTU has calculated the ATC from NEW Grid to SR Grid as under:-

“6.0 The Details of ongoing LTA and MTOA from NEW Grid to SR Grid in March 2015 is as below:

Sl. No.		Allocation as March, 2015 (MW)	Remarks
1.	LTA (based on Gol allocation SR)	2522	
i.	Talcher Firm Share	1773	
ii.	Share in Jajjhar (surrendered Delhi) (01.06.2014 to 31.05.2015)	217*	Allocation- 231- aux consumption
iii.	Allocation from U-3 Jajjhar	80*	Allocation- 85-6% a consumption
iv.	ER Allocation	33*	Allocation- 35-6% a consumption
v.	Solar Allocation	65	
vi.	MoP Allocation (01.08.2014 to 31.03.2015)	354*	Allocation- 377- aux consumption
2.	MTOA Granted	1132	
i.	National Energy Trading & Service Ltd. (16.06.2013 {WR} to 31.05.2016 {TN})	100	
ii.	KSK Mahanadi Power Company Limited (16.06.2013 {WR} to 31.05.2016 {AP})	400	
iii.	Jindal Power Limited (16.06.2013 {WR} to 30.11.2015 {TN})	200	
iv.	Adani Enterprise Limited (16.06.2013 {WR} to 31.12.2015 {TN})	200	
v.	PTC India Limited (01.03.2013 {Balco, WR} to 28.02.2015 {KSEB})	58	Granted as per CE order

vi.	NVVNL (01.03.2015 {WR} 28.02.2017 {KSEB}}	174	Granted as per CE order
3.	LTA Granted	150	
i.	Jindal Power Limited	150	To be k operationalized till L applications for month November 2013 are disposed of
	Total ATC allocated	3804	
	Balance ATC	396	

* The allocations has been modified to account for the auxiliary consumption in terms of Para-26 of the referred order of CERC”

As per para-140 of the referred CERC order, since the part LTA granted to Jindal Power for their November, 2013 application has been operationalized, it shall be allowed to inject power under the part LTA till the LTA applications for November, 2013 month are disposed of. Accordingly, while considering the November, 2013 the 150 MW granted to Jindal Power shall also be considered with allocation of ATC.

The MoP allocation of 354 MW (Allocation- 377-6% aux consumption) is expiring on 31st March, 2015. Further another MoP allocation of 297 MW (Allocation- 316-6% aux consumption) is expiring on 31st May, 2015. In terms of Para 132 of the referred order there is a requirement of prior consultation with CTU before MoP allocates the unallocated capacity at its disposal or reallocates the surrendered power from the Central generation Stations. Till day POWERGRID has not received any such request for allocation from MoP to Southern States. Further CTU has approached Hon'ble Commission for direction for priority of MoP allocation vis-a-vis pending/ under consideration application for KTA & MTOA direction in this regard is to be issued by CERC. In view of the above ATC of 900 MW (including part LTA granted to Jindal) shall be available from 1st April, 2015 and ATC of 1197 MW from 1st June, 2015 for allocation to LTA and MTOA applications received during the months of November, 2013.”

47. It is noticed from the agenda note that CTU has taken into consideration the allocation made by MoP while calculating the ATC. As already clarified in Para 45 above, the MoP allocation could not have been taken into account for calculation of ATC for the application received during November 2013 since the calculation has to be made based on the condition available as on 10th December 2013. CTU is accordingly directed to calculate the ATC for considering the applications for November 2013 and subsequent months in terms of our direction in para 45 above. However the allocation made by MoP till March

2016 shall not be disturbed as an exceptional case and part operationalization of LTA shall be allowed to accommodate MOP allocations.

Issue No. 8: Whether non-operationalization of MTOA by PTC/Balco is in contravention of the directions of the Commission in order dated 16.2.2015 and the undertaking furnished by PTC/Balco, and if so what action should be taken against them?

48. CTU has submitted that it has complied with the directions in Para 136(b) of the order dated 16.2.2015 pertaining to grant of MTOA by 25.2.2015 to eligible applicants. Subsequent to the grant, the pre-operationalization formalities including signing of MTOA Agreement and opening of LC were completed by 27.2.2015 and the MTOA was to be operationalized from 1.3.2015. However, as per the communication dated 28.2.2015 received from WRLDC, as the COD of the generating unit of Balco had not been achieved, the MTOA was not operationalized with effect from 1.3.2015. NLDC and WRLDC vide submission dated 8.4.2015 have stated that Balco has not declared COD of its 300 MW IPP. One unit of 135 MW had tripped due to stator problem. It has also highlighted that in the past Balco has been a net buyer of power and was drawing upto 180 MW through Power exchange even for its captive unit. For operationalization the MTOA to KSEB, Balco applied for STOA from Sterlite to Balco. Since no surplus of power was available at Balco plant, this purchase of power alternate source by Balco to meet the MTOA obligation would have tantamounted to trading by generator without licence, resulting in a possible violation of Section 2(71) and Section 12 of the Act.

49. We have considered the submissions of CTU, NLDC and RLDC. Though both Balco and PTC are parties to the petition and notices were issued vide order dated 20.3.2015, no reply has been filed by Balco and PTC. We direct Balco and PTC to file their reply by

15.7.2015. We direct NLDC/WRLDC and CTU to file a comprehensive reply with regard to the present position on operationalization of MTOA by Balco/PTC by 15.7.2015.

IA 17/2015

50. TRN Energy Pvt. Ltd. filed this IA, seeking impleadment as a respondent in Petition No.92/MP/2015. According to the applicant, it is an IPP situated at Chhatisgarh. It applied for and was granted LTA for 600 MW vide CTU's letter dated 14.9.2010 and the applicant entered into a BPTA with CTU dated 11.4.2011. The applicant was granted LTA for Western Region for 243 MW, Northern Region for 115 MW, and the remaining 207 MW was to be taken by the Chhattisgarh State Trade Power Ltd., as per the policy of the State Government. The applicant was declared as the successful bidder for supply 390 MW power to U.P. Discom and the Power Purchase Agreement was signed by the applicant on 20.7.2013. This required changes in the LTA granted to the applicant. In the 18th meeting of WR constituents regarding connectivity / open access held on 29.8.2013, the applicant was permitted to make changes in beneficiaries, which resulted in 319 MW allocated to Northern Region and nil MW to Western Region. In the 19th meeting of the WR constituents, CTU asked the applicants to make fresh applications for change in region with a liability for payment of relinquishment charges for changing the beneficiary region from Western Region to Northern Region. Since the issue of relinquishment charges from standard capacity is being considered in Petition No.92/MP/2015, the applicant has submitted that it has a direct and subsisting interest in subject matter of the petition and therefore, it should be allowed to be impleaded as a party to the petition. We have considered the prayers of TRN Energy Pvt Limited. The applicant is concerned about the issue of payment of relinquishment charges. In our order dated 12.3.2015, we had directed CTU to implead all

the persons who are likely to be affected on account of the proposed mechanism for calculation of relinquishment charges. CTU has impleaded a number of generators including TRN Energy Pvt Limited. Therefore, the present IA has become infructuous. TRN Energy Pvt. Limited has the liberty to file its response with regard to relinquishment charges by 15.7.2015 if not already done.

IA No.19/2015

51. PGCIL has filed this IA, bringing to the notice of the Commission that M/s Ind-Bharat Energy (Utkal) Ltd. informed the CTU vide its letter dated 24.2.2015 that Hon'ble Madras High Court has allowed its Writ Petitions Nos.28028 of 2014 and 16008 of 2014. CTU has submitted that Madras High Court while quashing the CTU's proceedings dated 22.9.2014, directed the CTU to allocate 500 MW capacity to Ind- Bharat Energy (Utkal) Ltd. pursuant to the letter dated 20.12.2013. CTU has further submitted that the Commission vide order dated 16.2.2015 in Petition No. 92/MP/2015 has already quashed the proceedings dated 20.12.2013, granting LTA inter-alia to Ind-Bharat Energy (Utkal) Ltd. CTU has submitted that the Commission in the order dated 16.2.2015 directed CTU to consider grant of LTA to LTA applicants of November 2013 afresh and while doing so proceeded on the basis that there are no LTA applications between the period June 2013 to October 2013, which assumption is liable to change owing to Madras High Court order. CTU has prayed for modification of the order dated 16.2.2015 in Petition No. 92/MP/2015 to the extent of the directions passed by Madras High Court vide its order dated 24.2.2015 in Writ Petition Nos. 28024/2014 and 16008/2014 to grant LTA for 500 MW to Ind-Bharat Energy (Utkal) Pvt. Ltd. In our view, there is no requirement to modify our order dated 16.2.2015 in order to give effect to the directions of the Hon'ble High Court. CTU is directed to take necessary action

with regard to the directions of Hon'ble High Court of Madras after seeking legal opinion in this respect.

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

53. The interim directions restraining CTU from taking final decision for grant of LTA vide RoPs dated 31.3.2015 and 9.4.2015 in Petition No. 99/MP/2015 are vacated.

54. Petition No. 99/MP/2015, I.A. No. 11/2015, I.A. No. 12/2015, I.A. No. 17/2015 and I.A. No. 19/2015 are disposed of in terms of the order.

Sd/-
(A.S. Bakshi)
Member

Sd/-
(A. K. Singhal)
Member

Sd/-
(Gireesh B. Pradhan)
Chairperson