

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

PETITION No. 311/MP/2013

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri M.Deena Dayalan, Member

Shri A K Singhal, Member

Date of Hearing: 24.04.2014

Date of Order: 05.01.2015

In the matter of

Petition under Section 79 (1) (f) and (c) read with Section 38 (2) (c) and (d) of the Electricity Act, 2003 and proviso to Regulation 8.8 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 seeking a direction against the respondent to construct the associated transmission system for evacuation of power from 2640 MW, Bhavanapadu Thermal Power Project in Srikakulam district of Andhra Pradesh.

And

In the matter of

East Coast Energy Limited
7-1-24, B Block, 5th Floor,
Roxana Towers, Green Lands,
Begumpet, Hyderabad-500 016
Andhra Pradesh.

.....Petitioner

Vs

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

.....Respondent

Parties Present:

Shri Rajiv Bhardwaj, Advocate, ECEPL

Shri A.M. Pavgi, PGCIL

Shri A. Bhargava, PGCIL



ORDER

This petition has been filed by East Coast Energy Private Limited under Section 79 (1) (c) and (f) and section 38(2)(c)and (d) of the Electricity Act, 2003 read with Regulation 8.8 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long Term and medium Term Open Access in inter-State transmission and related matters) Regulations, 2009 (hereinafter referred to as "Connectivity Regulations, 2009") for the alleged refusal of Power Grid Corporation of India Limited to entertain the petitioner's application for grant of connectivity under the Connectivity Regulations to its 2640 MW Bhavanapadu Thermal Power Project in Srikakulam District of Andhra Pradesh.

Background of the case:

2. The petitioner, a generating company, is implementing the 2640 MW, Bhavanapadu Thermal Power Project in two Phases of 1320 MW each. Each Phase comprises two units of 660 MW each with the aggregate capacity of 1320 MW. The first and second units of the first phase are scheduled for commissioning in December 2015 and March, 2016 respectively. The second Phase is scheduled to be commissioned subsequently after a gap of 12 to 18 months after the first Phase. The petitioner is stated to have obtained all government and regulatory clearances and approvals and the project is presently under construction.

3. On 11.10.2007, the petitioner submitted an application to Power Grid Corporation of India Limited (CTU) for grant of Long Term Open Access (LTA) under the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2004 (hereinafter "Open Access Regulations 2004") for its 2640 MW Bhavanapadu TPS (Phase I & II).

4. CTU in its letter dated 5.11.2007 intimated about the requirement of system studies for the purpose of system strengthening in the region. The petitioner vide its letter dated 7.12.2007 requested CTU to carry out the system studies required for strengthening of the transmission system in the region to facilitate evacuation of power from the generating station to SR, WR and NR and paid an amount of ₹17,94,390/- to CTU for conducting the system studies.

5. The petitioner vide its letter dated 29.11.2008 intimated CTU that during discussion with CTU it was understood that CTU would require about 90 acres of land for setting up the pooling station to which its project would be connected and offered the required area of land out of the land available for the project. The petitioner further stated in the said letter that once the suitability of the land is confirmed by CTU, ownership of the land could be transferred to CTU on mutually agreeable terms at a later date.

6. On 18.2.2009, a meeting was held by CTU with the generation developers seeking long term open access located in Srikakulam and East

Godavari areas in Southern Region. In the said meeting, it was indicated that *prima facie* there would be requirement of establishment of two (2) 765 kV Pooling Stations, one in East Godavai District and the other in Srikakulam District in Andhra Pradesh. During the presentation by PGCIL, it was explained that location of the pooling station shall be required to be selected in such a manner that power from the projects in the vicinity can be conveniently brought to the pooling station through dedicated transmission lines. In this connection, it was suggested that if possible, the Pooling Station could be made at the generation switchyard of one of the power projects and if the site conditions permit, bus bar of one project can be extended to other contiguous projects which would save substantial investment by avoiding establishment of a pooling station at other place and then inter-connecting through high capacity transmission lines. Generation developers agreed to look into the proposal and provide any inputs in this regard to CTU. It was decided in the said meeting that within a period of 30 to 45 days, CTU in association with CEA would carry out system studies keeping in view the status given by the generation developers for identification of the transmission system which shall then be discussed with generation developers/constituents of Southern and other beneficiary regions. It was also decided that once the proposal was agreed by all the beneficiary regions, the communication of grant of LTOA will be conveyed by CTU. It was clarified that for implementation of the common transmission system by CTU, the generation developers need to sign BPTA which would be forwarded to the developers by CTU.

7. The petitioner in its letter dated 29.5.2009 apprised CTU about the progress made by the project and reiterated its offer of providing land for the pooling station. The petitioner emphasized that on account of the time consuming process of land acquisition in Srikakulam district due to several local factors, substantial time can be saved by locating the pooling station in the land offered by the petitioner and sought acceptance of its proposal from CTU so as to work out the mutually acceptable terms for transfer of land.

8. On 5.6.2009, CTU sent the agenda for the meeting on Long Term Open Access Applications in the Southern Region scheduled on 15.6.2009. In the agenda, it was indicated that the petitioner had sought long term access for 2640 MW with the intended beneficiaries as 750 MW to SR, 600 MW to WR and 1100 MW to NR. Further, in the agenda, the dedicated system for the project of the petitioner at an approximate cost of ₹1400 crore was indicated. The petitioner in its letter dated 8.6.2009 requested PGCIL to revise the intended beneficiaries as earlier intimated vide its letters dated 26.8.2008, 20.11.2008 and 29.11.2008 which was 1940 MW to SR, 500 MW to WR and Nil to NR. The petitioner in the said letter further requested PGCIL for a confirmation that the sub-station would be located on the land being offered by the petitioner.

9. On 15.6.2009, the meeting on the Long Term Access Applications in the Southern Region was held. In the meeting, the revised target beneficiaries as

indicated by the petitioner were taken note of. CTU indicated that though revised studies would be carried out on account of the changed target beneficiaries, it would not make much material difference as power allocated to SR constituents would be displaced by the power allocated to NR/WR constituents in other generation projects in Tamil Nadu through the principle of displacement. In the meeting, it was decided that:

(i) Connectivity requirement would essentially remain the same inter alia comprising establishment of 765 kV Pooling Station in the area and integration of the pooling station through LILO of Behrampur –Gazuwaka 400 kV D/C line.

(ii) The petitioner and NCC would have to construct the dedicated transmission line for bringing power up to the pooling station through 400 kV or 765 kV voltage level transmission lines.

(iii) Stepping up of the generation at the East Coast would be at 400 kV level and that for NCC, would be at 765 kV level.

(v) As regards the location of the pooling station, it was indicated that both East Coast and NCC projects had offered land for establishment of the Pooling Station. It was decided that the decision on this would be taken separately after carrying out the analysis with respect to the locations of the project vis-à-vis the location of the Angul Pooling Station where power would be ultimately transferred for onward transmission.

10. A follow up meeting was held in the office of CTU on 25.6.2009 in which the representatives of the petitioner and NCC Vamshadara were present. It was decided in the said meeting that the petitioner's generation would be stepped up at 400 kV level and the petitioner would have connectivity to the grid through dedicated 400 kV transmission lines to the pooling station which would be created by CTU at a suitable location. The power generated at East Coast and NCC would be pooled at the pooling station which would be further transmitted to Angul pooling station (being developed by CTU) through the 765 kV transmission line. The pooling station and the transmission line therefrom to the grid would be constructed by CTU. In its letter dated 29.6.2009, CTU asked the petitioner to offer its comments on the generic BPTA mailed to it and indicate a suitable for signing the BPTA.

11. In its letter dated 3.7.2009, the petitioner acknowledged the decision conveyed by CTU in its letter dated 29.6.2009 and requested CTU to confirm that the pooling station would be constructed on the land offered by the petitioner and the pooling station would be connected through a LILO to Talcher-Gazuaka-Berhampur transmission line. The confirmation was sought by the petitioner to apprise its lenders. The petitioner further informed CTU that Stage I with 2x660 MW generating units was being appraised by the lenders and Phase II would be taken up at a later stage and accordingly, requested CTU to phase out the development of the Pooling Station and associated transmission lines for evacuating the generation from Phase-I of the project. The petitioner

also requested CTU to indicate the value of the Bank Guarantee that would accompany BPTA and also requested for a meeting to discuss about its comments on the draft BPTA.

12. CTU in its letter dated 21.7.2009 advised the petitioner that if it intended to modify LTOA application from 2640 MW to 1320 MW in view of the petitioner's request for phasing the development of the pooling station and associated transmission lines, the petitioner should make a fresh LTA application clearly indicating the beneficiaries and their quantum. CTU further advised the petitioner to indicate the time difference between the two phases if it was not intended to modify the LTOA. With regard to the location of the pooling station, CTU clarified that CTU had never indicated that pooling station would be developed on the land being offered by the petitioner.

13. The petitioner vide its letter dated 11.8.2009 informed CTU that it was necessary to finalise the pooling point on top priority considering the advance stage of the project. Further, the petitioner confirmed that its load projection would be as per its letter dated 26.8.2008 i.e. 1940 MW to SR, 500 MW to WR and Nil to NR. The petitioner further confirmed that there would be a time gap of 8 to 12 months between the Phases to facilitate the financial closure. The petitioner requested CTU to finalize the Pooling Station at top priority in order to expedite the other formalities of entering into an agreement.

14. CTU in its letter dated 27.10.2009 intimated the grant of long term open access for the generation projects in Srikakulam Area. As per the said intimation, LTOA was granted to the petitioner for 2440 MW (1940 MW for SR and 500 MW for WR). In Annexure 3 of the letter, the dedicated part of the transmission elements to be constructed by the petitioner was indicated as (a) LILO of one circuit of Behrampur-Gazuwaka 400 kV D/c line at East Coast switchyard and (b) two nos. of 400 kV bays at East Coast generation switchyard. Annexure 4 (a) indicated the system strengthening in SR and Annexure 4(b) indicated the system strengthening required in NR and WR. In the said letter, CTU requested the generation project developers to initial the BPTA, provide Bank Guarantee and also provide an undertaking to sign the requisite BPTA upon its approval by the Commission.

15. On 4.11.2009, CTU provided the draft BPTA (initialed document) to the petitioner consistent with the technical details of the system strengthening to be undertaken by CTU and the dedicated transmission system to be built by the petitioner indicated in the intimation for grant of open access. CTU requested the petitioner to convey confirmation/ the date and venue for signing the initialed document (i.e. BPTA) and to furnish the bank guarantee within one month of signing the agreement.

16. The petitioner vide its letter dated 25.3.2010 intimated CTU that noting the contents of the draft regulation on transmission charges and losses, the

petitioner has decided to change the quantum of LTOA to 1320 MW (Gross). The petitioner has further requested CTU to keep the following points in view while working out the evacuation scheme for its project:

(a) The commissioning schedule has been shifted to March 2013 from March 2012.

(b) Quantum of power is 1320 MW (Gross) with proposed allocation as 1000 MW to SR and 320 MW to WR.

(c) The petitioner is prepared to submit Bank Guarantee at the rate of ₹ 5 lakh per MW on the net quantum.

(d) Consequent to an interaction with APTRANSCO, the petitioner would be able to obtain start-up power from the AP grid and the LILO to Berhampur-Gazuaka 400 kV D/C line will not be required and may not be mentioned in the letter of modification to the evacuation scheme.

(e) Power from both the units will be evacuated through ISTS.

17. On 13.4.2010, the 9th meeting of Southern Region constituents regarding Long term Open Access applications was held in CTU's office at Gurgaon. In the minutes of the meeting, it has been mentioned that in the Srikakulam Area, two generators, namely, East Coast Energy Private Limited and NCC Power Projects Limited had submitted their revised requests for LTOA under 2004 Open Access Regulations. The petitioner had indicated the quantum of allocation of power for LTOA as 1000 MW for SR and 320 MW for WR with date

of commencement as March 2013. In the said meeting, the following transmission system was proposed:

Dedicated transmission system

- (a) Both the East Coast and NCC generation projects shall be stepped up at 400 kV level and bus reactor of 1x125 MVAR to be provided at each generation project switchyard
- (b) Power from each generation project shall be pooled at Srikakulam pooling station through dedicated 400 kV D/C (quad) line under the scope of generation developer.

Common Transmission System

- (a) Establishment of 400 kV pooling stations in Srikakulam area with future provision for 765 kV level
- (b) Srikakulam Pooling station-Angul 765 kV D/C lines (initially charged at 400 kV)
- (c) Provision of 2x1500 MVA transformer at Angul 765/400 kV substation.
- (d) Angul-Jharsuguda 765 kV D/C line
- (e) Jharsuguda-Dharmajaigarh 765 kV D/C line

It was decided in the said meeting that considering schedule of generation projects, an interim arrangement was proposed through LILO of one circuit of Gazuwaka Berhampur 400 kV D/C line at the respective power plants. These LILO will be further extended to Srikakulam Pooling Station when this sub-

station gets ready. Phasing of the dedicated transmission system was decided as under:

(a) Phase I: Interim arrangement to be done by East Coast and NCC

- (i) Construction of 400 kV Quad line from Switchyard upto LILO point on Berhampur-Gazuwaka 400 kV line
- (ii) During interim arrangement if there is any constraints in the transmission system for evacuation of power, generation developer shall have to back down the generation.

(b) Phase II : Matching with establishment of pooling station to be done by East Coast and NCC

- (i) Extending the LILO line from LILO point to the pooling station.

18. Pursuant to the decision taken in the meeting dated 13.4.2010, PGCIL intimated the grant of LTOA as per the Open Access Regulations of 2004 vide its letter dated 6.5.2010. The LTOA indicated that the developers shall ensure availability of identified dedicated scheme at its own cost before scheduled commissioning of the generating units. The operation and maintenance of these lines shall be undertaken by the developers. The scope of dedicated part to be implemented by the petitioner was indicated as under:

“1. East Coast Energy Private Limited (1320 MW) generation project

- a) East Coast Energy Generation Switchyard-Srikakulam Pooling Station 400 kV D/C (quad) capacity line
- b) Provision of 1x125 MVAR Bus Reactor at generation switchyard

- c) Two numbers of 400 kV bays each at East Coast Energy generation switchyard and Srikakulam Pooling substation

Note:

1. East Coast Energy shall take up implementation of the above dedicated transmission matching with the commissioning of pooling station to be implemented by CTU. Further, as a temporary measure to facilitate drawal of start-up power East Coast Energy shall make LILO of one circuit of Berhampur-Gazuwaka 400 kV D/C line being constructed under IPTC route. With the commissioning of pooling station, temporary LILO arrangement shall be removed to restore Berhampur-Gazuwaka line.”

The petitioner was asked to sign the BPTA and furnish the Bank Guarantee as per the provisions of Connectivity Regulations.

19. On 31.5.2010, the Commission accorded regulatory approval for nine High Capacity Power Transmission Corridors which included the transmission system developed by the petitioner in Srikakulam Area christened as HCPTC-VIII. The Commission directed the CTU to submit quarterly progress report of the transmission corridors, along with the progress of the generation projects of the IPPs.

20. On 5.7.2010, the petitioner signed BPTA with CTU pursuant to the grant of open access vide letter dated 6.5.2010. The BPTA contained that the dedicated part would be implemented by the petitioner. In accordance with the provisions of BPTA, the petitioner submitted a Bank Guarantee of Rs.62.04 crore.

21. For ascertaining the progress of the generation projects, CTU held Joint Coordination Committee (JCC) meetings. There were also correspondences between the petitioner and CTU with regard to the location of pooling station

and progress of the generation project and transmission projects. These developments are discussed in brief as under:

(a) In the 1st Joint Coordination Committee (JCC) meeting held on 17.9.2010, the petitioner indicated that its project would get commissioned by July 2013. On an enquiry by the petitioner regarding the status of the LILO of Behrampur-Gazuwaka 400 kV D/C Transmission Line being executed by Reliance Power Transmission Limited (RPTL) which was identified as an interim measure for availing start-up power, the petitioner was informed that as per the then available projection, the line was expected by September 2012. The petitioner was given the contact details of RPTL and was advised to coordinate with RPTL for getting the route alignment. On a further query by the petitioner about the expected location of Srikakulam Pooling station which was required by the petitioner to take up route alignment of the dedicated transmission line, the petitioner was informed by CTU that the location of the pooling station was being identified and would be communicated to the petitioner.

(b) In the 2nd JCC Meeting held on 2.2.2011, the petitioner indicated the target completion date of its generating unit as March 2013 and its requirement of start-up power by September 2012. CTU informed that the land for the pooling station had been identified with the tentative coordinates as 18^o41'33.43"N, 84^o19'27.19"E and the schedule of

transmission system implementation is 45 months from the date signing of the BPTA. The representative of RPTL indicated that the target date for Behrampur-Gazuaka line is October 2012.

(c) In the 3rd JCC meeting held on 1.4.2011, CTU informed the petitioner that the transmission line being constructed by RPTL would be available by September 2012 and advised the petitioner to stay in touch with RPTL for finalizing the route alignment. CTU also informed the petitioner that the land for Srikakulam pooling station acquisition process for the land identified and land acquisition process had been initiated and money had already been deposited with the authorities.

(d) In the 4th JCC meeting held on 12.7.2011, the petitioner was informed that the coordinates of the Pooling Station earlier provided were final unless there was an objection from the locals. However, RPTL, the developer of Behrampur-Gazuwaka line, informed that on account of delay in obtaining Section 164 authorization, TTCL has issued notice under Force Majeure clause of the PPA seeking extension of one year i.e. up to October, 2013 for commissioning of the line. CTU also informed that now only the petitioner's project is on the anvil as the other projects have been called off.

(e) The petitioner vide its letter dated 11.10.2011 informed the Ministry of Power regarding the notice issued by RPTL under force majeure clause

seeking extension of one year for completion of the Behrampur-Gazuwaka transmission line. The petitioner also informed the Ministry of Power that the pooling station being planned by CTU is not likely to be available for connecting the generating station for start-up power and requested to issue instruction to CTU to provide suitable alternate source so that the start-up power was made available for the project before September 2013.

(f) On 21.6.2012, CTU vide its e-mail informed the petitioner that the final coordinates for the Srikakulam Pooling station had been fixed at 18°48'28" N and 84°27'22" E.. On 30.6.2012, the petitioner informed CTU that with the new coordinates, the length of the line had almost doubled to about 40 km. In view of the increased line length and cost, the petitioner once again reiterated the offer of land for the Pooling Station out of the land parcel available for the generation project.

(g) In the 8th JCC Meeting held on 2.7.2012, CTU informed that the investment approval for system strengthening work had been obtained which included Srikakulam Pooling Station and Srikakulam Angul 765 kV D/C line and work in the transmission project would begin shortly with the commissioning date as June, 2015 as per revised BPTA signed. As regards the progress of the generation project, the petitioner informed that the MoEF had rescinded the work suspension order and the work on the project had resumed and commissioning of Unit-I was expected by

November 2014. CTU further assured to make best efforts to match the transmission system with the commissioning of the generation project. With regard to the availability of land for the Pooling Station, CTU informed that the proposal for Section 4(1) notification was already in Secretariat and was being pursued actively. In response to the petitioner's offer of land for the Pooling Station out of the land parcel available with it for the project, CTU stated that site selection for new sub-station was done by a committee taking into consideration of various standards parameters and selection of land for Srikakulam Pooling Station was accordingly made.

(h) The petitioner in its letters dated 14.8.2012 and 21.8.2012 informed CTU that the location of pooling station with the new coordinates (18°48'28" N and 84°27'22" E) would result in increase of the length of the dedicated transmission line from 19 km to 40 km. The petitioner informed CTU that as land for the Pooling Station had not yet been acquired by CTU, the petitioner had identified three alternative locations for the pooling station and requested CTU to locate the pooling station in the premises of the generating station or in the alternative location suggested by it. The petitioner vide its letter dated 27.9.2012 paid an amount of ₹1,05,16,860/- to CTU as advance for execution of 2 nos 400 kV bays at CTU's Srikakulam Pooling Station.

(i) In the 15th meeting of the Southern Region Constituents held on 4.1.2013 regarding approval of LTOA and connectivity application, CTU informed that from about 20 sites surveyed, CTU selected the most suitable site but the same was not enough to accommodate normal 765/400 kV GIS sub-station. Considering these factors, CTU proposed that Srikakulam pooling station be constructed with 400 kV portion as AIS and 765 kV portion as GIS.

(j) The petitioner vide its letter dated 26.4.2013 informed PGCIL that the proposed location of Srikakulam sub-station based on the coordinates(18°48'28" N and 84°27'22" E) would result in a tie line of about 40 km to be constructed between the generation switchyard and the pooling station and the cost of the tie line cannot be assumed by the company for the following reasons: (i) prior to entering into the BPTA, ECEPL had offered 90 acres of land for CTU's Srikakulam Pooling Station during November, 2008, and the petitioner was informed by CTU that it was possible to locate the pooling station at the Switchyard of ECEPL. (ii) As per the terms of the BPTA signed on 5.7.2010, the location of the pooling station is subject to only minor changes, if any due to final survey and physical constraints, and (iii) as per Connectivity Regulations, the cost of the line was required to be incurred by CTU. The petitioner renewed its offer/proposal for 90 acres of land for setting up the

pooling station as a cost effective solution for mutual benefits of both parties.

(k) In the 9th meeting of JCC held on 12.4.2013, PGCIL informed that the land for the sub-station was likely to be acquired by May 2013 and accordingly the award for the sub-station package would be made thereafter. In the said meeting, the petitioner informed that the unit-1 is scheduled to be completed by September 2015. In response, CTU informed that the scheduled commissioning of the transmission system is June, 2015 for Part A and C and December, 2015 for Part B. As regards Gazuwaka-Behrampur transmission line, CTU informed that it has filed petition before this Commission for vesting the project with CTU.

(l) In its letter dated 1.6.2013, the petitioner informed PGCIL that the cost of tie line cannot be assumed by the petitioner based on the CTU pooling station at the present location and requested for a decision on its letter dated 26.4.2013. PGCIL in its reply informed to the petitioner as under: (i) LTOA intimation to the petitioner was given by CTU vide its letter dated 27.10.2009 in accordance with the 2004 Open Access Regulations according to which tie line would be constructed by the generation developer. The revised intimation also clearly mentioned that intimation was as per the 2004 Open Access Regulations. (ii) The Connectivity Regulation came into force from 1.1.2010. As per the Detailed

Procedure, CTU gave option to the project developer to switch over to the Connectivity Regulations with revised application. The petitioner did not revise the application and went ahead with signing of BPTA and requisite bank guarantee. As per the BPTA signed, the tie line was within the scope of generation project developer. (iii) The Commission accorded regulatory approval vide order dated 31.5.2010 and as per the said approval, the dedicated transmission lines fell within the scope of generation project developer. (iv) Both the petitioner and NCCPPL had offered land for Srikakulam Pooling Station near their respective generation switchyard. CTU has identified the land for the pooling station optimal to both generating station and the scheme is under implementation.

(m) The petitioner vide its letter dated 27.7.2013 applied for connectivity for the generating station under the Connectivity Regulations with the following request:

“1. Considering the drastic changes that have taken place from July 2010 till date, as explained above in ‘Background’ and MOEF suspension already causing a lot of financial implication on the project cost, kindly note that any additional burden on the project cost will have serious implication which may lead to relook by the lenders. In this regard, we request CTU to consider our application for connectivity so that transmission line from ECEPL project switchyard to the point of connection is built by CTU as the capacity is above 500 MW.

2. After approval of connectivity, the company shall submit the LTOA application separately.

3. We request you to consider our case favourably and issue the connectivity at the earliest. Also we request CTU to consider and adjust the BG of ₹62.04 crore submitted at the time of BPTA signing against the BG required to be submitted along with the LTOA/BPTA signing.”

(n) In the 16th meeting of the Southern Region constituents held on 4.9.2013 regarding LTA and Connectivity applications in Southern Region, the application of the petitioner was considered. In the meeting, CTU informed that based on the Open Access application submitted by the petitioner, LTOA was granted vide ref no. C/ENG/SEF/TAL/L/S/(/005(R1) dated 6.5.2010 and the conditions stipulated included the dedicated transmission line from generation switchyard to Srikakulam Pooling Station would be constructed by the petitioner. CTU further informed that the petitioner has submitted the connectivity application for the same generation project in the Srikakulam Area to process under the Connectivity Regulations so that the dedicated transmission line from the generation switchyard to the Srikakulam pooling station may be considered under the coordinated planning of CEA and CTU and developed as ISTS transmission system. Chairperson CEA observed that the Petitioner’s request for migration to 2009 Connectivity Regulations cannot be permitted at this point of time.

Submission of the Petitioner

22. Against the above factual background, the petitioner has submitted that the Connectivity Regulations were notified by the Commission on 7.8.2009 to

come into effect from such date as the Commission may notify which would be after approval of the Detailed Procedure. The Commission vide its order dated 31.12.2009 approved the Detailed Procedure and declared that the Connectivity Regulations would come into force with effect from 1.1.2010. The petitioner has submitted that as per the proviso to Regulation 8(8) of the Connectivity Regulations, a thermal generating station of 500 MW and above shall not be required to construct the dedicated transmission line to the point of connection and such stations shall be taken into account for coordinated transmission planning by CEA and CTU. The petitioner has further submitted that as per the Detailed Procedure, only two categories would be covered under the 2004 Open Access Regulations, namely, applications, which have been approved and the BPTA have been signed; and those applications where BPTAs are yet to be signed but have been initialed. The petitioner has submitted that its case is covered under neither of these categories and therefore, the petitioner is legally entitled to submit its application under the Connectivity Regulations. However, CTU refused to entertain the petitioner's application for connectivity under Connectivity Regulations. The petitioner has submitted that CTU without authority of law rejected its application for connectivity under Connectivity Regulations knowing fully well that earlier grant of open access communicated in October 2009 was superseded by the revised intimation in May 2010 and therefore the open access approval would be governed by the Connectivity Regulations as the earlier Open Access intimation stood revoked. Secondly, the petitioner has further submitted that despite the fact that the system evolved

pursuant to the system studies carried out by CTU as indicated to the petitioner through intimation for grant of open access provided for injection point at generator's switchyard, CTU without credible justification decided to set up the pooling station at a distance after a loss of considerable time preventing the petitioner for making arrangements for evacuation of power and procurement of start-up power. Thirdly, CTU has turned blind eye to the petitioner's repeated offer of 90 acres of land out of the land parcel available for the generation project which the petitioner was willing to make on the terms of CTU and has gone ahead to make avoidable expenditure which would certainly be loaded on the injection tariff of the node with which the generator is connected. Fourthly, the petitioner has also submitted that the cost of the transmission lines, its associated bays and reactors would substantially add to the capital cost of the project which is already reeling under substantial cost escalation on account of delays caused due to the work suspension order issued by MOEF to the projects in Srikakulam Area and the petitioner has very little possibility of recovery of this additional cost of the transmission lines in the current environment of competitive bids whereas CTU would be able to recover the investment cost as part of its transmission tariff determined by the Commission.

23. The petitioner has made the following prayers in the petition:

"(a) Direct the Respondent to construct the pooling station at the generation switchyard of the petitioner's power project;

- (b) In the alternative, direct the Respondent to construct the transmission line between the petitioner's generation switchyard and the Srikakulam Pooling Station along with all the associated systems;
- (c) Direct the respondent to refund the money paid as advance for construction of 2 nos of 400 kV bays at the pooling station;
- (d) Direct the Respondent to make arrangement for providing start-up power for commissioning of the generation project; and
- (e) Pass such other further order(s) as the Hon'ble Commission may deem fit in the facts of the present case."

24. The petition was admitted on 6.3.2014 and notice was issued to CTU. During the course of the hearing dated 6.3.2014, the Commission observed that the transmission system for the petitioner's generating station was being constructed under HCPTC approved by this Commission and directed the petitioner to submit progress of its generating station under various milestones achieved so far. The Commission further observed that in accordance with Connectivity Regulations, the petitioner need to firm up its beneficiaries and inform the same to nodal agency at least 3 years prior to the intended date of availing long-term access. Accordingly, the petitioner was directed to submit details of its long-term beneficiaries. The petitioner was further directed to submit a detailed Status Report for its 2640 MW Bhavanapadu Thermal Power Project as on 28.2.2014.

25. The petitioner vide its affidavit dated 13.3.2014 has submitted that Central Power Distribution Company of Andhra Pradesh Ltd. (APCPDCL) has awarded the contract for supply of 300 MW of power to PTC India Ltd. from the petitioner's Bhavanpadu power station and remaining generation capacity is yet to be tied up. The petitioner proposes to offer this power for long-term sale in the bids, which may be invited in future. The petitioner has submitted that the present dispute has arisen on the question whether in view of the fact and circumstances mentioned in the petition, the LTA application is to be governed under the Open Access Regulations, 2004 or the Connectivity Regulations. It has been further submitted that the petitioner has only applied for the connectivity of its generating station and shall apply for Open Access as and when the said arrangement is finalized with the end beneficiaries. The petitioner has submitted that as per the Regulation 8(6) of the Connectivity Regulations, grant of connectivity does not entitle the applicant to interchange any power with the grid unless it obtains open access.

Reply of Power Grid Corporation of India Ltd.(CTU)

26. CTU vide its reply dated 3.4.2014 has submitted as under:

- (a) In the present case, the applications were made under the Open Access Regulations, 2004 which did not provide such arrangement for furnishing of BG to ensure seriousness of applicant. The change of quantum was accepted and the applications were processed accordingly.

(b) The petitioner had not been sure of the capacity of the project and its commissioning schedules as demonstrated as under:

| S. No. | Particulars | Date | Capacity | Commissioning Schedule |
|--------|-------------------------------------|----------------------------------|----------|---|
| 1 | Original Application | Oct, 2007 | 2640 | U#1,2,3,4: December 2011, March 2012, March 2013, June 2013 |
| 2 | Letter from ECEPL, Intimation, BPTA | Aug, 2009, Oct, 2009, July, 2010 | 1320 | U#1: March, 2013 U#2: August, 2013 |
| 3 | BPTA | July, 2010 | 1320 | |
| 4 | Revised Annexure to BPTA | Oct, 2011 | 1320 | U#1: August, 2014 U#2: December, 2014 |
| 5 | Revised Annexure to BPTA | May, 2012 | 1320 | U#1: August, 2014 U#2: December, 2014 |
| 6 | Application for Connectivity | July, 2013 | 1320 | U#1: December 2015 U#2: March, 2016 |
| 7 | Petition | Mar, 2014 | 2640 | U#1: December 2015 U#2: March, 2016 U#3 and 4: with a gap of 12-18 months |

(c) It is clear from the above table that the petitioner had all along been inconsistent about the generation capacity and its schedule. Though the application for connectivity made in July, 2013 was for 1320 MW, however, the petitioner has alleged that its application for 2640 MW has not been entertained by CTU.

(d) The petitioner has sought to increase the volume of the petition by giving unnecessary details of meetings and minutes of transmission evolution process which itself was marred by lot of uncertainty not only pertaining to the petitioner's generation project but also other proposed generation projects in the vicinity. Never-the-less, all such communication

and minutes establishes one fact that the petitioner had all along been kept in confidence during the entire process and nothing has been done without petitioner's knowledge. After making application in October, 2007, the applicant kept on changing the quantum of injection, target beneficiaries for almost two years i.e. up to July, 2009 when revised LTOA application were made. Therefore, all the options and alternatives as quoted by the petitioner for the prior period do not hold much relevance in such an uncertain conditions. The petitioner had signed BPTA in July, 2010 wherein the above scope of the petitioner was kept un-modified.

(e) As per the status report submitted by petitioner, it has already obtained Section 68 approval from Ministry of Power on 5.6.2011. The petitioner submitted status report to CTU on 12.2.2014 wherein it had informed that public notice and gazette notification for Section 164 approval is already done. In other words, the petitioner had been taking all measures for implementation of the dedicated transmission line as per the BPTA signed with CTU. It is only after thought of the petitioner to convert their LTA under Open Access Regulations, 2004 to mere Connectivity under Connectivity Regulations, 2009.

(f) There is an option given to applicants regarding migration from Open Access Regulations, 2004 to Connectivity Regulations, 2009. The status of the petitioner on 1.1.2010, when the Connectivity Regulations,

2009 came into force, was of "Applications made but LTA yet to be granted". Such applicants, as per para 31 of the detailed procedure approved by this Commission, were given the option of applying afresh without requirement of submitting application fees and Bank Guarantee @ ₹ 10000 per MW of LTA quantum. In fact, in the 9th meeting of connectivity and LTA held on 13.4.2010, the petitioner had explained the provision pertaining to migration from Open Access Regulations, 2004 to Connectivity Regulations. However, the petitioner, for reasons best known to it, chose to go ahead with the Open Access Regulations, 2004 and subsequently, the petitioner signed the BPTA on 5.7.2010 and submitted the construction Bank Guarantee for CTU to go ahead with the implementation of the Common Transmission System. Therefore, the petitioner's contention that these provisions were not applicable to it is not correct, as these had been specifically explained to it. Further, after going ahead with implementation of Common Transmission System, the petitioner is now praying in the aforesaid additional facts that it has applied for connectivity only and LTA shall be applied later on as and when sale arrangement is finalized with the beneficiaries. In other words, the petitioner is acting against the BPTA for which it has committed and based on which CTU has gone ahead with the implementation of Common Transmission System.

(g) The petitioner had been permitted interim arrangement by LILO of one circuit of Behrampur-Gazuwaka 400 kV D/C line being constructed

under IPTC route by Reliance Power Transmission Ltd. This provision was under the scope of the petitioner and the same was agreed in the BPTA signed. All steps taken by CTU and CEA are coordinating with the petitioner and RPTL to fructify the arrangement of the petition corroborates this. In the meantime, RPTL had approached the Commission regarding implementation difficulties for the Behrampur-Gazwuka transmission line. Accordingly, anticipating that RPTL line was likely to get delayed, the matter of start-up power was discussed in 33rd meeting of Standing Committee held in the month of October 2011 in which the petitioner was apprised about the situation and, in absence of any ISTS grid point in the vicinity, was advised to approach APTRANSCO for necessary arrangement of Start-up power. In the same meeting, APTRANSCO had also confirmed that it would study the proposal whenever approached by the petitioner. Therefore, the petitioner was sounded well in time to arrange for start-up power in absence of any ISTS grid point in the vicinity. Now after lapse of about precious 30 months period, the petitioner's prayer for CTU to arrange start-up power was out of context and would be feasible only with availability of petitioner's dedicated transmission line upto Srikakulam Pooling Station.

(h) According to the petitioner, it would face difficulties in obtaining approval under Section 164 which is time consuming process. However, the petitioner in its status report dated 12.2.2014 had confirmed that

approvals under Section 164 and Section 68 of the Act had been obtained from Ministry of Power.

(i) As regards, the petitioner's contention regarding offer of land in the petitioner's generation project switchyard for locating Pooling Station, CTU has submitted that at the time of planning of Common Transmission System, there were three generation projects in the vicinity viz. East Coast Energy (1320 MW), NCC Power (1320 MW) and Alpha Infra Prop (2640 MW). Out of these, East Coast and NCC Power were offering lands for locating pooling station in their respective switchyards, with the primary objectives of avoiding construction of dedicated transmission line by them. The location of Pooling Station is decided based on numerous consideration like suitability of drawing 765 kV incoming/outgoing lines, optimization of line lengths of not only dedicated transmission line but also the 765 kV lines for smooth operation, site specific issues like availability of Govt. land, extent of inhabitation, water bodies in the vicinity, etc. In the present case, the site was selected following the above procedure in which the petitioner's offer of the land was also taken into consideration. Just for the sake of avoiding dedicated transmission line, CTU could not make compromise on other considerations.

(j) As regard the petitioner's request for grant of connectivity as per its application dated 27.7.2013, CTU had not summarily rejected the application of the petitioner which was taken up as agenda point in the

16th meeting of SR constituents regarding LTA/Connectivity application. In the said meeting, it was specifically noted that the applicant had sought connectivity from June 2015 and the work on dedicated transmission line had not started by generation developer_which clearly indicated that there would be mis-match between availability of dedicated transmission line and generation project for which generation developer would be solely responsible. In fact, apart from all the reasoning and arguments made in the entire petition, the reason explained by the petitioner for making such an application is that due to various environmental issues faced by it in implementation of generation project, the cost of generation project is going beyond its estimate. The lenders of the petitioner are asking it to reduce the cost of generation project. Therefore, the petitioner has expressed his inability to cover the cost of dedicated transmission line within its project cost for which it had earlier agreed in the BPTA. Accordingly, the petitioner is seeking a via media to get implementation of its dedicated transmission line under ISTS route. Moreover, in the 36th Standing Committee meeting held on 4.9.2013 Chairperson, CEA had observed that the generation developer should undertake implementation of dedicated transmission line matching with the ISTS transmission system for coordinated evacuation of power from generation project. In the said meeting, COO (CTU) also clarified that irrespective of the availability of dedicated transmission line, the petitioner would have to bear transmission charges as per the BPTA and

suggested the petitioner to construct dedicated transmission line in compressed time schedule matching with the generating schedule.

Rejoinder of the petitioner

27. The petitioner in its rejoinder dated 21.4.2014 has submitted as under:

(a) The provision given in the Detailed Procedure for making application for grant of Long-term Access to ISTS is clear that in those applications, which are under process, applicants shall have to apply afresh. However, it did not exercise any choice and only agreed to construct the LILO line on the assurance that the Pooling Station would be located close to the LILO point.

(b) The route survey for the public notice to be issued for Section 164 approval has been carried out with LILO connectivity in mind. The public notice and the publication in the official gazette are the preliminary requirement before the approval for fresh Section 164 is processed by Government of India, Ministry of Power. The notice of the route alignment was published in the newspaper and the official gazette in January, 2013 and March, 2013 respectively before the petitioner was informed about the fate of Behrampur-Gazuwaka transmission line.

(c) The statement attributed to the COO (CTU) is contrary to the Regulation framed by the Commission and the liability to pay the

transmission charges only after the entire transmission system is made ready by the Respondent including the evacuation line from the generating station.

Submissions during and after the hearing

28. During the course of hearing on 24.4.2014, learned counsel for the petitioner and the representative of CTU reiterated their stand as made in the written pleadings. After hearing the parties, the Commission had directed the petitioner to file (i) technical schedule for time required from boiler light up to the stage of commissioning of the unit; (ii) PERT chart of the complete activity up to the COD of the unit (iii) approval under Sections 68 and 164 of the Act and (iv) the programs/schedule for construction of line till Srikakulam pooling station in the light of the approval under Section 164 of the Act.

29. The petitioner vide its affidavit dated 20.6.2014 has submitted the information called for. In PERT chart, the commissioning schedule of unit-I and unit-II has been given as December, 2015 and as March, 2016 respectively. The petitioner has also filed the copies of the section 68 approval issued by Government of India (Ministry of Power) vide letter dated 5.6.2011 and section 164 approval issued vide letter dated 13.1.2014. As regards the program for schedule for construction of the dedicated transmission line, the petitioner has submitted that it has not drawn any program/schedule for construction of the transmission line and is awaiting direction from the Commission.

30. The petitioner has filed an affidavit dated 7.8.2014 in which it has been submitted that it is not constructing the dedicated transmission system for evacuation of power from its 2640 MW Bhabhanapadu Thermal Power Project. CTU vide its affidavit dated 3.9.2014 has submitted that after the order was reserved by the Commission, there was no occasion for the petitioner to file a fresh affidavit of evidence and has prayed that the said affidavit should not be considered as part of record. CTU has submitted that the petitioner is only deliberately trying to evade its liabilities to construct the dedicated transmission line for which it had committed under the BPTA dated 24.12.2010 by reverting to a plethora of pleas which are only causing delays in implementation of the project. CTU has drawn attention of the Commission to para (iv) of the section 164 Notification dated 13.1.2014 where permission has been granted to the petitioner for construction of the 400 kV Double Circuit transmission line with Quad Moose Conductor from Bhabhana padu TPS till the CTU's proposed sub-station at Village Simhachanpeta near Palasa. CTU has submitted that the petitioner in its affidavit dated 7.8.2004 has abdicated its responsibility entrusted on the petitioner through notification by GOI. CTU has prayed to reject the petitioner's affidavit dated 7.8.2014 and direct the petitioner to execute the dedicated transmission line.

Analysis and Decision

31. We have considered the submissions of the petitioner and CTU and perused documents in record. After consideration of the pleadings of the parties

and submissions during the hearing, it emerges that the petitioner is aggrieved by non-acceptance of its offer of a piece of land offered to CTU to locate the Srikakulam Pooling station which would have saved the petitioner from the expenditure to construct the dedicated transmission line from the generating station to the pooling station. The petitioner has also highlighted the issue of start-up power for the purpose of testing and commissioning of its generating station. In the light of the pleadings and the prayers in the petition, the following issues arise for our consideration:

- (a) Whether CTU is bound to construct the pooling station at the plot of land offered by the petitioner?
- (b) Whether it is the responsibility of CTU to construct the dedicated transmission line from the generating station of the petitioner to the pooling station of CTU?
- (c) Whether it is the responsibility of CTU to provide start-up power to the petitioner?
- (d) Whether the petitioner is entitled to refund of money deposited by it with CTU for construction of bays?

These issues have been dealt with in the succeeding paragraphs.

Issue No.1: Whether CTU is bound to construct the pooling station at the plot of land offered by the petitioner?

32. The petitioner applied for LTOA on 11.10.2007 under the Open Access Regulations, 2004. As per the requirement of the said regulations, the petitioner had submitted the following information:

- Quantum of power to be transmitted: 2460 MW
- Points of injection of power: Switchyard bus of power plant.
- Expected Sale to: Andhra Pradesh-200 MW, Karnataka-550 MW, Maharashtra-500MW, Rajasthan-600 MW, Punjab-500MW, Goa-100 MW.
- Voltage level of the EHV sub-station (Nearest EHV sub-station and ownership): 400kV at Gazuwaka owned by PGCIL.
- Expected date of commencement of the Open Access: October, 2010.
- Generating capacity: 2640 MW (Phase I-2x660 MW and Phase II-2x660 MW).
- Step up generation voltage: 400 kV
- Unit wise capacity and commissioning schedule:
 - Unit-I: December, 2011
 - Unit-II: March, 2012
 - Unit-III: March, 2013
 - Unit-IV: June, 2013

33. CTU intimated vide its letter dated 5.11.2007 that the system studies were required before LTOA is granted. The petitioner vide its letter dated 7.12.2007 requested CTU to carry out the system studies for system strengthening for the purpose of evacuation of power from its generating station to SR, NR and WR. The petitioner vide its letter dated 29.11.2008 referring to its discussion with CTU stated that CTU would require about 90 acres of land for

setting up the pooling station to which its project would be connected and offered the required area of land out of the land available for the project. The petitioner further stated in the said letter that once the suitability of the land is confirmed by CTU, ownership of the land could be transferred to CTU on mutually agreeable terms at a later date. On 18.2.2009, a meeting was held by PGCIL with the generation developers seeking long term open access located in Srikakulam and East Godavari areas in Southern Region (Annexure P-4). CTU during its presentation explained that location of the pooling station shall be required to be selected in such a manner that power from the projects in the vicinity can be conveniently brought to the pooling station through dedicated transmission lines. It was suggested that if possible, the Pooling Station could be made at the generation switchyard of one of the power projects and if the site conditions permit, bus bar of one project can be extended to other contiguous projects which would save substantial investment by avoiding establishment of a pooling station at other place and then inter-connecting through high capacity transmission lines. The petitioner in its letter dated 29.5.2009 (Annexure P-5) reiterated its offer of land for the pooling station. The Petitioner in its letter dated 8.6.2009 (Annexure P-7) renewed its offer about the land for pooling station and sought a confirmation from CTU in that regard. In the meeting on the Long Term Access Applications in the Southern Region held on 15.6.2009 (Annexure P-8), the following was decided about the pooling station:

“As regards the location of the pooling station, it was indicated that both East Coast and NCC projects had offered land for establishment of the Pooling Station. It was decided that the decision on this would be taken separately after carrying out the analysis with respect to the locations of

the project vis-à-vis the location of the Angul Pooling Station where power would be ultimately transferred for onward transmission.”

The petitioner in its letter dated 3.7.2009 (Annexure P-10) made the following request with regard to the pooling station:

“We wish to submit that during the discussion on 15th June and 25th June 2009, we have been told that the 400 kV D/C Talcher-Gazuaka transmission line will be connected to the pooling station near East Coast Power Project through LILO (in the land offered by us). We request that this may be formally mentioned in a letter issued to us as the lenders, to whom we had given this indication, have been insisting for the same.”

PGCIL in its letter dated 21.7.2009 (Annexure P-11) has clarified with regard to the location of pooling station as under:

“Further with regard to para 2 of the referred letter wherein it has been mentioned that ECEPL has been told about the LILO of Berhampur-Gazuwaka line shall be made at the pooling station to be developed in the land offered by ECEPL, we would like to clarify that it has never been indicated by us. In fact there had been conflicting claims from ECEPL and NCC Vamshadra regarding availability of adequate land for pooling station. Further NCC Vamshadra has contended that , by virtue of its closer location to Angul Pooling station by about 55 kms, it is technically superior option to develop pooling station near NCC Vamshadra switchyard from cost and losses consideration.”

CTU in its letter dated 27.10.2009 intimated the grant of long term open access for the generation projects in Srikakulam Area. However, before the BPTA was signed, the petitioner vide its letter dated 25.3.2010 intimated CTU to change the quantum of LTOA to 1320 MW (Gross). In the 9th meeting of Southern Region constituents regarding Long term Open Access applications held on 13.4.2010, it was decided that power from each generation project shall be pooled at Srikakulam pooling station through dedicated 400 kV D/C (quad) line

under the scope of generation developer. By letter dated 6.5.2010, the petitioner was intimated about the grant of LTA. The petitioner signed BPTA on 5.7.2010 (Annexure P-19). As per the BPTA, the following are covered under the scope of work of the petitioner:

- “(i) Construction of 400 kV Quad line from Switchyard-Srikakulam Pooling Station 400 kV D/c (quad) high capacity line.
- (ii) Provision of 1x125 MVAR Bus Reactor at generation switchyard
- (iii) Two nos of 400 kV bays each at East Coast generation switchyard & Srikakulam Pooling Station.”

34. It is evident from the above that though the petitioner has been offering a piece of land measuring 90 acres from its generation area for locating the pooling station, CTU has at no time committed that the pooling station would be located at the plot offered by the petitioner. In fact in its letter dated 21.7.2009, CTU has bluntly clarified that no such indication was ever given to the petitioner. The transmission system was finalized in the meeting held on 13.4.2010 and intimated to the petitioner on 6.5.2010. Subsequently, the petitioner has signed the BPTA on 7.5.2010. As per the BPTA, it is the responsibility of the petitioner to construct the 400 kV Quad line from Switchyard upto Srikakulam Pooling Station. It is therefore clear that the pooling station was not to be constructed at the site provided by the petitioner. Having signed the BPTA, the petitioner should be prepared to construct the transmission line from its switchyard to the pooling station of CTU.

35. CTU in the 2nd JCC Meeting held on 2.2.2011(Annexure P-24) intimated that land for the pooling station has been identified with tentative coordinates 18°41'33.43"N, 84°19'27.19"E. Subsequently, CTU vide its email dated 21.6.2012 (Annexure P-29) intimated the coordinate of Srikajulan pooling station as 18°48'28" N 84°27'22" E. CTU vide letter dated 6.8.2012 informed the petitioner that the land acquisition was in advanced stage and the possession was expected shortly. CTU further informed that the tenders for preliminary work had already been floated taking the identified location into consideration and the main packages were in advanced stage of tendering. The petitioner vide its letters dated 14.8.2012 and 21.8.2012 informed CTU that as land for the Pooling Station had not yet been acquired, it had identified three alternative locations for the Pooling Station near the generating project and these lands could be acquired within three months. In 15th meeting of the Southern Region constituents held on 4.1.2013 regarding approval of LTOA and connectivity application, CTU informed that from about 20 sites surveyed, CTU selected the most suitable site. However, it was not enough to accommodate normal 765/400 kV GIS sub-station. In 9th JCC meeting held on 12.4.2013 CTU informed that the land for the sub-station was likely to be acquired by May 2013 and accordingly, the award for the sub-station package would be made thereafter.

36. It is clear from the above that the petitioner was well aware of the developments in regard to construction of pooling station from initial stage onwards. At no stage, the petitioner was given any expectation or assurance by

CTU that the pooling station would be constructed on the plot offered by it. Moreover, after signing the BPTA, the petitioner has approached for approval under Section 68 and Section 164 of the Act and has been granted approval under section 68 of the Act vide Government of India, Ministry of Power`s letter dated 5.6.2011 and Section 164 approval vide order dated 13.1.2014. Both the approvals have been granted for implementation of East Coast Energy (Bhavenapadu) Generation Switchyard- Srikakulam Pooling station 400 kV D/C quad line. One of the conditions in Section 68 approval is that the petitioner would be required to take up implementation of the dedicated transmission line matching with the commissioning of the pooling station to be implemented by CTU. From the above, it clearly emerges that the pooling station of CTU was not planned to be constructed on the land offered by the petitioner and the petitioner would be required to construct the transmission line from its generation switchyard till the pooling station of PGCIL for which the petitioner had applied for and obtained the approval under Section 68 and 164 of the Act. Only on account of optimizing its cost, the petitioner has been pursuing with CTU to construct the pooling station at the site of its generation so that the petitioner would not be required to construct the dedicated transmission line. Selection of a site for the pooling station is a planning matter to be decided by CEA and CTU and there is no provision in law under which the Commission can direct CTU to locate the pooling station at a particular site. For all these reasons, this issue is decided against the petitioner and accordingly, the first prayer is rejected.

Issue No.2: Whether it is the responsibility of CTU to construct the dedicated transmission line from the generating station of the petitioner to the pooling station of CTU?

37. The petitioner has submitted that under the Connectivity Regulations, 2009, it is the responsibility of PGCIL to construct dedicated transmission lines for thermal generating station with capacity of 500 MW above. The petitioner vide its letter dated 27.7.2013 applied for connectivity for the generating station under the Connectivity Regulations with the following request:

“1. Considering the drastic changes that have taken place from July 2010 till date, as explained above in ‘Background’ and MOEF suspension already causing a lot of financial implication on the project cost, kindly note that any additional burden on the project cost will have serious implication which may lead to relook by the lenders. In this regard, we request PGCIL to consider our application for connectivity so that transmission line from ECEPL project switchyard to the point of connection is built by PGCIL as the capacity is above 500 MW.”

Since the application of the petitioner was rejected, the petitioner has raised the point that its application should be considered under 2009 Connectivity Regulations and the responsibility for construction of the dedicated transmission line should be entrusted to CTU. Accordingly, the petitioner has sought a direction to CTU to construct the dedicated transmission line from its generation switchyard to the pooling station.

38. 2009 Connectivity Regulations came into force with effect from 1.1.2010 repealing the provisions of the 2004 Open Access Regulations. Regulation 34 of the Connectivity Regulations provides as under:

“34. Repeal and Savings

(1) On commencement of these regulations, Regulation No.’s 4(1)(a), 4(ii), 5(i), 6(i), 7, 8(i), 9, 10, 11, 12, 16(i), 18, as far as it applies to long-term

customers, and 31(i) of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2004, shall stand repealed.

(2) Notwithstanding anything contained in clause (1), long-term access granted in accordance with the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2004 shall continue to be valid till the expiry of the term of long-term access.”

From the above it is clear that after coming into force of the 2009 Connectivity Regulations, the provisions of 2004 Open Access Regulations in so far as they relate to long term open access stood repealed. However, the long term access granted under 2004 Open Access Regulations were saved till the expiry of the term of the long term access.

39. Clause 31 of the Detailed Procedure (approved by the Commission in terms of Connectivity Regulations) provided as under:

“Treatment of Present Long Term Open Access Applications already made to CTU

2. Long term Open Access Application where system strengthening is required:

(i) The long term open access already granted and BPTA has been initialed between generation developers and POWERGRID, like Orissa, or yet to be signed/initialed and become operational, shall have to inform firm beneficiaries in terms of para 22.7 of the detailed procedure atleast 3 (three) years prior to the commencement date of open access. If applicant is already completed this time-period, then he shall have to firm up and inform beneficiaries in terms of para 22.7 of the detailed procedure along with the supporting documents (as explained in the detailed procedure for long term access) within 6 (six) months of approval of detailed procedure by CERC.

(ii) The Long Term Open Access already granted and BPTA is yet to be signed/initiated, applicant shall have to inform firm beneficiaries in terms of Para 22.7 of the detailed procedure atleast 3 (three) years prior to the commencement date of open access. If applicant is already within this time period then he shall have to firm up and inform firm beneficiaries in terms of para 22.7 of the detailed procedure along with the supporting documents as explained in the detailed procedure for long term access within 6 (six) months of approval of detailed procedure by CERC.

(iii) Application which are under process and who have already given the consultancy charges for evolution of transmission system strengthening shall be required to apply afresh without giving the application fees and clearly indicating the quantum of power for connectivity and/or for Long Term Access separately. They shall however, not be required to furnish application Bank Guarantee of Rs. 10,000/- per MW for the quantum of power for which Long term Access has been sought. However, they shall also be required to submit the various documents as prescribed in the detailed procedure for connectivity/Long term Access.

(iv) Applications which are under process and for which the consultancy charges for evolution of transmission system strengthening have not been either paid to or demanded by POWERGRID shall have to apply afresh as per the detailed procedure for connectivity/LTA."

Under the above Procedure, the cases where LTOA has already been granted and BPTA has either been signed or yet to be signed as on 1.1.2010 are not required to apply afresh. They are required to firm up the beneficiaries in accordance with para 22.7 of the Detailed Procedure. It means that such LTOA/BPTA were saved in terms of Regulation 34(2) of the 2009 Connectivity Regulations and the parties will be bound by the provisions of said LTOA/BPTA.

40. The petitioner applied for long term open access vide its letter dated 11.10.2007. After carrying out the necessary system studies, PGCIL granted LTOA to the petitioner vide its letter dated 27.10.2009 for 2440 MW (Annexure P-13) and asked the petitioner to sign BPTA. PGCIL vide its letter dated 4.11.2009 (Annexure P-14) sent the draft BPTA to the petitioner. As per the said draft BPTA, dedicated transmission line is to be implemented by generation project developer. Annexure 5 of the draft BPTA required the petitioner to pay Bank Guarantee of ₹241 crore @ ₹10 lakh/MW. The petitioner vide its letter dated 25.3.2010 (Annexure P-15) sought modification of LTA to 1320 MW. One of the points highlighted by the petitioner was that it was prepared to pay Bank

Guarantee @ ₹5 lakh/MW and shall be at the net quantum as already agreed in the meeting convened by CEA on 1.2.2010. It is pertinent to mention that Bank Guarantee @ ₹5 lakh/MW has been prescribed in Regulation 27(2)(d) of 2009 Connectivity Regulations as well as the Detailed Procedure. In other words, the petitioner sought only modification in the quantum of LTA and the payment of Bank Guarantee in accordance with the 2009 Connectivity Regulations. The petitioner did not seek construction of the dedicated transmission line by CTU as provided in the Connectivity Regulations, 2009.

41. The Commission considered the PGCIL's petition for regulatory approval for the High Capacity Power Transmission Corridors (HPCTC) in Petition No.233/2010. Certain issues like amount of Bank Guarantee to be provided, requirement for signing of PPA and liability for construction of dedicated transmission lines were raised. The Commission in its order dated 26.3.2010 in Petition No.233/2009 dealt with the issues as under:

14. One of the IPPs, M/s. KSK Mahanadi Pvt. Ltd. submitted that it was decided in the meeting held on 1.2.2010 in CEA that for the present lot of cases, the generators would lay dedicated lines upto the specified pooling points and the same dispensation would not be changed at this advanced stage. This decision, according to the IPP, is a departure from the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 (2009 Regulations) which provides that the transmission system has to be developed upto the bus-bar of the generating stations. While the petitioner has accepted Rs 5 lakh/ MW as BG as per the provisions of the 2009 Regulations, the petitioner is unwilling to construct the dedicated transmission line as per the provisions of the said regulations. M/s Wardha Power Company Ltd has made a similar submission. Another respondent, M/s. Navbharat Power Private Ltd. has submitted that it did not sign BPTA because it was asked to submit BG by 31.3.2010 failing which their application would not be considered whereas the 2009 Regulations allow the BG to be submitted within three months of signing of BPTA.

5. We have considered the submissions of the petitioner, the beneficiaries and the IPP developers. At this stage, the following issues need to be addressed:

i) Construction of dedicated transmission lines by the CTU.

ii) PPAs to be signed with the beneficiaries for the IPPs.

iii) Time required for submitting the Bank Guarantee after signing the BPTAs.

16. As regards the construction of dedicated transmission lines by the CTU, we are of the view that under section 10 (1) of the Electricity Act, it is the duty of the generating company to install, operate and maintain the dedicated transmission lines in accordance with the provisions of the Act or the rules or regulations made there under. The 2004 Regulations did not provide for inclusion of the dedicated transmission lines as part of system strengthening and accordingly the CTU has not planned the dedicated transmission lines in the HCPTCs for which the regulatory approval has been sought in this petition. However, recently in 2009, the Commission after detailed deliberation has decided that the CTU should also develop the dedicated transmission lines as part of planned and coordinated development of inter-State transmission system and accordingly, provisions have been made in the 2009 Regulations. Such arrangement cannot be extended in case of the transmission lines which were planned prior to the said regulations as it will delay the construction of the HCPTCs and consequently bottle up the generation projects.

17. As regards the requirement for signing of PPAs with the beneficiaries, we observe that the IPPs have not been able to come forward to sign the PPAs, primarily because the States have not yet gone ahead with the bidding process for evacuation of power. However, linking the signing of the PPAs with regulatory approval will hamper the progress of the transmission projects. The Tariff Policy issued vide Govt. of India in para 7.1.4 does not make it mandatory for network expansion by the CTU/STU. The said para reads as under:

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

In view of the above mandate of the Tariff Policy, we are of the view that the CTU should carry out consultation with the stake holders and satisfy itself about the bonafide nature of generation projects which are likely to

materialize during the next three years and submit the detailed report about such projects, including the physical progress made wherever feasible and approach the Commission by first week of April, 2010.

18. As regards the BG, some of the IPPs have argued for submission of the BG within a period of three months from the date of signing of the BPTA in accordance with the 2009 Regulations. At this point, the Commission would like to clarify that the CTU had adopted an approach to take about 10% of the estimated cost of the transmission system as Bank Guarantee which works out to Rs.10-15 lakh/MW for the coverage of the risk towards construction of the transmission system. However, taking note of the concern of some of the IPPs and considering the provision in the 2009 Regulations, the Commission in the Record of Proceeding dated 12.01.2010 had directed the petitioner "to take Bank Guarantee in accordance with the provisions of Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term open access in inter-State Transmission and related matters) Regulations, 2009 under the BPTA even for the cases of open access prior to the Regulations". The Bank Guarantee of Rs 5 Lakh/MW for projects planned prior to the 2009 Regulations was allowed as a special dispensation which should not be construed that all the provisions of the 2009 Regulations shall be applicable to the IPPs whose applications have been considered and accepted by the CTU for grant of LTOA under 2004 Regulations. We make it clear that if any IPP is interested to be considered under the 2009 Regulations, it is at liberty to do so for which all provisions of the said regulations shall apply. However, in cases of IPPs which have already been granted LTOA by the CTU, such IPPs should sign the BPTA with the Petitioner and deposit the BG at the rate of Rs 5 lakh/ MW by 31.3.2010 in order to ensure that the progress of some of the IPPs which are in the most advanced stage is not stalled due to other IPPs."

42. The Commission had decided that those projects which were planned prior to the operation of the Connectivity Regulations with effect from 1.1.2010 cannot be allowed the benefit of construction of their dedicated line by the CTU as it would delay the construction of the HCPTCs and consequently bottle up the generation projects. It is pertinent to mention that the petitioner was one of the respondents in the said petition. The petitioner has not challenged the order dated 26.3.2010. Therefore, the petitioner is bound by the said order and cannot now claim that its dedicated transmission line should be constructed by CTU

since the transmission line in connection with its generation project was planned prior to 1.1.2010.

43. In the 9th meeting of Southern Region constituents regarding Long term Open Access applications held on 13.4.2010 (Annexure P-16), the petitioner's request for revised LTOA was considered. Considering the requirement of the generation Project Developers in Srikakulam Area, CTU proposed the transmission system as under:

Dedicated Transmission System:

- Both the East Coast and NCC generation projects shall be stepped up 400 kV level and bus reactor of 1x125 MVAR to be provided at each generation project switchyard.
- Power from each generation project shall be pooled at Srikakulam pooling station through dedicated 400 kV D/C (quad) line under the scope of generation developer.

Common Transmission System:

- Establishment of 400 kV pooling station in Srikakulam area with future provision for 765 kV level.
- Srikakulam Pooling Station-Angul 765 kV D/C lines (initially charged at 400kV)
- Provision of 2x1500 MVA transformer at Angul 765/400 kV sub-station.
- Angul-Jahrsugunda 765 kV D/C line

- Jharsuguda-Dharamjaigarh 765 kV D/C line

Considering the commissioning schedule of generation projects, an interim arrangement was proposed through LILO of one circuit of Gazuwaka-Behrampur 400 kV D/C transmission line at respective power plants which will be further extended to Srikakulam Pooling Station when this sub-station gets ready. With regard to the implementation of Transmission System, the following was decided:

“7.5 Implementation of Transmission System

POWERGRID informed that for the common transmission system, generation developers need to sign BPTA & submit BG. Based on above, POWERGRID will approach CERC for regulatory approval. After getting regulatory approval, POWERGRID shall obtain investment approval. The commissioning schedule of the transmission system shall be as per the CERC timeline after investment approval.

7.6 It was informed to the applicant that those who had applied for LTOA under CERC Regulations, 2004 shall not be permitted for any more revision in the LTOA quantum, target beneficiaries, location etc. For any change in the LTOA considered and granted shall have to apply afresh in line with the provisions of CERC Regulations, 2009. The representative of East Coast mentioned that this is their final change in the capacity & LTOA sought and are ready to sign BPTA and submit Bank Guarantee(BG).

7.7 ED (SEF, CE & IT), POWERGRID informed that EAST Coast and NCC shall sign the BPTA with POWERGRID on 26.4.2010 so that the transmission which was submitted to CERC for regulatory approval and put up at the 2nd priority may be taken up with CERC for consideration in 1st priority for grant of regulatory approval.”

44. From the above, it is evident that the petitioner never raised the issue that its application should be considered under Connectivity Regulations, 2009 for modification LTOA already granted. CTU clearly clarified that the BG is for the common transmission system which means that the dedicated portion would be implemented by the petitioner.

45. The petitioner in Ground B of the petition has submitted that PGCIL presented the scheme for regulatory approval of transmission system associated with IPPs in Srikakulam Area which included construction of the sub-station of the generation switchyard of the petitioner. It has been further submitted that the scheme was approved by the Commission vide its order dated 31.5.2010. We have gone through our order dated 31.5.2010 in Petition No.233/2009. Annexure VIII of the order which pertained to HCPTC VIII (Srikakulam Area) is extracted as under:

“HCPTC – VIII (Transmission System Associated with IPP projects in Srikakulam Area, Andhra Pradesh)

- (a) Establishment of 2x1500 MVA, 765/400 kV Pooling station at Srikakulam
- (b) Provision of 1x1500 MVA, 765/400 kV substation at Angul.
- (c) Srikakulam Pooling Station – Angul 765 kV D/c (initially charged at 400 kV)
- (d) Angul – Jharsuguda – Dharamjaigarh 765 kV D/c
- (e) Associated 400kV bays at Srikakulam & Angul substations
- (f) Associated 765 kV bays at Angul, Jharsuguda & Dharamjaigarh substations.”

From the above, it is clearly evident that the Commission had accorded regulatory approval for the construction of common transmission system for the evacuation of power from IPP projects in Srikakulam Area. Therefore, the contention of the petitioner that the dedicated transmission lines were approved by the Commission as part of regulatory approval is not correct.

46. The petitioner was granted LTOA by CTU vide letter dated 6.5.2010 (Annexure P-17) for 1320 MW. The petitioner entered into BPTA on 5.7.2010 (Annexure P-19). As per Annexure 2 of the BPTA, the petitioner is required to execute the following dedicated system:

“3. East Coast Energy Private Limited (1320 MW) generation project/March 2013

- d) East Coast Energy Generation Switchyard-Srikakulam Pooling Station 400 kV D/c (Quad) capacity line
- d) Provision of 1x125 MVAR Bus Reactor at generation switchyard
- e) Two nos of 400 kV bays each at East Coast Energy generation switchyard & Srikakulam Pooling Station.”

The petitioner has also paid a Bank Guarantee of ₹62.04 crore vide letter dated 17.7.2010 (Annexure P-20). The petitioner having entered the BPTA and paid the Bank Guarantee has accepted the obligations under the BPTA which includes construction of the dedicated transmission line.

47. The petitioner vide its letter dated 27.7.2014 (Annexure P-40) applied for grant of connectivity for 1320 MW mainly with the purpose that the transmission line from its generation project to the point of connection should be built by CTU.

The petitioner has submitted that after grant of connectivity, it will apply for LTA

separately. The petitioner has also requested for adjustment of the Bank Guarantee of ₹62.04 crore submitted at the time of BPTA. In other words, the petitioner appears to have proceeded on the premise that by applying for connectivity, the LTOA granted and BPTA signed earlier would be null and void. It is clarified that the application of the petitioner amounts to abdication of its contractual obligations under BPTA which cannot be done except without the procedure prescribed in the BPTA. Para 5.0 of the BPTA which is relevant is extracted as under:

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

48. It is noticed that the application of the petitioner vide letter dated 27.7.2014 for connectivity was considered in the 16th Meeting of the Southern Region constituents regarding long term access and connectivity applications in Southern Region held on 4.9.2013 (Annexure P-41). Paras 4.2 to 4.5 of the minutes of the said meeting are extracted as under:

“4.2 ECEPL has submitted connectivity application for the same generation project in the Srikakulam Area to process under the CERC Regulations, 2009 so that the dedicated transmission line viz. Generation Switchyard – Srikakulam Pooling station 400 kV Quad D/c line may be considered under the coordinated planning of CEA and CTU and shall be developed as ISTS transmission system.

4.3 COO(CTU) stated that in the approved Detailed Procedure of CTU, a specific time was provided to the Long Term Open Access (LTOA) applicants which were under process as per CERC Regulations, 2014, however after that time period there is no provision under present CERC Regulations, 2009 to process again the already granted

applications. He further stated that strengthening system beyond Srikakulam pooling station is in progress and shall be implemented as per the BPTA schedule signed with ECEPL. Also as the applicant sought connectivity from June 2015, the construction works for dedicated line has not yet been started by the generation developer. It indicates that there will be a mismatch between availability of dedicated line and the generation project or availability of the transmission system which is under implementation of POWERGRID. Such delay will be solely responsibility on the part of generation developer.

4.4 ECEPL representative informed that due to various environmental issues in the implementation of generation project, the cost of the generation projects is already going beyond their estimates and their lenders are asking them to cut down the cost of the generation project. Therefore, it is not possible for the generation developer to implement the dedicated transmission line by its own and requested to consider their connectivity application so that dedicated transmission line can be implemented as ISTS scheme.

4.5 Chairperson CEA stated that since very long time has passed, now their request to migrate from Regulations, 2004 to Regulations, 2009 cannot be accepted at this point of time. Therefore, the generation developer should take up the implementation of the dedicated transmission line matching with the ISTS transmission system being developed by POWERGRID for coordinated evacuation of power from the generation project.”

49. It is apparent from the above that the petitioner is seeking connectivity only on commercial consideration that it is not in a position to implement the dedicated transmission line on its own as the cost of its generation project has gone beyond the estimates due to environmental issues. It is clarified that CTU and CEA carried out system studies on the basis of the application of the petitioner dated 27.10.2007 and based on the system study, the dedicated transmission line was included under the scope of the generation project developer. The petitioner now seeks modification of the coordinated transmission planning already undertaken earlier in order to transfer the

dedicated transmission line from the scope of the generation project developer to the scope of CTU. It is to be noted that under the Electricity Act, 2003, it is the duty of the generating company to build, maintain and operate dedicated transmission line. Therefore, the petitioner should have factored the cost of the dedicated transmission line in its project cost. Even though Regulation 8(8) of 2009 Connectivity Regulations provides for building up of dedicated transmission line by CTU for thermal generation project above 500 MW, it is not necessary that it would be possible for CTU to execute it within the limited timeframe available. This issue was considered by the Commission in Petition No.116/2011 (PGCIL Vs. Thermal Powertech India Limited) and the Commission in the order dated 19.12.2011 held as under:

"10.....If it is not possible for the CTU to implement the dedicated transmission lines included in the coordinated transmission planning due to paucity of time, it may require the applicants to implement these transmission lines as per the main provision of Regulation 8(8) of Connectivity Regulations. In our view, the word 'shall' used in the proviso is directory in nature and does not prevent the generating stations to construct the dedicated transmission lines if so required by the CTU. Therefore, there is no requirement to permit deviation from proviso to Regulation 8(8) of Connectivity Regulations as prayed for by the petitioner (POWERGRID) in order to get the dedicated transmission lines implemented by the project developer."

50. As per CEA`s monthly progress report, scheduled commissioning of Srikakulam pooling station-Angul 765 kV D/C is June, 2015 And therefore, the transmission line required for evacuation of power under common transmission system is expected to be ready by June, 2015. The relevant chart from CEA`s monthly progress report is extracted as under:



51. Even for the sake of argument, it is accepted that the construction of the dedicated transmission line is entrusted to CTU under Regulation 8(8) of Connectivity Regulations, it would require 36 months for CTU to execute the transmission line as it has to follow the standard procedure of investment approval, seeking various statutory permission/clearances and the normal

timeline for tendering process. The petitioner has indicated the commissioning schedule of units-I and II of its generating station as December, 2015 and March, 2016 respectively. Since the time available for the construction of dedicated transmission line is around 14 months from now to match with the generation project of the petitioner, CTU would not be able to complete the dedicated transmission line by December, 2015. The petitioner has got the sections 68 and section 164 clearances and is in the best position to implement the dedicated transmission line within the available timeframe. We direct the petitioner to put in its best efforts to complete the dedicated transmission line expeditiously so that evacuation of power from its generating station does not get bottled up.

52. The petitioner has filed affidavit dated 7.8.2014 without seeking leave of the Commission. In the said affidavit, the petitioner has given a confirmation that it was not constructing the associated transmission system. CTU in its reply dated 7.8.2014 has submitted that the affidavit be rejected and the petitioner be directed to implement the dedicated transmission line matching with the commissioning of the generation project. We do not approve of the practice to file affidavits without the prior leave of the Commission. With regard to the content of the affidavit, it is clarified that this Commission has not issued any order restraining the petitioner to execute the dedicated transmission line and therefore, the petitioner is liable for the contractual obligations under the BPTA.

Issue No.3 : Whether it is the responsibility of CTU to provide start-up power to the petitioner?

53. The petitioner has sought a direction to PGCIL to provide start-up power for the purpose of testing and commissioning of its generating station. We have to examine whether PGCIL is under any statutory or contractual obligation to supply start-up power to the petitioner. Start-up power is required to start the auxiliary equipments during testing and commissioning of the generating station. It is the responsibility of the generator to arrange for start-up power. CTU has not been entrusted either under the Act or under the regulations of the Commission to arrange for start-up power for the generator. Under the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) (Fourth Amendment) Regulations, 2014, a generating company is allowed to draw start-up power from the grid provided it has got connectivity with the grid. In the present case, connectivity line falls under the scope of the petitioner and therefore, if the petitioner is able to connect its generating station with the pooling station of CTU, it would be able to draw start-up power.

54. On perusal of the documents on record, it is noticed that in the Southern Region constituents meeting held on January 13, 2010, CTU informed the petitioner that power would flow from Srikakulam Pooling Station through dedicated 400 kV D/C transmission line under the scope of generation developer. It was also informed by CTU to the petitioner that by considering the

commissioning schedule of the generation project, an interim arrangement was proposed through LILO of one circuit of 400 kV D/C Gazuwaka-Behrampur transmission line, which will be further extended to Srikakulam Pooling Station being constructed by PGCIL. CTU further informed the petitioner that 400 kV D/C Gazuwaka-Behrampur transmission line is being constructed by Reliance Power Transmission Limited and the petitioner should be in touch with RPTL in regard to progress of the line. In the revised LTOA intimation issued vide CTU's letter dated 6.5.2010, the following arrangement has been noted in Annexure-3 pertaining to dedicated part to be implemented by generation project developer:

“1. East Coast Energy shall take up implementation of the above dedicated transmission matching with the commissioning of the pooling station to be implemented by POWERGRID. Further as a temporary measure to facilitate drawal of start-up power, East Coast Energy shall make LILO of one circuit of Behrampur-Gazuwaka 400 kV D/c line being constructed under IPTC route. With the commissioning of the pooling station, temporary LILO arrangement will be removed to restore the Behrampur-Gazuwaka line.”

A similar provision was also made in the BPTA signed by the petitioner with CTU on 5.7.2010. It is not clear as to how despite clear request of the petitioner not to make any mention about the LILO of Berhampur-Gazuaka D/c line, the interim arrangement through the LILO of one circuit of Berhampur-Gazuaka D/C line was made in the intimation of LTOA and BPTA. It is to be noted that LILO on Berhampur-Gazuaka D/C line was under the scope of the generation project developer. The progress of the Berhampur-Gazuwaka line was being monitored in the various Coordination Committee Meetings of IPPs granted LTOA in SR and the petitioner was kept in picture. CEA vide its letter dated 28.9.2010

(Annexure P-22) wrote to Reliance Power Transmission Limited (RPTL), the developer of Berhampur-Gazuwaka line requesting RPTL to coordinate with the petitioner for the LLO of one circuit of Berhampur-Gazuwaka line. The petitioner vide its letter dated 30.11.2010 (Annexure P-23) brought to the notice of PGCIL that it was doubtful about the readiness of Berhampur-Gazuwaka line by September 2012 when the petitioner would require start-up power and requested CTU to provide alternate source/solution to ensure that start-up power is made available. In the 2nd Joint Coordination Committee Meeting held on 2.2.2011, representative of RPTL confirmed that target date of Berhampur-Gazuwaka line was October 2012. In the 3rd Joint Coordination Commission meeting held on 1.4.2011, the same status was indicated and the petitioner was asked to get in touch with RPTL. In the 4th Joint Coordination Committee meeting held on 18.7.2011, it was brought out that RPTL was seeking one more year of time to execute the Berhampur-Gazuwaka line. The representative of CTU suggested the petitioner to explore possibility of taking start-up power from any nearby 220/132 kV sub-station of APTRANSCO as is the practice with NTPC projects and the representative of the petitioner agreed to explore the possibility. The petitioner vide its letter dated 11.10.2011 addressed to Secretary (Power) Government of India stated that the existing sub-stations in the nearby vicinity of its generating station are not adequate to supply start-up power and requested for instructions to CTU to provide suitable alternate source/solution for start-up power and evacuation arrangement.

55. From the above, it is evident that the construction of Behrampur-Gazuwaka transmission line has not yet started due to delay in obtaining Section 164 approval and subsequently pendency of the petition before this Commission and appeal before the Appellate Tribunal. However as far back as 18.7.2011, the CTU had informed the petitioner that it should explore the possibility of start-up power from the nearby sub-station of APTRANSCO. In its letter to MOP, the petitioner has submitted that the existing sub-stations of APTRANSCO were not adequate to supply start-up power. The petitioner in its revised LTOA application dated 25.3.2010 had requested CTU as under:

“(d) Consequent to an interaction with APTRANSCO, the petitioner would be able to obtain start-up power from the AP grid and the LILO to Behrampur-Gazuwaka 400 kV D/c line will not be required and may not be mentioned in the letter of modification to the evacuation scheme.”

It is not understood as to how the petitioner who was requesting for not making a provision for start-up power in the revised LTOA on account of availability of start-up power from APTRANSCO is subsequently taking a stand that the sub-stations of APTRANSCO are not adequate to supply start-up power.

56. In our view, it is the responsibility of the petitioner to develop the dedicated transmission line. The petitioner was aware that LILO of Behrampur-Gazuwaka was not feasible due to lack of progress on the Behrampur-Gazuwaka line. Therefore, the only alternative left with the petitioner for evacuation of power from the petitioner's generating unit is dedicated transmission line from its Switchyard to Srikakulam Pooling Station. However, CTU in a number of Joint Co-ordination Committee meetings and LTOA

meetings of Southern Region constituents, informed the petitioner that it had to construct the dedicated transmission line from generation switchyard to Srikakulam Pooling Station. That being the case, the petitioner cannot seek a direction to CTU to make arrangement for start-up power. The CTU is neither under statute nor under the BPTA has obligation to make arrangement of start-up power and therefore, this prayer is rejected.

Issue No.4 : Whether the petitioner is entitled to refund of money deposited by it with CTU for construction of bays?

57. The petitioner in its third prayer has requested to direct CTU to refund the money paid as advance for construction of 2 nos of 400 kV bays at the pooling station. On 27.9.2012, the petitioner paid an amount of ₹1,05,16,860/- after deducting TDS on the gross amount of ₹1,16,85,400/- to CTU as advance for execution of 2 nos 400 kV bays at Srikakulam Pooling Station. CTU is constructing Srikakulam Pooling Station and while planning for the construction of Pooling Station, PGCIL has also taken into consideration of extra bays which are to be constructed for the petitioner as the petitioner paid advance for the same. CTU in its submission dated 14.3.2014 has submitted that it has acquired land for the construction of Srikakulam Pooling Station, the scope of work of the Pooling Station also includes line bays of the petitioner. CTU has submitted that Srikakulam Pooling Station will be commissioned by June 2015. Considering all these facts at this point of time, the petitioner's prayer to direct

CTU to refund the money paid as advance for construction of 2 nos. of 400 kV bays at the pooling station, is not agreed to.

58. Summary of our findings:

(a) The petitioner's prayer to direct CTU to construct the Pooling Station at Generation Switchyard is rejected.

(b) Since the petitioner has already obtained approval under Section 68 and Section 164 of the Electricity Act, 2003 from Ministry of Power on 5.6.2011 and 13.1.2014, respectively, the petitioner is directed to construct its dedicated transmission line from Generation Switchyard to Srikakulam Pooling Station which falls within its scope as per the BPTA. Therefore, the petitioner's prayer to direct CTU to build the dedicated transmission line is rejected.

(c) The petitioner's prayer to direct CTU to refund the money paid as advance for construction of 2 bays at 400 kV sub-station at Srikakulam is rejected.

(d) It is the responsibility of the petitioner to arrange for start-up power for commissioning of its generation project and no direction in this regard can be issued to CTU.

59. Petition No. 311/MP/2013 is disposed of in terms of the above.

Sd/-
(A.K. Singhal)
Member

sd/-
(M. Deena Dayalan)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson