

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri M. Deena Dayalan, Member

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Dates of Hearing: 15.10.2014

27.10.2014

20.11.2014

Date of Order : 16.02.2015

Petition No. 92/MP/2014

with

I.A. Nos. 43/2014, 51/2014, 52/2014, 54/2014, 56/2014 and 59/2014

In the matter of

Petition under Section 79 (1) (c) of the Electricity Act, 2003 and Regulations 32 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, 'in the matter of arbitrary denial of Medium Term Open Access' violating the provisions of the regulations.

And

In the matter of

Kerala State Electricity Board
Vydyuti Bhavan, Pattom,
Thiruvananthapuram – 695 004, Kerala

Petitioner

Vs.

- 1) Power Grid Corporation of India Limited
“Saudamini” Plot No. 2
Sector-29, Gurgaon-122001, Haryana
- 2) PTC India Limited
2nd Floor, NBCC Tower,
15 Bhikaji Cama Place,
New Delhi-110066
- 3) NTPC Vidyut Vyapar Nigam Limited
7th Floor, Core-3, Scope Complex,
Lodhi Road, New Delhi-11003



4) Jindal Power Limited
Tamnar, Raigarh, Chhattisgarh-496197

Respondents

Petition No. 376/MP/2014

In the matter of

Petition under Section 79 (1) (c) read with Section 79 (1) (f) and Section 79 (1) (k) of the Electricity Act, 2003, seeking appropriate direction or order declaring the letter dated 22.9.2014 as arbitrary and unreasonable being dehors the provisions of Electricity Act, 2003 and Detailed Procedure for making application for grant of Connectivity in ISTS submitted by the Central Transmission Utility and as approved by this Hon'ble Commission under Regulation 27 (1) 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.

And

In the matter of

DB Power Limited
Office Block IA, 5th Floor,
Corporate Block, DB City Park,
DB City, Arera Hills, Opp. MP Nagar, Zone-I,
Bhopal-462016

Petitioner

Vs.

Power Grid Corporation of India Limited
"Saudamini" Plot No. 2
Sector-29, Gurgaon-122001, Haryana

Respondent

Petition No. 382/MP/2014

In the matter of

Petition under Section 79 (1) (f) of the Electricity Act, 2003 regarding disputes arising between the petitioner, a generating company, and the respondent, the Central Transmission Utility and nodal agency for grant of long-term access to the inter-State transmission system.

And

In the matter of

EMCO Energy Limited
IBC Knowledge Park
4/1, Bannerghatta Road
Bangalore 560029

Petitioner

Vs.

1. Power Grid Corporation of India Limited



“Saudamini” Plot No. 2
Sector-29, Gurgaon-122001, Haryana

2. KSK Mahandi Power Co. Limited
8-2/293/82/A/431A, Road No. 22
Jubilee Hills, Hyderabad-500033
3. Jindal Power Limited
Plot No. 2, Tower-B
Sector-32, Gurgaon, Haryana-122001
4. Bharat Aluminum Co. Limited
Balco Nagar, Korba-495450, Chhattisgarh
5. Kerala State Electricity Board
Vydyuthi Bhavan, Pattom,
Thiruvananthapuram– 695 004
6. Karnataka Power Transmission Corporation Limited
Cauvery Bhawan, K.G. Road, Bangalore-560009, Karnataka
7. Tamil Nadu Generation and Distribution Corporation Limited
NPKRR Maaligai, 144, Anna Salai, Chennai-600 002
8. PTC India Limited
2nd Floor, NBCC Tower, 15 Bhikaji Cama Place, New Delhi-110066
9. Essar Power M.P. Limited
Equinox Business Park,
Off Bandra Kurla Complex
LBS Marg, Kurla (West), Mumbai-400070

Respondents

Petition No. 393/MP/2014

In the matter of

Petition under Section 79 (1) (c) read with Section 79 (1) (f) and Section 79 (1) (k) of the Electricity Act, 2003, inter alia seeking appropriate direction or order declaring allocation of LTA on LILO of existing lines by the Respondent No. 1 vide letter dated 22.9.2014 as illegal, arbitrary, malafide and discriminatory and contrary to the provisions of the Electricity Act, 2003 and 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.

And

In the matter of
DB Power Limited



Office Block 1A, 5th Floor,
Corporate Block, DB City Park,
DB City, Arera Hills,
Opposite MP Nagar, Zone-I, Bhopal-462016

Petitioner

Vs.

1. Power Grid Corporation of India Limited
“Saudamini” Plot No. 2
Sector-29, Gurgaon-122001, Haryana
2. National Load Despatch Centre
B-9, Qutab Institutional Area, Katwaria Sarai, New Delhi-110016
3. Western Regional Load Despatch Centre
F-3, M.I.D.C. Area, Marol, Andheri (EAST), Mumbai-400093
4. Central Electricity Authority
Sewa Bhawan, R.K. Puram, New Delhi-110066
5. Kerala State Electricity Board
Vydyuthi Bhavan, Pattom,
Thiruvananthapuram– 695 004, Kerala
6. Karnataka Power Transmission Corporation Limited
Cauvery Bhavan, K.G. Road, Bangalore-560009, Karnataka
7. Tamil Nadu Generation and Distribution Corporation Limited
NPKRR Maaligai, 144, Anna Salai, Chennai-600 002
8. KSK Mahanadi Power Co. Limited
8-2/293/82/A/431/A, Road No. 22
Jubilee Hills, Hyderabad-500033
9. Bharat Aluminum Co. Limited
Aluminum Sadan, Core-6
Scope Office Complex, Lodhi Road,
New Delhi-110003

Respondents

Petition No. 25/RP/2014

In the matter of

Petition under Section 79 (1) (c) of the Electricity Act, 2003 read with Regulation 32 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 and Section 94 (1) (f) of the Electricity Act, 2003 seeking review of the orders dated 8.8.2014 and 5.9.2014 and setting aside of the grant of MTOA to applications received in June 2013.

And

In the matter of

Bharat Aluminum Co. Limited
Aluminum Sadan, Core-6,
Scope Office Complex, Lodhi Road,
New Delhi-110003

Petitioner

Vs.

1. Power Grid Corporation of India Limited
"Saudamini" Plot No. 2
Sector-29, Gurgaon-122001, Haryana
2. Kerala State Electricity Board
Vydyuthi Bhavan, Pattom,
Thiruvananthapuram – 695 004, Kerala
3. PTC India Limited
2nd Floor, NBCC Tower, 15 Bhikaji Cama Place, New Delhi-110066

Respondents

Parties Present:

- 1) Ms. Suparna Srivastava, Advocate, KSEB
- 2) Shri B. Pradeep, KSEB
- 3) Shri S.R. Anand, KSEB
- 4) Shri G. Sreenivasan, KSEBL
- 5) Shri Krishnan Venu Gopal, Senior Advocate, DB Power
- 6) Shri Deepak Khurana, Advocate, DB Power
- 7) Shri Vikas Mishra, Advocate, DB Power
- 8) Shri Matrugupta Mishra, Advocate, Essar Power MP Ltd./DB Power
- 9) Shri H. Sharma, DB Power
- 10) Shri Prashant Panda, DB Power
- 11) Shri Vikas Adhia, DB Power
- 12) Shri Akhil Sibal, DB Power
- 13) Ms. Aditi Sharma, DB Power
- 14) Shri Sitesh Mukherjee, Advocate, EMCO
- 15) Shri Jafar Alam, Advocate, EMCO
- 16) Shri Kawaljit Singh, Advocate, EMCO
- 17) Shri Aditya Mathur, Advocate, EMCO
- 18) Shri Varma, EMCO
- 19) Shri Prashanto Chandra Sen, Advocate, BALCO
- 20) Ms. Anushruti, Advocate, BALCO

- 21) Shri Alok Shankar, Advocate, Essar Power MP Ltd.
- 22) Shri Manish Ranjan, Essar Power MP Ltd.
- 23) Shri Deepak Rodricks, Essar Power MP Ltd.
- 24) Shri S. Vallinayagam, Advocate, TANGEDCO
- 25) Shri K. Seshadri, TANGEDCO
- 26) Shri S. Thirunavukkarasu, TANGEDCO
- 27) Shri V.K. Jain, TANGEDCO
- 28) Shri Balaji Srinivasan, Advocate, KPTCL
- 29) Shri S.S. Ranga, Advocate, KPTCL
- 30) Ms. Srishti Govil, Advocate, KPTCL
- 31) Shri S. Sriranga, KPTCL
- 32) Shri Anand K. Ganeshan, Advocate, KSKMPL
- 33) Shri S. Narasimha, KSKMPL
- 34) Shri N. Ramakrishnan, KSKMPL
- 35) Shri Ravi Kishor, Advocate, PTC
- 36) Shri Varun Pathak, Advocate, PTC
- 37) Shri Rajiv Bhardwaj, Advocate, PTC
- 38) Shri K.C. Agarwal, PTC
- 39) Shri Bharat Sharma, PTC
- 40) Ms. Gunjan Thakri, JPL
- 41) Shri Vikas Saxena, JPL
- 42) Shri Y.K. Sehgal, PGCIL
- 43) Shri Dilip Rozekar, PGCIL
- 44) Shri Ashok, PGCIL
- 45) Shri Aryaman Saxena, PGCIL
- 46) Ms. Jyoti Prasad, POSOCO
- 47) Ms. Jayantika Singh, POSOCO
- 48) Ms. Abilia Zaidi, POSOCO
- 49) Shri S.S. Barpanda, NLDC
- 50) Shri Anurag Gupta, NVVNL
- 51) Ms. Ranjana Gupta, NVVNL
- 52) Ms. Shruti Bhatia, IEX
- 53) Shri U. Bharathesha Rao, PCKL

ORDER

Kerala State Electricity Board Limited (KSEBL), the petitioner in Petition No. 92/MP/2014 had challenged the denial of medium term open access by the Central Transmission Utility for which the applications on behalf of KSEBL were made by NVVN Limited and PTC India Limited. KSEBL had prayed for the following:

“(1) The denial of Medium Term Open Access (MTOA) by PGCIL (the CTU), on the application made by the trader, M/s NVVN Limited vide its application dated 27-06-2013 and 27-11-2013 on behalf of KSEBL for 300 MW power tied up through CASE-1 Bid route from M/s CSPDCL in

Chhattisgarh to KSEBL in Southern region for the period from 1st March, 2014 to 28th February, 2017 may be declared as illegal and cancelled.

(2) The denial of Medium Term Open Access (MTOA) by PGCIL (the CTU), on the application made by the trader, M/s PTC India vide its application dated 27-06- 2013, 25-10-2013 and 30-12-2013 on behalf of KSEBL for 100 MW power tied up through CASE-1 Bid route from BALCO in Chhattisgarh to KSEBL in Southern region for the period from 1st March, 2014 to 28th February, 2017 may be declared as illegal and cancelled.

(3) Considering the additional ATC of 208 MW available from 01-06-2014 as stated in the minutes of the Long-term Access Meeting of WR & SR constituents held on 28th March, 2014 for allocation of 150 MW of ATC from 'NEW GRID to SR', 150 MW out of 208 MW ATC may be allocated to M/s Jindal Power Limited considering the MTOA application dated 30-04-2013 on behalf of KSEBL and balance may be allocated to M/s NVVN on behalf of KSEB considering the MTOA application dated 27-06-2013 and 27-11-2013.

(4) Considering the Available Margin of 1250 MW available between 'NEW Grid SR Grid' from August-2014 onwards as declared by PGCIL vide its communication dated 09-12-2013, necessary direction may be given to PGCIL to grant MTOA from 1st August, 2014 onwards based on the following applications made on behalf of KSEBL.

- (i) MTOA applied by M/s NVVN Limited for 300 MW from CSPDCL in Chhattisgarh to KSEBL in Southern region considering the MTOA applications dated 27-06-2013, 27-11-2013 and 28-02-2014.
- (ii) MTOA applied by M/s PTC India for 100 MW from BALCO in Chhattisgarh to KSEBL in Southern region vide the applications dated 27-06-2013, 25-10-2013 and 30-12-2013.

(5) Necessary direction may be issued to the PGCIL as the CTU in the country to strictly follow the regulations and procedures approved by the Commission from time to time for granting MTOA and LTA.”

2. The Commission after detailed examination of the issues in the light of the pleadings and submissions of the concerned parties had declared the allocation of MTOA to DB Power on the basis of the application for the month of May, 2013 as invalid vide para 41 of the order dated 8.8.2014 as under:

"41. In the light of our above discussion, we are of the view that the processing of the application of DB Power for the month of May 2013 without proper documents and grant of MTOA with effect from 1.6.2014 are in violation of the Connectivity Regulations and Detailed Procedure and hence are held to be invalid. Since the corridor was available with effect from 1.6.2014, CTU should consider the applications received for MTOA during June 2013 and decide the allocation of MTOA within a period of one week if the applicants otherwise meet the requirements of the Connectivity Regulations and Detailed Procedure."

3. Further, the Commission in para 56 and 57 of the said order issued the following

directions:

"56. In view of the above discussion, we are of the view that CTU has not acted in accordance with the provisions of Regulations 19 and 20 of Connectivity Regulations and Paras 14, 15 and 16 of the Detailed Procedure for grant of MTOA and LTA. Accordingly, the grant of MTOA to DB Power against its application made in May 2013 is not in accordance with the provisions of CERC Connectivity Regulations read with the Detailed Procedure for grant of MTOA & LTA.

57. We direct that CTU shall process the applications received in June 2013 including the application of the petitioner in accordance with the existing Connectivity Regulations and Detailed Procedure. The applicants for MTOA shall be provided with detailed justification of the decision on their applications alongwith results of system study wherever required. This exercise should be completed within seven days, from the date of this order."

4. Subsequently, CTU in its affidavit dated 22.8.2014 sought certain clarifications with regard to the operationalisation of MTOA and the scope of Sale Purchase Agreement mentioned in the Detailed Procedure. The Commission in the order dated 5.9.2014 issued the following clarification:

"4. In view of the above, the applications for MTOA made during June 2013 are not being considered by CTU in normal course but in compliance with the directions of the Commission in the order dated 8.8.2014. Considering the fact that the period of one year as prescribed in Regulation 19 (2) of Connectivity Regulations for operationalisation of MTOA is over as on the date of consideration of the applications, we direct that as a special case, CTU shall allow a reasonable time of one week to successful applicant(s) after declaration of the result for operationalisation of MTOA. This is an exception in view of the findings and directions in our order dated 8.8.2014 and shall not be cited as precedent.

5. CTU shall also ensure that the Short Term Open Access granted on the corridor prior to 8.8.2014 is honored. The STOA granted after 8.8.2014 shall be curtailed, if required, to give effect to the MTOA.

6. As regards the clarification regarding the documents which shall qualify as the Sale Purchase Agreement, the issue will be dealt with in the final order."

5. CTU processed MTOA applications received during the month of June, 2013 and granted the Medium Term Open Access vide its letter dated 22.9.2014. Out of the ATC of 211 MW available, MTOA was granted to M/s PTC India Limited for 100 MW for transfer of power from the plant of Bharat Aluminum Company Limited (BALCO) in Chhattisgarh to KSEB for the period 1.10.2014 to 28.2.2017 and to Ideal Energy Project Limited (IEPL) for

111 MW for transfer to BESCO, Karnataka for the period 1.10.2014 to 30.6.2015. CTU also considered the applications for Long Term Access (LTA) received during the month of November, 2013 for transfer of power from NEW Grid to SR Grid and granted LTA to M/s. Jindal Power Limited (150 MW), M/s. KSK Mahanadi (179 MW) and to M/s. BALCO (36 MW) out of 365 MW ATC available vide its letter dated 22.9.2014.

6. The decisions of CTU granting MTOA and LTA vide its letters dated 22.9.2014 have been challenged before the Commission by various parties as per the details given below:

(A) Interlocutory Applications (IAs) filed in Petition No. 92/MP/2014:

(a) **IA No. 43/2014** :- This IA has been filed by KSK Mahanadi Power Limited on 8.9.2014 seeking clarifications to the effect that the MTOA allocation for the applications received during the month of June, 2013 being considered by CTU pursuant to the directions of the Commission is not from the new capacity of 423 MW which was available only from 1.8.2014 and seeking a direction to CTU to consider and dispose of the pending LTA Applications in accordance with the Connectivity Regulations for the said capacity of 423 MW made available w.e.f. 1.8.2014 and any new capacity made available thereafter, without being affected by Medium Term Open Access application of KSEBL filed in June, 2013.

(b) **IA No. 51/2014**:- This IA has been filed by KSEBL seeking a declaration that the rejection of the MTOA application of NVVNL made in June, 2013 for transfer of power of 300 MW from CSPDCL for the period 1.3.2014 to 28.2.2017 is in violation of the order dated 5.9.2014 and the provisions of Connectivity Regulations and

further seeking a direction to CTU to process the application of NVVN and not to operationalized the MTOA of Ideal Energy Project Limited (IEPL).

(c) **IA No. 52/2014**:- This IA has been filed by NVVN seeking a direction similar to the direction sought in IA No. 51/2014.

(d) **IA No. 54/2014**:- This IA has been filed by Essar Power MP Limited (EPMPL) seeking impleadment in Petition No. 92/MP/2014 on the ground that on account of failure of IEPL to satisfy the conditions for grant of MTOA, any decision with respect to the availability of corridor would directly affect the right of EPMPL under the Connectivity Regulations and its ability to perform its obligations under the PPA entered into with Power Company of Karnataka Limited.

(e) **IA No. 56/2014** :- This IA has been filed by Essar Power MP Limited (EPMPL) on 10.10.2014 seeking direction to CTU to grant MTOA to EPMPL pending consideration of the MTOA applications by CTU and final adjudication of the issues raised in Petition No. 92/MP/2014.

(f) **IA No. 59/2014**:- This IA has been filed on 28.10.2014 by Indian Energy Exchange Limited seeking intervention in Petition No. 92/MP/2014 to reserve some percentage of available transmission capacity for the short term market.

(B) Petition No. 376/MP/2014: This petition has been filed by DB Power Limited challenging the letter dated 22.9.2014 issued by CTU granting Long Term Access on the ground that its application for the month of November, 2013 was not considered by CTU as an application made in the month of November 2013 on account of return of its cheque by

the bank.

(C) Petition No. 382/MP/2014: This petition has been filed on 26.9.2014 by Emco Energy Limited challenging the long term access granted by CTU vide letter dated 22.9.2014 issued by CTU and seeking a direction to CTU to consider its intimation about PPA made vide letter dated 16.11.2013 as valid and eligible application received in November, 2013.

(D) Petition No. 393/MP/2014: This petition has been filed by DB Power Limited on 1.10.2014 challenging the long term access granted by CTU vide letter dated 22.9.2014 on the ground that allocation of long term access to KSK Mahanadi on LILO on existing line should be held as null and void as CTU had rejected its earlier application on the same ground.

(E) Petition No. 25/RP/2014: This review petition has been filed by Bharat Aluminum Company Limited (BALCO) seeking review of the order dated 8.8.2014 and 5.9.2014 issued by this Commission on the ground that sufficient time was not granted by the Commission for operationalization of the MTOA and further seeking reasonable time extension for start of power flow by the applicant as per the MTOA granted vide CTU's letter dated 22.9.2014 in pursuance to the orders of the Commission.

7. All these IAs and petitions can be grouped into following broad categories based on the issues involved:

(a) Issues relating to MTOA granted by CTU vide its letter dated 22.9.2014 on the basis of applications made for the month of June 2013.

(b) Issues relating to LTA granted by CTU based on the applications made for

November 2013.

(c) Various issues raised by CTU with regard to LTA and MTOA.

(d) Treatment of the applications for MTOA and LTA raised for the subsequent months in Petition No.92/MP/2014.

The IAs and petitions have been considered under these broad categories in this order.

ISSUES RELATING TO GRANT OF MTOA

8. In compliance with the directions of the Commission in its orders dated 8.8.2014 and 5.9.2014, CTU considered the applications for MTOA received during June 2013 and granted MTOA vide its letter dated 22.9.2014. As per the Statement of Reasons enclosed with the letter dated 22.9.2014, ATC of 211 MW was available from 1.6.2014 after MTOA to DB Power based on its application for May 2013 was held invalid. The following 10 applications received in June 2013 were considered:

Sl. No.	Name of MTOA Applicant Injection & Drawl	Quantum (MW)	Application Date	MTOA start Date	MTOA end date
1	Jindal Power Limited (Chhattisgarh-Maharashtra)	2.32	20.06.2013	01.12.2013	31.03.2014
2	Jindal Power Limited (Chhattisgarh-Maharashtra)	6.56	20.06.2013	01.12.2013	31.03.2014
3	PTC India Limited (Delhi-AP)	100	28.06.2013	01.12.2013	29.05.2014
4	Shree Cement Limited (Odisha-AP)	100	28.06.2013	01.12.2013	29.05.2014
5	Jindal Power Limited (Chhattisgarh-AP)	250	28.06.2013	01.12.2013	29.05.2014
6	Mittal Processors Pvt Ltd (Chhattisgarh-AP)	200	28.06.2013	01.12.2013	29.05.2014
7	PTC India Limited (Chhattisgarh-Kerala)	100	28.06.2013	01.03.2014	28.02.2017
8	NVVNL (Chhattisgarh-Kerala)	300	28.06.2013	01.03.2014	28.02.2017
9	Ideal Energy Projects Ltd (Maharashtra-Karnataka)	140	17.06.2013	01.12.2013	30.06.2015
10	Essar Power M.P. Limited (MP-Karnataka)	210	27.06.2013	01.06.2014	30.06.2015
11	Sterlite Energy Limited (Odisha-Kerala)	200	28.06.2013	01.12.2013	31.10.2014
12	PTC India Limited (Chhattisgarh-Kerala)	250	28.06.2013	01.12.2013	31.10.2014

9. As per the Statement of Reasons, the applications mentioned at Sl. Nos. 1 & 2 which were earlier granted MTOA expired on 31.3.2014 and the end date for applications mentioned at Sl. Nos. 3 to 6 also expired on 29.5.2014 before 1.6.2014. Accordingly, CTU found the applications from Sl. Nos. 7 to 12 as eligible for processing and analysed the applications with respect to submission of various documents required with the applications and duration of MTOA as per the table given below:

S. No.	Applicant	MTOA sought for(months)	PPA	MTOA sought (MW)
1.	PTC India Ltd	36	✓	100
2.	NVVNL	36	LOI	300
3.	Ideal Energy Project	19	✓	140
4.	Essar Power M.P. Ltd	13	✓	210
5.	Sterlite Energy Limited	11	✓	200
6.	PTC India Limited	11	✓	250

CTU considered both PTC India Limited and NVVNL at Ser Nos. 1 & 2 with MTOA duration of 36 months as having higher priority as per the provisions of Connectivity Regulations. Since NVVNL had submitted LOI of both seller and purchaser of power in place of PPA, CTU did not consider the application in the light of the observation of the Commission in order dated 8.8.2014. Though NVVNL informed the CTU vide its letter dated 19.8.2014 that it had signed PPA on 18.7.2013, CTU considered NVVNL as ineligible having no PPA at the time of making the application and withdrew MTOA for 3 MW earlier granted with effect from 1.10.2014. Accordingly, CTU granted MTOA for 100 MW to PTC (ser No.1) and 111 MW to M/s Ideal Energy Projects Limited (Ser No.3) as against its requirement of 140 MW. M/s Ideal Energy Project Limited (IEPL) had indicated in its application that its connectivity to the grid would be through STU by LILO of one circuit of Koradi II- Wardha 400 kV D/c line of Maharashtra. Since the Detailed Procedure required that the applicant not already connected to the grid would be required to submit documentary evidence with regard to completion of connectivity before the intended date of start of MTOA, CTU directed IEPL to submit documentary evidence of its connectivity through LILO of one circuit of Koradi II- Wardha 400 kV D/c line before operationalisation of MTOA from 1.10.2014. The grant of MTOA to PTC for 100 MW and to IEPL for 111 MW was subject to their signing requisite MTOA agreements and fulfillment of other conditions by 30.9.2014 for operationalisation from 1.10.2014.

IA No. 51 filed by KSEB Limited and IA No. 52/2014 by NVVN Limited

10. Aggrieved by the decision of the CTU holding NVVNL ineligible for consideration for grant of MTOA in the absence of the PPA as on the date of the application, KSEBL and NVVNL have filed the IAs seeking a declaration that rejection of the application of NVVNL

is in violation of the orders of the Commission dated 5.9.2014 and the provisions of the Connectivity Regulations read with the Detailed Procedure. Both KSEBL and NVVNL have submitted as under:

(a) A Sale Purchase Agreement as stated in the Detailed Procedure connotes a concluded bargain between the parties where there was consideration for acceptance of a proposal. When KSEBL accepted (through the Lol dated 25.4.2013 as modified vide Lol dated 27.5.2014) the financial offer for sale of power made by NVVNL in response to the RFP of KSEBL, and NVVNL conveyed its unconditional acceptance of the Lols to KSEBL, all that remained was signing of a formal PPA and there came into existence a concluded bargain between KSEBL and NVVNL, making NVVNL eligible to apply for grant of MTOA for supply of power to KSEBL.

(b) Kerala State Electricity Regulatory Commission had also adopted the tariff for procurement of 300 MW power from NVVNL vide order dated 24.5.2013, much before the application for MTOA was made in June, 2013. Further a concluded contract as per Lol has been executed as a PPA in July, 2013 itself during the processing time allowed for MTOA application which culminated only on 10.8.2013

(c) There was no requirement to be fulfilled or condition to be complied with by any of the parties before signing of necessary PPA after issuance of the Lol and its unconditional acceptance by NVVNL. Further as per the RFP issued, the corporate bank guarantee could be furnished within 30 days of the issuance of Lol whereas the PPA was to be signed within 20 days, meaning thereby that furnishing of a corporate bank guarantee was also not a pre-condition for signing of the PPA.

(d) The above concluded bargain between KSEBL and NVVNL was duly accepted by the CTU who proceeded to process its application and granted MTOA vide its letter dated 8.8.2013, though for 3 MW only from 1.6.2014 instead of 300 MW applied for.

(e) When CTU sought a clarification from the Commission as to what constitutes the sale purchase agreement, the Commission very clearly stated that this issue was to be dealt with in the final order. Once, the Commission clarified in unequivocal terms that it would adjudicate on the issue in due course, it followed that CTU could most certainly on its own not take a decision on the nature of document as being a sale purchase agreement or not and the course open to CTU was to process the application of NVVNL for 300 MW along with the application of PTC for 100 MW subject to the final order of the Commission and once again to approach the Commission seeking clarification in a way where the affected/inter-State parties could also participate.

(f) Another application was made in June 2013 by PTC for grant of MTOA of 100 MW for transmitting power from the power plant of BALCO in Chhatisgarh to KSEBL. The response received from CTU on the said application was that the entire 1261 MW ATC for import of power to SR under MTOA had been allocated till November, 2015. At that time, the enhancement in ATC between NEW Grid and SR Grid was taking place with the commissioning of Raichur-Sholapur line which was originally scheduled to be commissioned in January 2014. Had the necessary system studies been conducted and notified by CTU as per the Connectivity Regulations and had

the capacity enhancement under Raichur-Sholapur 765 kV S/c lines been taken into account by virtue of it being a transmission system under execution, KSEBL would have been eligible for grant of entire 400 MW capacity for which MTOA applications had been made except that MTOA for 211 MW would have been granted against the applications made in June 2013.

(g) In the matter of availability of corridor as on 1.6.2014, it is empirically proved that at least 376.83 MW capacity was available between NEW Grid and SR Grid for allocation under MTOA even prior to declaration of additional corridor based on commissioning of Raichur-Sholapur lines. Government of India, Ministry of Power (MoP) vide letter dated 30.6.2014 had allocated additional quantum of 376.83 MW from Jhajjar generating station in NEW grid to SR constituents for a period from 1.7.2014 to 31.7.2014 and CTU had allowed full transfer of power without any restriction. Thereafter, MoP through CEA letter dated 30.7.2014 allocated the said quantum of 376.83 MW for the period from 1.8.2014 to 31.3.2015. The allocation of 376.83 MW from 1.8.2014 was after establishment of additional ATC between NEW grid and SR grid based on the commissioning of Raichur-Sholapur lines. However, since the flow of additional 376.83 MW before 1.8.2014 had not created any congestion in NEW-SR grid, this capacity was available and MTOA applicants were eligible for allocation for 376.83 MW or more quantum from June, 2014.

11. KSEBL and NVVNL have prayed for a declaration that rejection of the MTOA application of NVVNL made in June, 2013 is in violation of the order of the Commission dated 5.9.2014 and the Connectivity Regulations read with the Detailed Procedure. They

have further sought a direction to process the application of NVVNL to grant MTOA for 300 MW. They have also sought an ex-parte interim direction pending adjudication of the application for restraining CTU from operationalizing MTOA of 111 MW granted to IEPL. Both have sought initiation of penal proceedings against CTU under Section 142 of the Electricity Act, 2003 for wilfully and deliberately violating the order dated 5.9.2014 passed by this Commission.

12. CTU in its reply vide affidavit dated 10.10.2014 in IA No. 51/2014 and reply vide affidavit dated 13.10.2014 in IA No.52/2014 has submitted as under:-

(a) KSEBL has admitted that signing of formal PPA was pending at the time of submission of the MTOA application in the month of June, 2013. As regards the contention of KSEBL regarding existence of concluded contract on unconditional acceptance of Lol by NVVNL, CTU has submitted that in this respect, CTU has been guided by observations of the Commission in Para 39 of the order dated 8.8.2014 wherein it has been stated that a contractual relationship between a seller and procurer in case of Case-I bidding can only come into existence after the signing of the PPA and therefore, the application of NVVNL was considered as incomplete in the absence of signed PPA between the parties.

(b) As regards the transfer of 376.83 MW power from Jhajjar Power Station to the State of Andhra Pradesh, Telangana and Kerala, CTU has stated that the said allocation was made by MoP for which CTU neither granted LTA against any formal application nor the allocation letter had any reference to CTU. It has been further submitted that the first circuit of Raichur-Sholapur transmission line was

commissioned on 31.12.2013 and the second circuit could be commissioned on 30.6.2014. Therefore, in the intervening period from 1.1.2014 to 30.6.2014, two large grids such as NEW Grid and SR Grid were connected by only one circuit leading to a very insecure inter-connection. Therefore, it was not prudent to schedule any commercial transaction on such an insecure inter-connection. Further, it was decided in the beginning that keeping in view the stabilization period required for two large synchronized grids, the commercial transaction would be undertaken from 1.8.2014 onwards. Prior to the synchronization of both circuits on 30.6.2014, the ATC between SR Grid and NEW Grid was 3450 MW. After commissioning of the second circuit on 30.6.2014, POSOCO permitted 200 MW on the inter-connected system, thus making the net ATC of 3650 MW available w.e.f. 1.7.2014. Against the ATC of 3650 MW, LTA and MTOA allocations were already made upto 3223 MW (LTA 2170 MW + MTOA 903 MW). Therefore, for the month of July, 2014, a margin of 427 MW was available which comprised of 200 MW additional ATC permitted by POSOCO and 208 MW MTOA which could not be operationalized. CTU has submitted that such capacity could not be visualized in June, 2013 or the period thereafter. For the period beyond 31.7.2014, 200 MW additional ATC declared by POSOCO for STOA got converted into 350 MW additional Long-term ATC. Further with synchronization of NEW Grid and SR Grid, some additional capacity was also released on HVDC back to back link at Chandrapur and Gazuwaka. CTU has submitted that the present TTC between NEW Grid and SR Grid has been assessed as 4750 MW which amounts to ATC of 4000 MW considering TRM of 750 MW.

(c) As regards the contention of KSEBL regarding the system studies in anticipation of enhancement in ATC with the commissioning of 765 MW Raichur-Sholapur line, CTU has submitted that Raichur-Sholapur line has been planned for export of power from Southern Region to NEW grid. However due to changed scenario on account of large scale delay of generation projects within SR, the same is now being used for import of power. This change required availability of some identified transmission system strengthening in SR & WR regions to be in place before August, 2014 for its effective utilisation upto target ATC. Moreover, the scheduled commissioning of PGCIL line was in the month of September, 2014 which was advanced to month of December, 2013 to meet the grid requirement. The 2nd circuit of Raichur-Sholapur line which was being developed by Private Sector was commissioned on 30.6.2014 with a delay of six months. Nevertheless, the exercise for determination of ATC was initiated in August 2013 and could be finished by December 2013 with the declaration of additional 1250 MW ATC w.e.f. August, 2014 between NEW grid and SR grid on account of Raichur-Sholapur transmission line. However, the additional ATC was contingent upon commissioning of the additional identified transmission lines in WR and SR regions by August 2014. As per the latest assessment, the ATC of 1250 MW is likely to be available only from March 2015 onwards on account of the delay in completion of identified transmission system strengthening in WR and SR due to severe Right of Way issues. CTU has suggested that MTOA should be granted only on the commissioned transmission systems and not on the basis of system under execution.

(d) As regards the submission that CTU should have waited for the clarification regarding Sale Purchase Agreement, CTU has submitted that if the said contention is accepted, then CTU would have committed clear cut violation of Commission's order exposing it to penal action. It is unfair and unreasonable on the part of KSEBL and NVVNL to seek penal action against the CTU for following the Commission's order with good intention.

13. Tamil Nadu Generation and Distribution Company Limited (TANGEDCO) vide affidavit dated 9.10.2014 has submitted that the correct interpretation of the expression "transmission system under execution" under Regulation 9 (2) read in conjunction with Regulation 19 (2) of the Connectivity Regulations would reveal that the said expression refers to the transmission system which is under execution and to be available certainly before the start of the MTOA. TANGEDCO has further submitted that for the MTOA applications made in June 2013, the Raichur-Sholapur transmission system cannot be considered, as both the circuits have to be commissioned and with only one circuit, the ATC of the transmission system will not get operationalized. Even if any system study had been conducted for MTOA applications made in month of June, 2013, the 765 kV Sholapur-Raichur transmission line could not have been taken into the system study and therefore, the MTOA applicants of June, 2013 claiming Open Access in the 765 kV Sholapur-Raichur transmission system is untenable. As regards the contention that Lol should be taken as a Sale Purchase Agreement, TANGEDCO has submitted that Lol cannot be a substitute to PPA which is prescribed in the standard bid document to establish a contract. Moreover, in the PPA, the date of signing of the PPA is notified as the effective date and therefore, no dilution can be considered for treating Lol as a document in place of PPA.

IA No. 43/2014

14. KSK Mahanadi Power Limited (KMPCL) has filed IA No. 43/2014 in Petition No. 92/MP/2014 seeking a clarification that the MTOA allocations on the basis of the applications made in the month of June, 2013 being considered by CTU pursuant to the directions of the Commission was not from the new transmission capacity of 423 MW which was available from 1.8.2014. KMPCL has submitted that after the MTOA allotment to DB Power was found to be incorrect by the Commission, only 211 MW is available effective from 1.6.2014 for allotment to MTOA applicants for the month of June, 2013. KMPCL has submitted that the transmission capacity of 423 MW to be available from 1.8.2014 was only made known in December, 2013 and under no circumstances this capacity could have been considered in June, 2013 while processing the applications made during June 2013 for MTOA. KMPCL has further submitted that pending disposal of the petition of KSEBL for Medium-Term Open Access, Long-term Access to the extent of 376 MW has been granted by PGCIL to constituents of Southern Region pursuant to the allocation made by the Government of India. This allocation was initially for the period upto 31.7.2014 which has been extended upto 31.3.2015 for a capacity of 376 MW. KMPCL has submitted that the capacity of 423 MW which was made available from 1.8.2014 was in addition to the capacity available in June 2014 and therefore, KSEBL did not have any right over such capacity. MTOA for 208 MW sought by KSEBL was part of 376 MW already allocated by CTU from June, 2014 and did not affect the allocation of 423 MW available from 1.8.2014. KMPCL has submitted that it was incumbent on CTU to consider and dispose of the pending long term open access applications including the application of KMPCL which was pending since November 2013 with regard to the capacity created with effect from 1.8.2014

and new capacities to be made available thereafter. However, in the meeting convened by CTU on 1.9.2014 for consideration of the allocation of the transmission capacity including the new capacity available from 1.8.2014, CTU did not take any decision in view of the pendency of the proceedings before the Commission. KMPCL has submitted that the issue in the Petition No.92/MP/2014 does not extend to any capacity that is available from 1.8.2014 and accordingly, KMPCL has sought a direction to CTU to consider and dispose of the long term open access applications pending in accordance with the Connectivity Regulations for the capacity of 423 MW made available with effect from 1.8.2014 and any new capacity made thereafter without being affected by the medium term open access applications of KSEBL submitted in June, 2013.

15. KSEBL in its reply dated 29.9.2014 has submitted that the application of the KMPCL has become infructuous as CTU pursuant to the order dated 8.8.2014 has considered the applications for MTOA made in June, 2013 including the application made by KSEBL and allocated the MTOA vide its letter dated 22.9.2014. KSEBL has further submitted that the CTU's letter dated 22.9.2014 shows that the capacity of 211 MW alone was considered for grant of MTOA for applications made in June, 2013. KSEBL has further submitted that the Commission in its order dated 8.8.2014 had segregated the matters involved in the Petition No. 92/MP/2014 into two periods i.e. issues related to process of MTOA applications made during April, May and June, 2013; and issues related to MTOA and LTA applications made during October, November and December, 2013. On the first issue, the Commission has issued an order on 8.8.2014 and a clarification on 5.9.2014. On the second issue, the Commission has reserved its order for being passed in due course. Therefore, the application of KMPCL in so far as it relates to the first issue has become infructuous after

the final orders were passed and with regard to the second issue, it is premature pending orders from the Commission. As regards the allocation of corridor for 376 MW power from Jhajjar station to the SR constituents in accordance with the order of the Ministry of Power, Government of India, it has been stated that initially the power was allocated for a limited period upto 31.7.2014 and by a subsequent letter dated 30.7.2014, Ministry of Power allocated 376 MW for a firm period from 1.8.2014 to 31.3.2015. Therefore, the allocation of power by Ministry of Power and consequent allocation of corridor by CTU is for the period from 1.8.2014 to 31.3.2015 and not from 1.6.2014 as contended by KMPCL. KSEBL has further submitted that since the ATC between NEW grid and SR grid was augmented partly from 1.8.2014 and was likely to be further augmented in near future, the LTA transaction allowed on the basis of allocation by Ministry of Power would get fully accommodated in such augmented capacity.

16. CTU in its affidavit dated 13.10.2014 has submitted that the allocation of transmission capacity for MTOA application received in the month of June, 2013 has been made against 211 MW (208 MW+3 MW) only. CTU has clarified that 208 MW considered for MTOA is part and parcel of 423 MW that got available after considering enhancement of transmission capacity between NEW grid and SR grid.

17. KMPCL in its submissions dated 15.10.2014 filed during the course of the hearing, submitted that the capacity of 408 MW (208 MW available from 1.6.2014 on cancellation of DB Power MTOA plus 200 MW additional capacity made available on 15.5.2014) was available for allotment in June, 2014 out of which 376 MW was allotted to supply power from Jhajjar Power Station pursuant to the allocation made by Ministry of Power.

Therefore, the allotment of 211 MW of MTOA vide CTU letter dated 22.9.2014 was not evidently out of the capacity that was available in June 2014, but was actually out of the capacity made available with effect from 1.8.2014 which is incorrect and contrary to the regulations of the Commission.

IA Nos. 54/2014 and 56/2014 filed by Essar Power MP Limited

18. These two IAs have been filed by Essar Power MP Limited (EPMPL). In IA No. 54/2014 filed on 9.10.2014, EPMPL has sought impleadment as a party in Petition No. 92/MP/2014. It has been submitted that EPMPL has entered into a PPA with Power Company of Karnataka Ltd. (PCKL) on 21.3.2013 for sale of 210 MW power from 1.8.2013 to 30.6.2015. It has been further submitted that PTC India and Ideal Energy Projects Ltd. (IEPL) were granted MTOA by CTU vide letter dated 22.9.2014 for 100 MW and 111 MW respectively on the basis of the MTOA applications made in June, 2013. As per the said letter, MTOA was granted to IEPL subject to the condition of furnishing documentary evidence of operationalization of connectivity line i.e. LILO of Koradi II-Wardha 400 kV DC line. Since the conditions specified for grant of MTOA to IEPL has not been fulfilled and IEPL is not entitled for grant of MTOA, EPMPL which is the next on the priority list having fulfilled all the conditions for grant of MTOA is an affected party and any decision which is now taken with respect to the available corridor would directly affect the right of EPMPL under the Connectivity Regulations and also its liability to perform its obligations under the PPA entered into with PCKL. Accordingly, EPMPL has sought impleadment in the Petition No. 92/MP/2014 as a necessary party. EPMPL has filed IA No. 56/2014 seeking directions to the CTU to grant open access to EPMPL for the corridor which is unutilized as the

applicants who have been granted MTOA have failed to meet the conditions for operationalization of MTOA.

IA Nos. 59/2014 filed by Indian Energy Exchange Limited

19. IEX has filed this IA on 28.10.2014 seeking intervention in the Petition No. 92/MP/2014. IEX has submitted that the Commission is enjoined to promote development of market including trading in power. Non discriminatory access over transmission system is a pre-requisite for development of power market including power trading which enables better utilization of available resources and facilitates optimum harnessing of various power sources including merchant generation capacity. Therefore, availability of adequate transmission margins is fundamental for the exercise of the statutory right to open access as well as for development of power market as envisaged under Section 66 of the Electricity Act, 2003. IEX has further submitted that the Connectivity Regulations have envisaged LTA as different from open access as it requires creation of new transmission system for accommodation of power flow for LTA applicants and, therefore, grant of LTA cannot be limited to what is available at each point of time without taking the statutorily mandated recourse to augmenting the transmission system for accommodating the resulting power flows. IEX has also submitted that Raichur-Sholapur transmission lines were planned and executed as a Southern Region strengthening scheme intended to improve the reliability of the system and for creating necessary margins for catering to the open access regime. The entire capacity thus built cannot be apportioned among certain generators for LTA who need to be accommodated by planning and executing adequate transmission system in accordance with the Act and Regulations. IEX has submitted that until such capacities are created, all the generators ought to utilize the existing margins

under the open access regime preferably through power exchanges which provides the most transparent and competitive price for both the energy as well as transmission capacity. IEX has requested that some percentage of available transmission capacity be reserved for short term market.

Analysis and Decision

20. We have heard the learned counsel for the parties and examined the material on record. Based on the submissions, the following issues arise for our consideration:-

(a) Issue No.1: Whether CTU has erred in calculation of the transmission margin available in the month of June 2014 while considering the applications made in June 2013 for grant of MTOA?

(b) Issue No.2: Whether the system under execution can be considered for calculating the Available Transfer Capability (ATC) for grant of MTOA in accordance with the provisions of the Connectivity Regulations?

(c) Issue No.3: Whether CTU could have considered the LOI granted to NVVNL as a Sale Purchase Agreement while considering the application of NVVNL for MTOA made during June, 2013?

(d) Issue No. 4: What will constitute a Sale Purchase Agreement?

(e) Issue No.5: Whether unutilized MTOA capacity can be granted to next eligible applicants considered in a month in order of priority due to cancellation of MTOA?

(f) Issue No.6: Whether the unutilized capacity during a month can be granted to the

applicants who have applied in the succeeding month?

(g) Issue No.7: Whether any capacity can be reserved for MTOA and STOA for development of power market as suggested by IEX?

ISSUE No.1: Whether CTU has erred in calculation of the transmission margin available in the month of June 2014 while considering the applications made in June 2013 for grant of MTOA?

21. In compliance with the directions of the Commission in the orders dated 8.8.2014 and 5.9.2014, CTU considered the applications for MTOA made during June 2013. According to CTU, 211 MW capacity was available with effect from 1.6.2014 against which CTU considered 12 applications made during June 2013. The said capacity comprised of 208 MW of capacity allocated to DB Power and 3 MW capacity allocated to NVVNL which was subsequently cancelled. CTU considered the applications for MTOA made in June 2013 and granted MTOA to PTC for 100 MW and IEPL for 111 MW.

22. KSEBL has submitted that capacity of 376.83 MW allocated by Ministry of Power to the Southern Region constituents could be evacuated between 1.7.2014 and 31.7.2014 even before the additional ATC based on the commissioning of 765 kV S/c Raichur-Sholapur line was made available. This means that capacity of 376.83 MW was available for consideration for MTOA during June 2014. On the other hand, KMPCL has submitted that while only 211 MW capacity was available effective from 1.6.2014 for MTOA, long term access for scheduling of 376 MW power allocated by Ministry of Power has been granted by PGCIL. Therefore, capacity was not available for grant of MTOA as per the directions of the Commission dated 8.8.2014 and 208 MW allocated to KSEBL by CTU vide its letter dated 22.9.2014 would be from 423 MW available with effect from 1.8.2014 after

commissioning of both circuits of Raichur-Sholapur transmission line. KMPCL has sought direction to CTU to consider the pending LTA applications for the capacity of 423 MW available from 1.8.2014 and thereafter. However, in its written submission dated 15.10.2014, KMPCL has taken somewhat different stand and has submitted that 408 MW capacity was available for allotment in June 2014 out of which 376 MW has been allotted for supply of power from Jhajjar power station to SR constituents by Ministry of Power vide its letters dated 30.6.2014 and 28.7.2014 when new capacity with effect from 1.8.2014 was not even declared by CTU. Therefore, allotment of 211 MW of MTOA vide CTU letter dated 22.9.2014 was out of the capacity that was not available from June 2014 but from the new capacity available from 1.8.2014. KMPCL has submitted that MTOA allotment of 211 MW made by CTU vide letter dated 22.9.2014 is incorrect as this capacity could not be considered for MTOA applications made during June 2013.

23. CTU in its affidavit dated 10.10.2014 has submitted that the first circuit of Raichur-Sholapur 765 kV Transmission Line was commissioned on 31.12.2013 and the second circuit was commissioned on 30.6.2014. In the intervening period between 31.12.2013 and 30.6.2014, on account of two large grids being connected through one circuit leading to very insecure inter-connection, it was not considered prudent to schedule the commercial transactions on insecure interconnection and it was decided from the beginning that commercial transactions would be undertaken from 1.8.2014 onwards. CTU has further submitted that exercise for determination of ATC was initiated in August 2013 and was finished in December 2013 with the declaration of additional ATC of 1250 MW ATC with effect from 1.8.2014 between NEW Grid and SR Grid on account of the Raichur-Sholapur transmission line. The additional ATC was contingent upon commissioning of additional

identified transmission lines in WR and SR by August 2014. After synchronization of second circuit on 30.6.2014, POSOCO released 200 MW with effect from 1.7.2014. In the review meeting carried out in July 2014, the projected ATC of 1250 MW was reduced to 350 MW on account of the delay in completion of the identified transmission system strengthening in WR and SR due to severe ROW problems. CTU expects the 1250 MW ATC to be available only in March 2015.

24. As regards the calculation of ATC for June 2014, CTU has submitted that the ATC between SR Grid and NEW Grid was 3450 MW in June 2014 and on 1.7.2014, with the addition of 200 MW, it became 3650 MW, out of which LTOA and MTOA granted was 3223 MW, thus leaving a margin of 427 MW with effect from 1.7.2014. CTU has clarified that this 427 MW margin included 200 MW additional ATC declared by POSOCO post commissioning of the 2nd circuit with effect from 1.7.2014 and 208 MW of MTOA which could not be operationalized. From the submissions of CTU, it emerges that CTU has considered only 211 MW (208 MW MTOA not operationalized due to cancellation of MTOA to DB Power + 3 MW withdrawn from 1.10.2014 from NVVNL) for grant of MTOA against the capacity available in June 2014 and capacity available with effect from 1.7.2014 has not been taken into consideration while granting MTOA based on the applications made in June 2013.

25. As regards the scheduling of power allocated by MoP, it is noticed from the submission of CTU that MoP allocated 376.83 MW from Jhajjar for the period 1.7.2014 to 31.7.2014 to SR constituents without ascertaining the availability of capacity from CTU. Beneficiaries allocated power by MOP are considered as long term customer in terms of

Regulation 2(m) of Connectivity Regulations. POSOCO could schedule 376.83 MW power as per MoP allocation as margins were available in the short term and also due to the fact that 2nd S/C of Raichur-Sholapur transmission line was synchronized on 30.6.2014. POSOCO vide its TTC Revision No.13 dated 4.7.2014 allowed additional ATC of 200 MW and indicated booking of this capacity under LTA/MTOA. Subsequently, MOP in its letter dated 28.7.2014 allocated the same 376.83 MW power for the period from 1.8.2014 till 31.3.2015. According to CTU, 200 MW granted by POSOCO got converted to 350 MW ATC with effect from 1.8.2014 on account of commissioning of Raichur-Sholapur transmission line and additional capacity was available from HVDC back to back links at Chandrapur and Gazuwaka. CTU has submitted that the capacity available with effect from 1.8.2014 has been utilized for scheduling power from Jhajjar TPS based on the allocation of MoP.

26. It is pertinent to mention that allocation by MoP from the Central Generating Stations is in terms of gross capacity. Scheduling the power is done ex-bus i.e. by deducting auxiliary power consumption. Therefore, while calculating the margins, the auxiliary power in respect of the allocations by MoP should be deducted. It is noticed that CTU in its ATC Declaration dated 8.9.2014 has adopted this philosophy while calculating the margin of 423 MW. However, in its letter dated 22.9.2014 for allocation of MTOA, CTU has not adopted the same approach of deducting the auxiliary power consumption from the gross capacity allocated by MoP while deciding the margin for considering applications for MTOA made in June 2013. CTU is directed to adopt uniform approach while arriving at the margin for the month of June 2014. We are of the view that CTU should deduct the auxiliary power consumption from the allocation by MoP as it will realistically represent the margin

available.

27. In the light of the discussion hereinabove, we are of the view that in its letter dated 22.9.2014, CTU has not taken into account any capacity that was available with effect from 1.7.2014 or thereafter for considering the MTOA applications made during June 2013. Accordingly, we do not find any merit in the contention of KSEBL, NVVNL and KMPCL that CTU has utilized the capacity available with effect from 1.7.2014 for calculating the ATC for June 2014 while considering the applications for MTOA made during June 2013. However, margin for June 2014 shall be revised in the light of our observation in para 26 above.

Issue No. 2: Whether the system under execution can be considered for calculating the available transfer capability (ATC) for grant of MTOA in accordance with the provisions of the Connectivity Regulations?

28. KSEBL has submitted that at the time of making the application in June 2013, the enhancement of ATC between NEW Grid and SR Grid was taking place with the commissioning of Raichur-Sholapur transmission line which was scheduled to be commissioned in January 2014. KSEBL has submitted that had CTU considered the capacity enhancement under Raichur-Sholapur 765 kV S/c line by virtue of its being a transmission system under execution, KSEBL would have been eligible for grant of entire 400 MW capacity for which MTOA applications were made by PTC and NVVNL on behalf of KSEBL in June 2013. CTU has submitted that Raichur-Sholapur link was planned for export of power from Southern Region to NEW grid. However due to changed scenario on account large scale delay of generation projects within SR, the same is now being used for import of power. This change required availability of some identified transmission systems strengthening in SR and WR regions to be in place before August, 2014 for its effective

utilization upto target ATC. CTU has further submitted that since some of the identified transmission systems strengthening in WR and SR have not been completed due to ROW problems, CTU after review in July 2014 has drastically reduced the target ATC of 1250 MW to 350 MW. According to CTU, MTOA should be granted on the commissioned transmission systems which do not give any scope for error. TANGEDCO has submitted that the expression “transmission system under execution” in the context of Regulation 9(2) read in conjunction with Regulation 19(2) of the Connectivity Regulations would mean the transmission system which is under execution and will be certainly available before the start of MTOA. TANGEDCO has submitted that for the MTOA applications made in June 2013, Raichur-Sholapur Transmission line could not have been considered as both circuits of the said transmission line were not commissioned.

29. The question therefore arises whether the system under execution can be considered for grant of MTOA. Regulation 9 of Connectivity Regulation provides as under:

“9. Criteria for granting long-term access or medium-term open Access

(1) Before awarding long-term access, the Central Transmission Utility shall have due regard to the augmentation of inter-State transmission system proposed under the plans made by the Central Electricity Authority.

(2) Medium-term open access shall be granted if the resultant power flow can be accommodated in the existing transmission system or the transmission system under execution:

Provided that no augmentation shall be carried out to the transmission system for the sole purpose of granting medium-term open access:

Provided further that construction of a dedicated transmission line shall not be construed as augmentation of the transmission system for the purpose of this regulation.”

30. According to Regulation 9(2), MTOA can be granted if the resultant power flow can be accommodated in the existing transmission system or the transmission system under execution. Further, Regulation 19(2) provides that the start date of the medium open

access shall not be earlier than 5 months and not later than 1 year from the last day of the month in which application has been made. A combined reading of both provisions makes it clear that the transmission systems in execution which are being considered in connection with grant of MTOA must have the certainty of being commissioned prior to the commencement date of MTOA indicated in the application. In the Statement of Reasons for the Connectivity Regulations, it has been explained that the reason for granting one year as the upper limit for operationalization of MTOA is to avoid uncertainty regarding the estimated flows and projected commissioning of new transmission elements. Relevant para of the SOR is extracted as under:

“101. Further, the regulation 19 (2) has been modified specifying that the start date of the medium-term open access shall not be earlier than 5 months and not later than 1 year from the last day of the month in which application has been made.

This is with a view to giving priority for booking of transmission corridor to the medium term open access customers as compared to the short term open access customer. It may be recalled that application for short-term open access can be submitted a maximum of 3 months in advance of the month in which STOA is being sought. Processing time for the application of medium term open access is 40 days. With a view to avoid uncertainty regarding estimated flows and projection of commissioning of new transmission elements, it is desirable that start of open access should not be more than a year from the date of application.”

31. Further, Para 9.4 of the Detailed Procedure under the Connectivity Regulations provides as under:

“9.4. MTOA is the right to use the ISTS for any period exceeding three months but not exceeding three years and shall be provided on the basis of availability of transmission capacity in the existing transmission system or transmission system under execution and likely to be available from the intended date of MTOA. In case of delay in commissioning of transmission system under execution considered for such grant, which was beyond the control of the CTU, then date of commencement of MTOA shall be extended upto the date of commercial operation of the above system.”

From the above provisions, it is established that MTOA is to be granted on the margins available on the existing network or on the transmission system under execution which are likely to be available from the intended date of MTOA. Only in exceptional cases

where the transmission system under execution considered for grant of MTOA gets delayed due to the reasons beyond the control of CTU, the date of commencement of MTOA shall be extended upto the date of commercial operation of the above system. In other words, in all normal circumstances, CTU is required to conduct the system studies of the existing transmission systems and transmission systems under execution to determine whether margins are available for granting MTOA, and while doing so, CTU has to take into account those transmission systems under execution which have the certainty of being commissioned prior to the start date of MTOA. Therefore, it is the responsibility of CTU to ensure that while granting MTOA in consultation with stakeholders, CEA and applicants, there is high degree of certainty about the commissioning of the transmission system under execution before the start date of MTOA and margins are available after meeting the allocations for LTA.

32. In the present case, CTU after considering the progress of second circuit of the 765 kV S/c Raichur-Sholapur Transmission line, is stated to have decided in December 2013 that the ATC of 1250 MW would be available from 1.8.2014, subject to the implementation of the transmission system strengthening in WR and SR Grids. Therefore, considering the uncertainty surrounding the commissioning of both circuits of Raichur-Sholapur transmission line and the transmission system strengthening in WR and SR, the ATC between NEW Grid and SR Grid on account of the Raichur-Sholapur line could not have been taken into consideration while calculating the margins for considering the MTOA applications made in June 2013. First circuit was commissioned on 31.12.2013 and the second circuit of Raichur-Sholapur transmission line was commissioned on 30.6.2014. After commissioning of both circuits, POSOCO allowed additional ATC of 200 MW in July 2014.

Therefore, CTU could not have considered the ATC of the Raichur-Sholapur transmission line for calculation of ATC earlier than 1.7.2014.

33. CTU has submitted that on account of the uncertainties surrounding the execution of the transmission lines on account of various problems such as Right of Ways and environmental clearance issues, it is difficult to take into account the 'transmission system under execution' while calculating the margin for the purpose of deciding the ATC for grant of MTOA. CTU has pleaded that MTOA should be granted on the transmission systems which have been commissioned as this will reduce the scope for error in calculation of ATC. We find strength in the submission of CTU. In our view, CTU's suggestion for granting MTOA on the existing margin needs deliberation. We direct the staff to examine the issue and submit the same for consideration of the Commission.

Issue No.3 : Whether CTU could have considered the LOI granted to NVVNL as a Sale Purchase Agreement while considering the application of NVVNL for MTOA made during June, 2013 ?

34. While considering the MTOA applications for the month of June 2013, CTU rejected the application of KSEBL as it did not have a PPA on the date of application. Relevant paras of CTU's letter dated 22.9.2014 are extracted as under:

"The applications of PTC India Limited and NVVNL indicated at Ser No. 1 & 2 in the above table are seeking MTOA for the same duration of 36 months and accordingly, as per the regulations shall have higher priority among the above other applications. Further as per the CERC Regulations, 2009, the MTOA applicants are required to submit copy of the PPA/Sale Purchase Agreement of power. M/s NVVNL had enclosed LOI of both seller and purchaser of power in place of the PPA. Towards this, Hon'ble Commission vide its order dated 08.08.2014 has made it clear that a Letter of Intent (LOI) is not a concluded contract. Hence PPA must be submitted at the time of application as specified in the detailed procedure.

NVVNL vide their letter dated 19.08.2014 further informed the date on which they have signed the PPA is 18.7.2013. Accordingly, it is considered that at the time of the application, NVVNL did not have PPA as required by the regulation and the application of NVVNL may be closed and the intimation already issued for 3 MW which is under operation shall continue to remain under operation till 30.9.2014 and shall be withdrawn with effect from 01.10.2014. With this

full quantum of 211 MW (208 MW + 3 MW) ATC is available for allocation to MTOA applications received in June 2013.”

35. KSEBL and NVVNL have argued that LOI is a concluded contract and should have been considered as Sale Purchase Agreement for the purpose of considering the application of NVVNL. Both KSEBL and NVVNL have submitted that KSEBL initiated a bidding process for procurement of 300 MW of power from March 2014 to February 2017. NVVNL was declared as the successful bidder and its offer of 300 MW of power from Chhattisgarh State Power Distribution Company Limited was accepted to the extent of 260 MW at the revised rates. Accordingly, LOI dated 25.4.2013 was issued to NVVNL. As per the LOI, NVVNL was required to submit a Contract Performance Guarantee within 30 days of the receipt of LOI and convey a suitable reply for signing the PPA in accordance with clause 2.2.9 and 2.13 of the PPA. As a token of acceptance of the LOI, NVVNL was required to record on one copy of the LOI “Accepted Unconditionally” under the signature of the authorized signatory of NVVNL and return such copy to KSEBL within 7 days of the issue of LOI. NVVNL conveyed its unconditional acceptance to KSEBL on 1.5.2013. Subsequently, KSEBL decided to enhance the quantum of power to be procured from NVVNL from 260 MW to 300 MW and accordingly issued a modified LOI on 27.5.2013 and NVVNL accepted the modified LOI, though no date of the acceptance has been indicated in the said letter (Page 26 of IA No.52/2014). NVVNL filed the application for MTOA on 27.6.2013 on the basis of the LOI. The RFP/PPA documents were signed by KSEBL and NVVNL on 18.7.2013. Against the above background, KSEBL and NVVNL have submitted the following:

(a) The PPA to be signed by the parties was as per the model PPA issued by

Ministry of Power and any modification to the PPA requires approval of the Appropriate Commission. When the bidders submit their bids, the PPA duly initialed is also required to be submitted. In this scenario, when the LOI was unconditionally accepted, a concluded contractual bargain between KSEBL and NRVNL came into existence and the signing of the PPA became a mere formality. When an unconditionally accepted LOI with only a formal execution of the PPA pending was submitted alongwith the MTOA application, the same qualified under the prescribed requirement of Power Purchase Agreement/Sale Purchase Agreement.

(b) As per para 4.2.1(c) of the Model PPA, as soon as the LOI is granted, the seller is required to apply for MTOA without waiting for completion of the formality for PPA execution. Therefore, making of the MTOA application supported by an unconditionally accepted LOI could not non-suit NRVNL for receiving the grant of MTOA.

(c) The binding contractual commitment under the LOI was upheld by the Hon'ble Appellate Tribunal for Electricity in its judgment dated 11.12.2012 in Appeal No. 46/2012 in the matter of M/s Karamchand Thapar & Bros Vs. MP Power Trading Company Limited and in judgment dated 30.6.2014 in Appeal No. 62/2013 in the matter of PTC Indial Limited Vs.Gujarat Electricity Regulatory Commission. The Hon'ble Supreme Court in the matter of Trimex International FZE Ltd. Vs. Vedanta Aluminum Limited {(2010) 3 SCC 1} has held that once a contract was concluded orally or in writing, the mere fact that a formal contract had to be prepared and initialed by the parties was not to affect the acceptance of the contract so entered

into or implementation thereof. Based on the above judgements, it has been argued that once an LOI was issued by the KSEBL and unconditionally accepted by NVVNL, a valid and enforceable for power supply came to exist between KSEBL and NVVNL which fulfilled the requirement of Power Purchase Agreement/Sale Purchase Agreement as stipulated in the Detailed Procedure.

(d) Since the matter regarding the nature and scope of Sale Purchase Agreement was pending adjudication before the Commission as indicated in the order dated 5.9.2014, it was imperative that CTU ought to have granted the MTOA on the application of NVVNL subject to the outcome of the pending proceedings before the Commission.

36. CTU has submitted that it has been strictly guided by the observation of the Commission in para 39 of the order dated 8.8.2014 wherein it has been held that a contractual relationship between a seller and procurer in case of Case 1 bidding can only come into existence after signing of the PPA and therefore, the application of NVVNL was considered as incomplete in the absence of signed PPA between the parties. TANGEDCO has submitted that in the PPA, date of signing of the PPA has been notified as the effective date and therefore, LOI cannot be treated as a substitute to PPA.

37. We have considered the submission of the parties. The Commission in its order dated 8.8.2014 had clarified that a contractual relationship between the seller and the procurer in case of Case 1 bidding can come into existence after the signing of the PPA. Further, in case of DB Power, the Commission had held that no Sale Purchase Agreement could be in existence between DB Power and TANGEDCO prior to the signing of the PPA. Therefore,

the Commission in the order dated 8.8.2014 had clarified that in case of Case 1 bidding, the PPA and Sale Purchase Agreements are synonymous and the contractual relationship between the parties in case of Case 1 bidding can come into existence only after signing of the PPA. CTU has been guided by the above interpretation while deciding the MTOA applications made in June 2013. CTU had sought a clarification regarding Sale Purchase Agreement and the Commission in its order dated 5.9.2014 observed that Sale Purchase Agreement would be clarified in the final order. KSEBL has submitted that pending clarification by the Commission regarding Sale Purchase Agreement, CTU should have considered the unconditionally accepted LOI as the Sale Purchase Agreement and processed the application of NVVNL accordingly. CTU has submitted that it has strictly gone by the interpretation given by the Commission in the order dated 8.8.2014.

38. In the order dated 8.8.2014, it was observed that even though Sale Purchase Agreement came into existence in a technical sense when LOI is accepted unconditionally, such unconditional acceptance does not result in a concluded contract as a number of conditions are required to be satisfied before operationalisation of PPA. KSEBL and NVVNL have submitted that with the unconditional acceptance of LOI by the seller, a concluded contract comes into existence and the signing of the PPA is a formality only. In IA No.52/2014, NVVNL has placed on record a copy of the PPA and LOIs dated 25.4.2013 and 27.5.2013. The following paragraphs of LOI dated 25.4.2013 are relevant which are extracted hereunder:

“Please submit the Contract Performance Guarantee (CPG) within 30 (thirty) days of the receipt of this LOI as per Format 5.7 (without any alteration in the wording) and convey a suitable date for signing the PPA, in accordance with clause 2.2.9 and 2.13 of the RFP document.

It may please be noted that in case of any of the conditions specified in Clauses 2.2.8 and 2.2.9 are not fulfilled, KSEB reserves the right to annul the award of the Letter of Intent and

the provisions of clause 2.5(b) shall apply. Also KSEB shall be entitled to invoke the Bid Bond, in case of failure to provide the CPG as per the provisions of Clause 2.13.”

Even though the LOI is accepted unconditionally, the seller is required to comply with certain conditions with regard to the Contract Performance Guarantee and signing of PPA failing which KSEBL has the right to annul the LOI. In other words, even after accepting the LOI unconditionally, the seller may not provide the CPG and sign the PPA or may like to incorporate conditions in the CPG/PPA which may result in annulment of LOI. In these circumstances, the unconditionally accepted LOI may not result into PPA. Further, ‘effective date’ has been defined in Article 2.1.1 of the PPA as under:

“2.1.1 This Agreement shall come into effect from the date it is executed and delivered by last of all the parties and such date shall be referred to as the effective date.”

Article 2.2.1 of the PPA provides that “this agreement shall be valid for a term commencing from the Effective Date until the Expiry Date (“Terms of Agreement”) unless terminated earlier pursuant to Article 2.3.”. These provisions in the LOI and PPA led us to believe that signing of PPA is not an empty formality but is an important milestone in starting the contractual relationship between seller and procurers in case of Case 1 bidding. Thus the contractual relationship between KSEBL and NRVNL commences with the execution of the PPA.

39. The issue that needs to be considered is whether for the purpose of application for MTOA, an unconditionally accepted LOI should be considered as a Sale Purchase Agreement or not. In this connection, reliance has been made by KSEBL and NRVNL on the provisions of Article 4.2.1 (c) of the PPA in support of their contention that the seller is required to apply for MTOA on receipt of the LOI and therefore, LOI should be taken as a concluded contract. The said provision is extracted as under:

“4.2.1 Subject to the terms and conditions of this Agreement, the Seller undertakes to be responsible, at seller’s own cost and risks, for:

a).....

b).....

c) obtaining all the necessary permission for the open access for the inter-State transmission system for evacuation of power from the Power Station bus bar to the Injection Point (except in case of dedicated transmission lines) and execute all necessary agreements for such transmission access and provide a copy of the same to KSEB; However, in case of any eventuality falling beyond the control of seller in obtaining open access for which the seller shall submit documentary proof that timely efforts have been made for obtaining open access. The first option to exercise the right to use the quantum of contracted power under the contract as per the Agreement shall be vested in KSEB. In such case, failure to supply power at Kerala Periphery by the Seller shall not attract any penalty, subject to production of documentary evidence. Provided that on receipt of the LOI, the corridor shall be applied under MTOA, if due to the transmission constraint the corridor is partially or not cleared at all, then the unscheduled power shall be supplied under STOA at the full quoted tariff as mutually agreed by both KSEB and the Seller for the respective period.”

This provision in the PPA provides that if the selected bidder had applied for MTOA on receipt of LOI, it will not attract penalty. PPA is a part of the Standard Bidding Documents issued by Ministry of Power under section 63 of the Electricity Act, 2003. Moreover, the PPA has been approved by the State Commission. Since the PPA contains a provision that the successful bidder shall have to apply for MTOA on receipt of LOI, in our view non-acceptance of an unconditionally accepted LOI as a Sale Purchase Agreement for the purpose for application for MTOA would render the provisions of Article 4.2.1(c) of the PPA otiose. On a harmonious consideration of the provisions of the PPA which is a part of the Standard Bidding Documents and the provisions of the Detailed Procedure, we feel that an unconditionally accepted LOI could be considered as a Sale Purchase Agreement in case of Case 1 bidding for applying for MTOA. In partial modification of our order dated 8.8.2014, we direct that in case of Case 1 bidding, an unconditionally accepted Lol can be accepted as a Sale Purchase Agreement for applying for MTOA. Since the PPA is to be signed within a period of 30 days from the date of issue of Lol, the MTOA applicant shall

submit a copy of PPA within 35 days from the last date of the month in which application is made. The Commission would like to make it clear that the acceptance of applications for MTOA on the basis of unconditionally accepted Lol in respect of Case 1 bidding cases will be strictly subject to the production of PPA before the stipulated time as mentioned above. In the event, an applicant fails to submit the copy of the signed PPA by the stipulated date, then CTU shall treat the application as incomplete and remove the application from the list of eligible applications. This procedure will operate prospectively and we direct the Staff/CTU to make necessary changes in the Detailed Procedure in this regard. This decision of ours will not change the decision in respect of DB Power where LOI was issued only in the month of July 2013 and PPA was signed in August 2013 and therefore, neither the Lol nor the PPA could have been considered in respect of the application made in May 2013. In case of NVVNL, the PPA was signed on 18.7.2013 which was before 8.8.2013 when CTU originally took the decision on the MTOA application of NVVNL. In view of the above, the application of NVVNL made in June 2013 shall be considered as eligible.

40. In the light of the above discussion, we direct the CTU to consider the MTOA applications made in June 2013 afresh in the light of our interpretation of Power Purchase Agreement /Sale Purchase Agreement in the context of Case 1 bidding in this order.

Issue No. 4: What will constitute a Sale Purchase Agreement?

41. In our order dated 5.9.2014, we decided to deal with the Sale Purchase Agreement in the final order. As already decided, in case of Case 1 biddings, either a PPA or an unconditionally accepted Lol (which is in consonance with provisions of para 4.2.1 of the model PPA issued by MoP as part of Standard Bidding Documents under section 63 of the

Act) will be accepted for applying for MTOA. In case of sale and purchase of power other than through Case 1 bidding, we are not inclined to allow Lol for the purpose of applying for MTOA. In such cases, the MTOA applicant shall be required to submit a duly signed Sale Purchase Agreement between parties while applying for MTOA. The Sale Purchase Agreement shall satisfy the basic conditions of an agreement under the Indian Contract Act, 1876, namely, offer, acceptance and consideration and shall also contain provisions like point of injection, point of drawal, period of contract including date of commencement and date of termination, rate of power, payment security mechanism, penalties for default, and dispute resolution mechanism etc.. The Sale Purchase Agreement shall be duly signed by the authorized representative of the parties. The MTOA applicant shall give an affidavit about the authenticity of the Sale Purchase Agreement alongwith the application.

Issue No.5: Whether unutilized MTOA capacity can be granted to next eligible applicants considered in a month in order of priority due to cancellation of MTOA?

42. CTU in its letter dated 22.9.2014 has granted 100 MW MTOA to PTC India Limited and 111 MW to Ideal Energy Projects Limited (IEPL). In para 4 of the Statement of Reasons, CTU has stipulated the following condition to be fulfilled by IEPL for grant of MTOA:

“4. In view of the above, PTC India Ltd. seeking MTOA for 100 MW shall have first priority for grant of MTOA.

The next priority goes to M/s Ideal Energy Projects Limited for balance ATC of 111 MW. As per applications submitted in June 2013 for MTOA, M/s IEPL indicated that connection to the grid shall be through STU by LILO of one circuit of Koradi-II-Wardha 400 kV D/c line of Maharashtra. Towards the same, the concerned STU has issued NoC which was submitted alongwith the application subject to certain conditions including completion of LILO of one ckt of Koradi-II-Wardha 400 kV D/c line of MSETCL at IEPL TPS. Further as required by the Detailed Procedure, “in case of generating station or consumer not already connected to the grid, the applicant has to submit documentary evidence for completion of the connectivity showing that the same shall be completed before the intending date of MTOA”. Therefore, IEPL is required to submit the documentary evidences of its connectivity through said line before operationalisation of MTOA from 1.10.2014 in line with CERC regulations.”

43. CTU vide its affidavit dated 10.10.2014 has submitted that PTC India Ltd. through its letter dated 29.9.2014 has requested to defer the grant of start of power flow under the MTOA to a date after 10.1.2015, on the ground that the intimation of CTU to start the power flow within 7 days is not in line with the Connectivity Regulations and at least 3.5 months time is required for the purpose. CTU has further submitted that IEPL vide its letter dated 25.9.2014 has informed that their connectivity line through LILO of Koradi-Wardha 400 kV line at IEPL generation switchyard is not ready and expected date of completion of the same is January 2015. As a result, IEPL is unable to sign the agreement. Further, IEPL has made arrangement to supply the given quantum of power from an alternate source in Odisha and has sought permission to transfer power from an alternate source. CTU has submitted that in the light of the directions of the Commission in Petition No.93/MP/2013 (Central Power Distribution Company of AP Ltd. Vs. Powergrid Corporation of India Ltd.), any such request for change in point of injection and point of drawal is impermissible under the Connectivity Regulations and Detailed Procedure thereunder. CTU has sought a direction from the Commission whether CTU should re-process the applications of June 2013 and allocate 211 MW to the next eligible applicants or whether 211 MW should be considered for allocation to LTA applications which were under process.

44. EPMPPL has submitted that the conditions specified for grant of MTOA to IEPL have not been fulfilled and IEPL is not entitled for grant of MTOA. EPMPPL has entered into a PPA with Power Company of Karnataka Ltd. (PCKL) on 21.3.2013 for sale of 210 MW power from 1.8.2013 to 30.6.2015 and is the next on the priority list having fulfilled all the conditions for grant of MTOA. Any decision which would now be taken with respect to the

available corridor would directly affect the right of EP MPL under the Connectivity Regulations and also its liability to conform its obligations under the PPA entered into with PCKL. Accordingly, EP MPL has sought impleadment in the Petition No. 92/MP/2014 as a necessary party. EP MPL has filed IA No. 56/2014 seeking directions to the CTU to grant open access to EP MPL for the corridor which is unutilized as the applicants who have been granted MTOA have failed to meet the conditions for operationalization of MTOA.

45. Impleadment of EP MPL in Petition No.92/MP/2014 is allowed as it is one of the MTOA applicants found eligible for consideration on the basis of the applications for MTOA made in June 2013. As regards allocating the unutilized capacity on account of cancellation of MTOA due to non-readiness of MTOA applicants to the next eligible person in the list, we are of the view that before considering the applications for grant of MTOA, CTU should ascertain the readiness of the applicants to operationalise MTOA if granted. This will obviate to a large extent the possibility re-allocating the unutilized capacity to the other eligible applicants. However, there may be cases where the applicant who has been granted MTOA is not able to operationalise the MTOA due to factors which occurred after grant of MTOA. In such cases, the question is whether the unutilized capacity should be allocated to the other eligible applicants or not. As per Regulation 7 of the Connectivity Regulations, the MTOA applications shall be decided within 40 days. According to provisions of Regulation 10 of Connectivity Regulations, applications for MTOA received during a month shall be construed to have arrived concurrently and applications seeking access for a longer term shall have higher priority. In other words, all applications received during a month which are found eligible for grant of medium term open access shall be arranged on the basis of duration of access sought with highest duration at the top and

lowest duration at the bottom. Para 14.2 of the Detailed Procedure provides as under:

“14.2.....For all the applications received during a month (1st month), CTU shall carry out the studies and circulate the results to the concerned STUs/RLDCs for seeking their comments by 15th day of the 2nd month. The comments on the studies shall be received upto 25th of the 2nd month. After reviewing the comments, the decision on grant of MTOA shall be intimated to the applicant as well as to the concerned RLDCs/STUs by the 10th day of the third month. The intimation shall be provisional and shall be applicable only after signing of necessary agreements and submission of the BG.”

Para 14.4 provides that incomplete applications shall be rejected giving reasons for rejection to the applicants. Para 16.1.a of Detailed Procedure provides that while issuing the MTOA permission, CTU may grant or reject or reduce the time period or reduce the quantum applied in MTOA application and in case of rejection or reduction of time period, CTU shall inform the reasons for doing so in writing. From the above, it is apparent that the decision for allocation of MTOA including the rejection of applications has to be taken by the CTU and intimated to the MTOA applicants within 40 days from the last day of the month in which applications have been made. In case of applicants who have been granted MTOA, they will be required to sign the MTOA Agreement (Para 16.1.b) and submit bank guarantee (Para 16.1.c) within 30 days of the grant of MTOA. In case MTOA Agreement has not been signed or requisite bank guarantee has not been submitted by the applicant within the stipulated period, the grant of MTOA shall be cancelled by the CTU and the same shall be intimated to the applicant, concerned RLDCs/SLDCs/STUs (Para 16.1.e). Thus, in case of cancellation of MTOA on account of non-signing of MTOA Agreement and/or non-submission of Bank Guarantee, there is a time period of 70 days between the last date of the month in which the application is made and the cancellation of MTOA. The last date for consideration of the MTOA applications for the next month is coinciding with the cancellation of the MTOA for the month under consideration. For example, the last date

for allocation of MTOA for the application made during June 2013 is 10th August 2013 and in case of non-signing of MTOA Agreement, the date of cancellation is 10th September 2013 or thereafter. By that time the last date for allocation of MTOA for the applications made in July 2013 is over. Therefore, it would not be prudent to keep MTOA allocation for the month of June 2013 open and allocate the resultant capacity on account of cancellation of MTOA to the next eligible person when the allocation on the basis of applications made in July 2013 has already been made. Once the MTOA allocations are made against the available margin during a particular month, the window for that month shall be closed and the resultant unutilized capacity on account of cancellation of MTOA shall be included in the system study of the relevant month when the non-utilization of the capacity is known. Moreover, we have already directed the CTU to ascertain the operational preparedness of the MTOA applicants before consideration of their applications. Therefore, we reject the prayer of EPMPPL to grant open access to it against the corridor which were allocated to PTC and IEPL by CTU vide its letter dated 22.9.2014 but remained unutilized.

As regards the prayer of BALCO and PTC, there is no provision in the Connectivity Regulations to provide preparation time of 3.5 months to the successful MTOA applicant for operationalisation of MTOA. On perusal of the application of PTC, it is further noticed that the start date of MTOA is 1.3.2014 and it was expected that PTC would be ready by that date for flow of power. However, under the directions of the Commission, the applications made during June 2013 were again considered by CTU in September 2014 and the successful MTOA applicants were required to operationalise MTOA with effect from 1.10.2014. Thus the date of operationalisation of MTOA as intimated vide CTU letter dated 22.9.2014 is later than the date of start of MTOA sought by PTC in its application.

Therefore, PTC cannot be allowed to take advantage of its lack of preparedness and seek further time for operationalisation of MTOA.

As regards the prayer of IEPL to schedule power from alternate sources, it is clarified that MTOA requires specific point of injection and point of drawal and scheduling of power from alternative source cannot be permitted as it would involve new point of injection for which fresh MTOA has to be sought. This issue has been settled in our order dated 11.10.2013 in Petition No.93/MP/2013(Central Power Distribution Company of AP Ltd. Vs. Powergrid Corporation of India Ltd.). In view of the above discussion, the request of PTC for grant of additional time for operationalisation of MTOA, the request of IEPL for supply of power from alternative sources and the request of EPMPPL for allocation of MTOA on account of non-utilization of MTOA by PTC and IEPL cannot be granted.

46. We have directed in para 40 of this order to consider the MTOA applications made during the month of June 2013 afresh. All MTOA applicants who had applied in June 2013 including IEPL and EPMPPL shall be required to submit affidavits to CTU by 20.2.2015 that they are ready and willing to operationalise MTOA immediately if they are granted MTOA based on their priority. Those applicants who do not submit the affidavits and those who submit that they are not prepared and/or are not willing to operationalise MTOA shall not be considered for grant of MTOA.

Issue No.6: Whether the unutilized capacity during a month can be granted to the applicants who have applied in the succeeding month?

47. Next question is whether the capacity which was allocated under MTOA during a month but remain unutilized either on account of non-availability of eligible applicant or on

account of cancellation of MTOA, is to be considered for grant of MTOA for the applications filed during the next month. In this connection, we rely on two provisions in the Connectivity Regulations. Regulation 19(2) provides that the start date of medium term open access shall not be earlier than 5 months and not later than 1 year from the last date of the month in which the application has been made. Further Regulation 20(1) provides that nodal agency shall carry out the system studies so as to ensure that the decision is taken within 40 days from the last date of the month in which application has been made. Therefore, the MTOA for the applications made during a month (1st month) will be decided by 10th of the third month. MTOA applicants will be required to enter into MTOA Agreement and provide Bank Guarantee within one month thereafter i.e. after 10th of the fourth month. If any applicant who has been allocated MTOA does not enter into MTOA Agreement and/or submit bank guarantee, then it will be known after 10th of the fourth month. The allocation based on the applications received during the 2nd month will be made by the 10th of fourth month. Therefore, the capacity which remains unutilized on account of non-operationalisation of MTOA granted on the basis of applications made during 1st month cannot be taken into consideration for deciding the capacity for grant of MTOA based on the applications made during 2nd month. Therefore, the allocation once made on the basis of the applications made during a particular month shall be closed and if any capacity is available on account of non-utilization of MTOA, CTU shall consider the said capacity in the system studies for the relevant month when the fact of non-utilization comes to its knowledge.

48. At present there is no provision in the Connectivity Regulations or Detailed Procedure for application bank guarantee in case of MTOA unlike the case of LTA where the applicant

is required to give application bank guarantee @ ₹10,000 per MW for the capacity applied under LTA in addition to the application fee. However, after grant of MTOA, the applicant is required to enter into MTOA Agreement and submit bank guarantee equivalent to the transmission charges for two months of MTOA. It has been brought to our notice that some of the applicants neither enter into MTOA Agreement nor submit Bank Guarantee equivalent to the transmission charges for two months. As a result, the genuine and serious applicants are deprived of the MTOA. The Commission is of the view that the MTOA applicants should be required to apply for MTOA alongwith application fee at the prescribed rate and application bank guarantee which can be utilized as a penalty in the event of non-signing of MTOA Agreement and/or not furnishing the bank guarantee. We direct the Staff to examine this aspect in consultation with CTU and propose the necessary changes required in the Connectivity Regulations or Detailed Procedure for consideration of the Commission.

Issue No.7: Whether any capacity can be reserved for MTOA and STOA for development of power market as suggested by IEX?

49. IEX has submitted that Raichur-Sholapur transmission lines were planned and executed as a SR strengthening scheme intended to improve the a reliability of the system and for creating necessary margins for catering to the open access regime. The entire capacity thus built cannot be apportioned among certain generators for LTA who need to be accommodated by planning and executing adequate transmission system in accordance with the Act and Regulations. IEX has submitted that until such capacities are created, all the generators ought to utilize the existing margins under the open access regime preferably through power exchanges which provides the most transparent and competitive

price for both the energy as well as transmission capacity. IEX has requested that some percentage of available transmission capacity be reserved for short term market.

50. Section 66 of the Act provides that the Commission shall endeavor to promote the development of the market in power. Section 5.7.1 of the National Electricity Policy provides as under:

“To promote market, a part of new generation capacities, say 15% may be sold outside long term PPAs. As the power markets develop, it would be feasible to finance projects with competitive generation costs outside the long term power purchase agreement framework. In the coming years, a significant portion of the installed capacity of new generating stations could participate in competitive power markets. This will increase the depth of power markets and provide alternatives for both generators and licensees/consumers and in long run would lead to reduction in tariff.”

The Medium term and short term markets including the power exchanges are playing an important role in making the power available at a competitive price. However, transmission constraints are a major cause of concern for development of medium term and short term market. Keeping with the spirit of National Electricity Policy, the Commission directs the staff of the Commission to examine all the issues with regard to reservation of transmission capacity for medium term and short term market in consultation with CEA, CTU, POSOCO and Power Exchanges and submit to the Commission for consideration.

Review Petition No. 25/RP/2014 in Petition No.92/MP/2014

51. Bharat Aluminum Company Limited (BALCO) has filed the Review Petition No. 25/RP/2014 seeking review of the order dated 8.8.2014. BALCO has submitted that after meeting its captive requirement, the petitioner has a surplus of 265 MW for supply to third party entities. KSEBL floated a tender for supply of 100 MW round the clock power on medium term basis. PTC emerged as a successful bidder and an agreement was signed

between KSEBL and PTC on 13.6.2013 for supply of 100 MW power on MTOA for three years starting from 1.3.2014. PTC in turn entered into an agreement with BALCO on 13.6.2014 for supply of 100 MW power on a similar terms. PTC filed MTOA applications on 27.6.2013, 25.10.2013 and 30.12.2013 which were rejected by CTU on the ground of non-availability of ATC for import of power to Southern Region till November, 2015 vide its letters dated 8.8.2013, 25.10.2013 and 6.12.2013 respectively. Another application for MTOA dated 28.4.2014 made by PTC was rejected on the ground that capacity was utilized for allocation of LTA. Based on the applications made during May, 2013, CTU granted MTOA to DB Power for supply of power to TANGEDCO for 208 MW to be operationalised from June, 2014 against its application for MTOA made on 24.5.2013. The Commission in its order dated 8.8.2014 in Petition No. 92/MP/2014 came to a finding that the MTOA granted to DB Power was not in accordance with the provisions of the Connectivity Regulations and Detailed Procedures and accordingly, the Commission directed CTU to carry out the exercise afresh. The Commission in its order dated 5.9.2014 also directed the CTU to allow a reasonable time of one week to the successful applicants after declaration of the results for operationalisation of LTOA. CTU vide its letter dated 22.9.2014 granted MTOA based on the applications received in June, 2013 in compliance with the directions of the Commission vide orders dated 8.8.2014 and 5.9.2014. CTU vide the said letter granted MTOA for 100 MW to PTC for transfer of power from 1.10.2014 to 28.2.2017 from the generating unit of BALCO in Chhattisgarh to KSEBL. CTU vide letter dated 29.9.2014 directed PTC with regard to signing MTOA Agreement and fulfill other conditions by 30.9.2014. BALCO vide its letter dated 29.9.2014 addressed to PTC raised its objections and sought deferment to start power supply under MTOA with effect from 1.10.2014 on the

ground that as per the Connectivity Regulations and Detailed Procedures, a minimum period 3.5 months is given between the intimation and start of flow of power and the intimation to start of power supply within seven days is not in accordance with the Connectivity Regulations and Detailed Procedures filed therein. In the above background, BALCO has sought review of the order dated 8.8.2014 and 5.9.2014 on the following grounds:-

- (a) BALCO first came to know about the directions and orders of the Commission when it received the CTU's letter dated 22.9.2014 granting MTOA and directing BALCO to comply with the directions to start power supply to KSEBL with effect from 1.10.2014.
- (b) CTU has not followed the Procedures and Rules for grant of MTOA.
- (c) As per the detailed procedure an applicant is required to file a fresh application for MTOA after a lapse of one year. However, in this case the Commission directed PGCIL to consider the applications filed in the month of June, 2013 as a special case and further directed for resumption of MTOA within one week from the intimation of MTOA. The petitioner was not given a chance to represent himself before issue of the direction.

52. BALCO has made the following prayers in the Review Petition:-

- "(a) Review of the orders dated 8.8.2014 and 5.9.2014 and set aside of the grant of MTOA to applications received in June, 2013.
- (b) Cancel the direction of CTU to start the power supply from 1.10.2014 to 28.2.2017 for transfer of power from BALCO Power Plant in Chhattisgarh to KSEB.
- (c) In the alternative, grant reasonable time extension of Start of Power flow for preparation to the applicant with respect to grant of Medium Term Open Access for applications received

in June, 2013 as per the directions of Hon'ble CERC in orders dated 8.8.20014 and 5.9.2014 in Petition No. 92/MP/2014."

53. PTC India Ltd. in its written submission dated 17.11.2014 has submitted that based on the consent given by BALCO, PTC had made the applications on 27.6.2013, 25.10.2013, 30.12.2013 and 28.4.2014 which were rejected by CTU on 8.8.2013, 6.12.2013, 10.2.2014 and 10.6.2014 respectively. PTC has further submitted that as far late as June, 2014, BALCO had given consent to PTC for the MTOA application with full knowledge of its consequences. PTC has submitted that BALCO's challenge at this stage is clearly motivated by extraneous consideration and is an effort to evade its contractual responsibilities. It has been further stated that even on the date of filing of the affidavit, BALCO has not given its consent to PTC for signing the MTOA Agreement with CTU even though MTOA was granted on 29.9.2014. PTC has prayed to dismiss the review petition of BALCO at the admission stage.

54. The learned counsel for BALCO during the hearing submitted that grant of MTOA cannot be made contrary to the regulations and to this extent, the order dated 5.9.2014 needs to be reviewed. Learned counsel further submitted that in Nazir Ahmed case (AIR 1936 Privy Council 372) it has been held that when law prescribes a particular method of doing something, it must be done in that manner or not at all. Further relying on the judgment of the Hon'ble Supreme Court in PTC India Ltd. Vs CERC [(2010)4 SCC 603], learned counsel submitted that the Commission is a creature of statute and is bound by the statute and once regulations have been made for grant of MTOA, the Commission cannot go against these regulations. In this connection, learned counsel submitted that if BALCO is required to supply the power as per the MTOA allocation made, then at least 3.5 months

time would be required in accordance with Para 6 of the Detailed Procedure.

55. We have considered the submission of BALCO and PTC. KSEBL floated a tender for supply of 100 MW round the clock power on medium term basis. PTC emerged as a successful bidder and an agreement was signed between KSEBL and PTC on 13.6.2013 for supply of 100 MW power under MTOA for three years starting from 1.3.2014. PTC in turn entered into an agreement with BALCO on 13.6.2013 for supply of 100 MW power on similar terms. That means BALCO has given its consent to supply 100 MW power for a period of three years starting with 1.3.2014 in the event of allocation of capacity under MTOA. PTC has submitted that based on the consent given by BALCO, PTC made applications on 27.6.2013, 25.10.2013, 30.12.2013 and 28.4.2014 which were rejected on 8.8.2013, 6.12.2013, 10.2.2014 and 10.6.2014 respectively on account of non-availability of corridor. Petition No.92/MP/2014 was filed in the month of April 2014. Since BALCO is represented through PTC while bidding for supply of power and also while making application for MTOA, KSEBL had made PTC a party in Petition No.92/MP/2014. If BALCO considered itself as a necessary party, it was at liberty to approach the Commission to seek impleadment. Since the order dated 8.8.2014 has been passed after hearing all concerned parties including PTC who represented the interest of BALCO, there is no error in the order on account of not hearing BALCO who was not a party before the Commission.

56. The other ground of review is that the Commission did not allow time of 3.5 months between the intimation of MTOA and operationalisation of MTOA which according to BALCO is the requirement of Connectivity Regulations and Detailed Procedure. BALCO has submitted that as per Regulation 19 of Connectivity Regulations and Para 6 of the

Detailed Procedure, it is inherent that a minimum period of 3.5 months is required to be given between the date of intimation of MTOA and the date of start of flow of power which has not been followed by CTU in the instant case. BALCO has further submitted the following calculation in support of its contention for 3.5 months required for preparation:

Month		Remarks
April, 2014	M1	30 th April, 14 considered as date of submission of MTOA Application for start of Power from 1 st Oct, 14 onwards.
May, 2014	M2	Processing Time – Application is under Process
June, 2014	M3	Approval/Rejection on MTOA application to be intimated by 10 th Day of June, 2014.
11 th June, 2014 to 1 st October, 2015		In between period is utilized in the preparation by both buyer and seller supply and drawl of Power Obligations of signing of Transmission Service Agreement with CTU and arrangement of Bank Guarantee to CTU as security.

57. As per the application for MTOA filed by PTC in June 2013, the start date of MTOA was 1.3.2014. PTC is stated to have taken the consent of BALCO before filing the application. It means that BALCO was expected to fulfil all the conditions of connectivity to the grid by 1.3.2014. However, in the instant case, the conditions of connectivity to the grid have not been fulfilled by BALCO till 1st October, 2014 i.e. even after 8 months from the start date of MTOA as per the application filed. BALCO has submitted that the MTOA should commence 3.5 months after the processing period of 40 days from the last date of the month in which application has been made. It appears that BALCO has considered the five months gap between the last day of the month in which application has been made and the start date of operationalisation of MTOA as the period for processing of application and preparation for operating the MTOA. In our view, BALCO has misconstrued the provisions of the Connectivity Regulations and the Detailed Procedure in this regard. The rationale behind commencement of MTOA after 5 months has been clarified in the Statement of Reasons to the Connectivity Regulations as under:

"Further, the regulation 19 (2) has been modified specifying that the start date of the medium-term open access shall not be earlier than 5 months and not later than 1 year from the last day of the month in which application has been made. This is with a view to giving priority for booking of transmission corridor to the medium term open access customers as compared to the short term open access customer. It may be recalled that application for short-term open access can be submitted a maximum of 3 months in advance of the month in which STOA is being sought. Processing time for the application of medium term open access is 40 days. With a view to avoid uncertainty regarding estimated flows and projection of commissioning of new transmission elements, it is desirable that start of open access should not be more than a year from the date of application."

For ready reference, the procedure for advance scheduling for bilateral transactions in STOA is extracted as under:

“Procedure for advance scheduling for bilateral transactions

(9) (1) An application for advance scheduling for a bilateral transaction may be submitted to the nodal agency up to the fourth month, the month in which an application is made being the first month:

Provided that separate application shall be made for each month, and for each transaction.

(4)(a) An application for inter-State scheduling in the second month shall be made with the nodal agency up to ten (10) days prior to the close of the first month.

(b) All applications shall be taken up together for consideration.”

58. From the above it is clearly evident that the 5 months time period for start of MTOA has been provided to accommodate the transactions approved on the same corridor for STOA which are permitted to be applied 3 months in advance with a duration of one month at a time. This timeline is not for allowing the MTOA applicants to do preparations for operationalising MTOA as contended by BALCO. There is nothing in the Connectivity Regulations which suggest that the MTOA applicants shall be given 3.5 months time for preparation for operationalisation of MTOA. In the event of grant of MTOA, MTOA applicant is obligated to operationalise the MTOA from the date mentioned in its application or from the date indicated in the MTOA allocation whichever is later. In the application of PTC

dated 28.6.2013 which is stated to have been made after taking consent from BALCO, the date indicated for commencement of MTOA is 1.3.2014 which means that PTC/BALCO were prepared to flow power with effect from that date if MTOA was granted. The date of operationalisation of MTOA indicated in CTU's letter dated 22.9.2014 is 1.10.2014 which is much later than the start date of MTOA indicated in the application. Therefore, CTU has not violated any of the provisions of Connectivity Regulations or Detailed Procedure. Similarly, there is no infirmity in the order dated 8.8.2014 read with order dated 5.9.2014 where the Commission has granted one week time for operationalisation of MTOA from the date of intimation considering the fact that the normal timeframe for consideration of applications made during June 2013 was over on the date of the said orders. In view of the above discussion, we come to the conclusion that there is no error apparent in the orders of the Commission dated 8.8.2014 and 5.9.2014 in Petition No.92/MP/2014. Consequently, the Review Petition fails and is accordingly dismissed.

59. It is however mentioned that we have directed CTU in paras 40 and 46 of this order to consider the MTOA applications received during June 2013 afresh subject to the conditions and procedure approved in this order and provisions of the Connectivity Regulations and Detailed Procedure. Accordingly, CTU is directed to consider the application of PTC afresh alongwith with other applications received during June 2013 after taking necessary undertaking about its preparedness to schedule the power immediately if granted MTOA.

ISSUES RELATING TO LONG TERM ACCESS

60. During the hearing of the petition No.92/MP/2014 on 12.6.2014, learned counsel for KSEBL sought a direction to CTU not to publish the results of LTA applications being

considered by it till the disposal of petition No. 92/MP/2014. The Commission in the RoP had observed that the processing of applications for LTA and grant of LTA would be subject to the outcome of the Petition No.92/MP/2014. DB Power filed IA No.26/2014 seeking clarifications about the observations made in the RoP for the hearing dated 12.6.2014. The Commission in the RoP dated 30.6.2014 clarified that the observation "the processing of the application and grant of LTA by PGCIL shall be subject to the outcome of this petition" did not amount to stay on CTU to process the applications for Long Term Access.

61. CTU in its letter dated 22.9.2014 granted LTA to the eligible applications received in the month of November, 2013 for transfer of power from NEW grid to SR grid in terms of the Connectivity Regulations and the Detailed Procedure thereunder. CTU has stated that the following facts were considered while deciding the LTA applications in the said letter:-

(a) During November, 2013 CTU has received four applications for a total LTA of 1208 MW from KSK Mahanadi Power Company Ltd. (500 MW), Jindal Power Ltd. (400 MW), DB Power Ltd. (208 MW) and M/s BALCO (100 MW).

(b) The ATC between NEW grid and SR grid was assessed as 4000 MW which would be enhanced to 4900 MW subject to commissioning of identified transmission lines system in WR and SR. Out of 4000 MW, 3577 MW was already allocated to various LTA and MTOA customers, thereby ATC of 423 MW available of allocation under LTA/MTOA. Out of 423 MW, MTOA was granted for 211 MW on the basis of the application received in June, 2013 in compliance with the directions of the Commission's orders dated 8.8.2014 and 5.9.2014 in Petition No. 92/MP/2014. Balance ATC of 215 MW was available for allocation from 1.10.2014 onwards in

addition ATC of 150 MW was vacated by corporate power. Thus, making a total of 365 MW available for allocation of LTA applicants of November, 2013, out of which 150 MW ATC was allocated to M/s Jindal Power Ltd. against its application in the month of November, 2013 based on the decision during the meeting held on March, 2014.

(c) In the meeting of the constituents of SR and WR, CEA, WRPC, SRPC, POSOCO held on 21.5.2014, different aspects with respect to the issue of grant of LTA such as LTA for part capacity, inter-se priority between LTA and MTOA and quantum of compensation to be paid on account of relinquishment of LTA for the target region were raised. These issues were referred to the Commission and Commission in its order dated 8.8.2014 has stated that these issues will be dealt in the order will be issued subsequently. Since, CERC has confirmed that there is no stay on the processing of LTA applications, CTU has decided to allocate the ATC to the eligible LTA applicants on *pro-rata* basis.

(d) While processing the case of LTA, CTU found that the application of M/s DB Power was received in the month of November, 2013 whereas the requisite application fee was submitted in the month of January, 2014. Accordingly, the application of DB Power was treated as an application filed in the month of January, 2014. Consequently, the remaining three applications were considered against the available ATC.

62. Against the above background, CTU has allocated LTA on pro-rata basis as under, subject to the clarification on the issues referred to CERC and the outcome of the writ petition filed by Ind Bharat in the High Court of Madras:-

Sl. No.	LTA Applicant	LTA (MW)	Source	Allocation (MW)
1.	M/s Jindal Power	400		150
2.	M/s KSK Mahanadi	500		179
3.	M/s BALCO	100		36
4.	Total	1000		365

63. The LTA granted by CTU vide its letter dated 22.9.2014 has been challenged by DB Power Ltd. in Petition No. 376/MP/2014 and Petition No. 393/MP/2014 and by EMCO Energy Ltd. in Petition No. 382/MP/2014. After preliminary hearing of all petitions, the Commission vide order dated 1.10.2014 directed that the LTA granted by CTU vide letter dated 22.9.2014 shall not be given effect to till further orders.

Petition No. 376/MP/2014: DB Power Ltd.

64. DB Power is in the process of developing 1200 MW generation project in Chhatisgarh. DB Power was granted LTA by CTU vide its letter dated 1.10.2009 for 705 MW with target beneficiaries as WR-530 MW and NR-175 MW. Further LTA was granted to CSPTECL from the generation project for 384 MW vide CTU letter dated 1.10.2009. DB Power signed BPTA with CTU on 24.2.2010 and furnished a Bank Guarantee of ₹35.25 crore. As per the Connectivity Regulations, a generating company after firming up the beneficiaries through signing of long term Power Purchase Agreement is required to notify the same to CTU with copy of the PPA. DB Power executed a long term Power Purchase Agreement dated 19.8.2013 with TANGEDCO for supply of 208 MW of power starting 1.2.2014 for a period of 25 years. Based on the PPA, DB Power applied vide its letter

dated 23.8.2013 for change of region for 208 MW to Southern Region. DB Power was informed by CTU that a fresh LTA application would have to be filed for change of region. Accordingly, DB Power filed an application dated 25.11.2013 with a cheque dated 24.11.2013 for ₹3 lakh towards the application fee which was accepted by PGCIL. The cheque could not be encashed and was returned by ICICI Bank to PGCIL on 19.12.2014 for the reason "drawee's signature differs". PGCIL forwarded the ICICI Bank's intimation to DB Power on 22.1.2014 and the same day DB Power submitted a demand draft which was accepted by PGCIL.

65. Based on DB Power's application dated 24.11.2013, PGCIL considered it for grant of LTA along with other applicants for the month of November 2013, namely, Jindal Power, BALCO and Ind-Bharat Energy and granted LTA vide letter dated 20.12.2013. DB Power was granted LTA for 36 MW from 1.6.2014 and for 208 MW from 1.8.2014, subject to commissioning of Raichur-Sholapur transmission line. PGCIL subsequently held three LTA meeting on 28.3.2014, 21.5.2014 and 1.9.2014 in which the application of DB Power dated 24.11.2003 was considered for grant of LTA. While processing the applications for the month of November 2013 for grant of LTA on 22.9.2014, CTU noted that the requisite application fee for the application dated 24.11.2013 was submitted in January, 2014 and accordingly the application has been treated as an application filed in the month of January, 2014. Accordingly, CTU did not consider DB Power for grant of LTA on the basis of the application for the month of November, 2013.

66. Aggrieved by the above decision of CTU, DB Power has filed the present petition. It has been submitted that based on the grant of LTA to DB Power in December, 23013 and

subsequent meetings held by CTU in March and May, 2014, DB Power declared the commercial operation of Unit I of the generating station on 19.6.2014 and also commissioned its dedicated transmission line on 20.6.2014. DB Power has further submitted that its application made in November, 2013 has been treated as an application filed in January, 2014 on the sole ground that the cheque had been returned for technical reasons. As a result, the interest of DB Power has been prejudiced since the operationalization of LTA in favour of DB Power has been postponed indefinitely as all available transmission capacity has been allocated to other parties. DB Power has submitted that the letter dated 22.9.2014 issued by CTU suffers from the following illegality and infirmity:-

- (a) The letter has been issued by CTU without hearing DB Power. The deferment of application of DB Power from November 2013 to January, 2014 would have serious civil consequences as DB Power will suffer huge financial loss of ₹40 crore per month arising out of the stranding of its generation capacity.
- (b) As per the provisions of the detailed procedure read along with the format of the application annexed to it (format LTA-2) makes it clear that the payment of application fee through cheque is permissible.
- (c) As per the Connectivity Regulations and from the conduct of CTU, it can be inferred that payment of application fee is at best an ancillary and incidental condition and cannot stand on the way of consideration of the LTA application. It is also abundantly clear from the conduct of CTU that CTU never treated the payment

of application fees alongwith LTA application as an essential pre-condition to consideration of the LTA application.

(d) CTU admittedly accepted the LTA application along with the cheque dated 24.12.2013 without raising any objection to the DB Power's payment of the LTA application fee by cheque. CTU granted LTA to DB Power vide its letter dated 20.12.2013 without verifying whether the application fee has been credited to its account or not and continued to treat the LTA application as having been filed in November, 2013 which can be gathered from the subsequent agenda notes and minutes of the meetings to discuss the LTA for the Southern Region. Therefore, CTU is stopped from declaring the letter dated 20.12.2013 as null and void and from deferring the application of DB Power from November 2013 to January 2014.

(e) CTU cannot take a stand regarding letter dated 20.12.2013 different from the stand taken in affidavit before the Commission in Petition No. 92/MP/2014.

67. DB Power has prayed for declaration that the letter of CTU dated 22.9.2014 granting LTA is null and void, being arbitrary, unreasonable and illegal and for direction to CTU to grant LTA to DB Power on pro-rata basis out of the declared available transmission capacity of 365 MW.

68. CTU in its reply dated 8.10.2014 has submitted that as per Regulation 6 of Connectivity Regulations and para 23.4 and 23.5 of the Detailed Procedure, the application is required to be accompanied by a non-refundable specified application fee (₹3 Lakh for LTA for more than 100 MW upto 500 MW) and all payments have to be made through

Demand Draft or directly credited to Powergrid account electronically through RTGS. In response to the contention that acceptance of cheque is permitted as per LTA application form (Format LTA-2), CTU has submitted that such submission does not hold ground if the cheques are not honoured subsequently. CTU has further submitted that the petitioner while fully knowing the procedural requirements chose to submit cheque instead of DD or RTGS payment. CTU has further submitted that, CTU had processed the LTA application of DB Power in good faith, considering its receipt in the month of November, 2013 and had accordingly covered in various representations and communications including the affidavit made in Petition No. 92/MP/2014. However, CTU has contended that the issue of return of cheque came to light only in the month of September, 2014 and thereafter it was known that the complete application along with the requisite application fee was not filed in the month of November, 2013 by DB Power. Since, DB Power paid the requisite application fees vide demand draft in the month of January, 2014, CTU being a responsible statutory organization decided to rectify the mistake. Accordingly, CTU considered the application made by DB Power in the month of November, 2013 as incomplete and upon receipt of requisite application fee in the month of January, 2014, the receipt of complete LTA application was considered as January, 2014. CTU has further submitted that Regulation 10 of the Connectivity Regulations provides for processing of LTA applications on "first come first served" basis, the application of DB Power shall be treated as a case in which the LTA application was made in January, 2014.

69. During the course of the hearing, the learned counsel for DB Power submitted that CTU led it to believe that the payment of application fees through cheque is acceptable. Had DB Power been intimated immediately that cheque was not acceptable, DB Power

would have taken action to provide the Demand Draft or RTGS as required by CTU. Learned Counsel further submitted that the bonafide of DB Power is not in doubt as it deposited the demand draft on the same day when it was intimated about the dishonor of the cheque. Moreover, CTU has waived the deficiency if any by its subsequent conduct. Learned Counsel submitted that having accepted the cheque, CTU cannot now say that application was defective in November 2013 and has been shifted to January, 2014 when the defect was rectified. Learned Counsel further submitted that even though the DB Power was present in the meeting held on 1.9.2014, it was not informed about the infirmity in its application. However, DB Power's application was considered as defective and was rejected by CTU vide letter dated 22.9.2014. Learned Counsel for DB Power submitted that impugned letter dated 22.9.2014 has been issued by CTU without notice to DB Power who has been denying the right to hearing before any adverse order having civil consequence is passed. In this connection, Learned Counsel for DB Power had relied upon the judgment of the Hon'ble Supreme Court in State of Haryana Vs Ram Kishan [(1988) 3 SCC 416] in which the Hon'ble Supreme Court has held that a mining lease could not be terminated prematurely without providing the lessee a hearing as it involved serious civil consequences. Learned Counsel further relied upon the judgment in Krishan Kumar Mediratta Vs. Phulchand Agarwala, [(1977) 2 SCC 5] in support of the contention that PGCIL is estopped by its own conduct from contending that DB Power's LTA application is rejected or deferred on account of the return of its cheque towards the LTA application fees. Learned counsel contended that until the impugned letter dated 22.9.2014 was passed, CTU's conduct made it clear that the return of DB Power's cheque by ICICI Bank for the technical reason of alleged signature mismatch and subsequent payment by DB

Power by way of demand draft had no effect whatsoever on CTU's consideration of DB Power's application and LTA already granted to it on 20.12.2013. The representative of CTU submitted that the important consideration is that the application fee should have been credited to the account of PGCIL in the month of November, 2013 in order that the application is accorded priority of that month.

70. We have considered the submission of both parties. The following sequence of events is relevant to appreciate the rival contention of the parties on this point:

(a) DB Power was granted LTA on 1.10.2009 for 574 MW with target beneficiaries in NR and WR and BPTA was signed on 24.2.2010.

(b) DB Power entered into a long term PPA with TANGEDCO on 19.8.2013 for supply of 208 MW power starting from 1.2.2014 for 25 years. DB Power submitted the PPA to CTU on 23.8.2013 and sought change of region for 208 MW to Southern Region. DB Power submitted the request for change of region on 21.11.2014.

(c) In September 2013, CTU circulated an agenda for determination of ATC between NEW Grid and SR Grid which also included an agenda to consider the applications of four generators including DB Power (who were earlier granted LTA to other regions) for grant of LTA to Southern Region.

(d) In the meeting held on 3.10.2013, it was decided that based on the system studies, capacity would be available for transfer of power from WR to SR on commissioning of the Raichur-Sholapur Transmission line with effect from 1.8.2014

and the these four generators including DB Power would be granted LTA to the Southern Region from the capacity that was going to be available with effect from 1.8.2014.

(e) Proviso to Regulation 12 of Connectivity Regulations requires the LTA customers to make a fresh application for LTA if there is material change in (i) the location of the applicant or (ii) change by more than 100 MW in the quantum of power to be inter-changed using ISTS or (iii) change in the region from which electricity is to be procured or (iv) change in the region to which electricity is to be supplied.

(f) CTU received fresh applications from four generators namely, DB Power, BALCO, Jindal Power and KSK Mahanadi in November 2013 and from Ind-Bharat in December 2013.

(g) Based on the decision taken in the meeting of 3.10.2013, CTU granted LTA to DB Power, BALCO, Jindal Power and Ind-Bharat in December 2013 for supply of power to Tamil Nadu in Southern Region. The intimation of LTA to DB Power was issued on 20.12.2013 for 36 MW with effect from 1.6.2014 and 208 MW from 1.8.2014. This was made subject to the condition that DB Power would have to relinquish the access right for 208 MW in WR granted in 2009 in accordance with the Connectivity Regulations.

(h) On 19.12.2013, ICICI Bank sent an e-mail to PGCIL that cheque No. 126341 dated 24.11.2013 for ₹3 lakh is returned unrealized with the remarks "Drawers Signature Differs".

(i) On 22.1.2014, CTU informed through e-mail about the cheque to DB Power. On the same day, DB Power deposited a demand draft for ₹3 lakh.

(j) In the minutes of the meeting of WR and SR constituents held on 28.3.2014, COO (CTU Planning) informed that CTU had received request for grant of LTA from NEW Grid to SR grid from 4 IPPs (Ind-Bharat, Jindal Power, DB Power and BALCO) who have signed long term PPA with TANGEDCO in August 2013 for a total quantum of 1208 MW with effect from 1.2.2014 to 30.9.2028. Since these IPPs were earlier granted LTA with target regions in NR/WR and firming up of PPA was in region other than the target regions, the above LTA was granted subject to relinquishment of earlier granted LTA in target region.

(k) In the minutes of the meeting held on 21.5.2014 on Operationalisation of Long Term Access, it has been recorded in para A 1.0 that in December 2013, intimations were issued for grant of 1208 MW LTA to 4 IPPs including DB Power subject to implementation of Sholapur-Raichur 765 kV transmission line and relinquishment of earlier granted access right for the said quantum.

(l) CTU vide its letter dated 22.8.2014 has circulated an agenda for discussing the LTA applications received for power transfer to Southern Region from the various applicants in NEW Grid. At Serial No. 1 of the table under the para 3, the

application of DB Power has been shown against the month of November 2013. The minutes of the said meeting is not on record.

(m) In the letter dated 22.9.2014 issued by CTU with regard to the grant of LTA against the applications received in November 2013, it has been stated in para 5 that while processing the applications for grant of LTA, it was found that though the application of DB Power was received in November 2013, the requisite fee was submitted in January 2014 and accordingly, the application of DB Power has been treated as an application filed in January 2014.

71. In the light of the above, the following issues arise for our consideration:

(a) Issue No: 8: Whether cheque is an acceptable mode of payment of application fees while applying for LTA under the Connectivity Regulations and Detailed Procedure?

(b) Issue No.9: Whether the application of DB Power has been correctly considered by CTU as an application made in January 2014?

(c) Issue No.10: Whether DB Power had a right of hearing before CTU did not consider its application while granting LTA vide letter dated 22.9.2014?

Issue No.8: Whether cheque is an acceptable mode of payment of application fees while applying for LTA under the Connectivity Regulations and Detailed Procedure?

72. DB Power has submitted that under the Detailed Procedure, cheque is an acceptable mode of payment of application fees while applying for LTA as the format of application contains the word "cheque". CTU has submitted that the payment is required to

be made only through Demand Draft or directly credited to its account electronically through RTGS. Regulation 6 of the Connectivity Regulations reads as under:

“6. The application referred to in regulation 5 shall be accompanied by a non-refundable application fee specified hereunder, payable in the name and in the manner to be laid down by the Central Transmission Utility in the detailed procedure.”

The Connectivity Regulations is silent about mode of payment and has left it to be decided as per Detailed Procedure. Para 23.4 of the Detailed Procedure provides for the amount of non-refundable application fee to accompany the LTA application depending on the quantum of LTA applied. There is no dispute between the parties that the application fee of ₹3 lakh is payable for applying for 208 MW. Para 23.5 of the Detailed Procedure provides as under:

“23.5: All payments are to be paid through DD or directly credited to POWERGRID account electronically through RTGS (Real-time gross settlement) as per details.....

The document showing proof of payment directly credited to above POWERGRID a/c must be attached with the application.”

In the LTA Application Form (Format LTA-2), in column 6, the following information has been sought:

"6. Details of DD/Cheque e-transaction
Amount (in ₹)
DD/Cheque Transaction No.
Date
Bank Name
Branch Name"

It is clear from the above that while para 23.5 of Detailed Procedure talks about payment through DD or RTGS, the format of application seeks information about DD/Cheque/E-transaction. DB Power has contended that payment through cheque is permissible but CTU is of the view that payment only through DD or RTGS is permissible. According to CTU, DB Power fully knowing the procedural requirement chose to issue cheque instead of making payments through demand draft or RTGS which are secured

ways of making payment for the fees duly provided in the Detailed Procedure. However, as regards acceptance of the cheque in the instant case, CTU in its affidavit dated 8.10.2014 has submitted as under:

“The petitioner has mentioned that in the LTA application form (Format LTA-2) the submission of cheque is also permitted. However, such submission does not hold ground if the cheques are not honoured subsequently. The responsibility of timely honouring the cheque lies fairly and squarely on the issuer of cheque.”

73. Having considered the provisions of the Connectivity Regulations and the Detailed Procedure, we are of the view that provisions of para 23.5 and the format need to be harmoniously constructed. Para 23.5 provides for payment by demand draft or RTGS only. The purpose is to ensure that these payments are firm and secure. In case of cheques, there is an element of uncertainty on account of non-availability of funds in the cheque issuer's account or the mismatch between the signature on the cheque and on the record of the bank. The question therefore arises as to why cheque transaction No. has been provided in the Format LTA-2? This could be possibly on account of the reason that for intra-city transactions where Banks issue Banker's Cheque instead of demand draft, since in all respects a Banker's Cheque is as good as demand draft. In our view, cheques other than Banker's Cheque cannot be an acceptable mode of payment of application fees under the Detailed Procedure. Therefore, the contention of DB Power that cheque is an acceptable mode of payment of application fees is not correct. Knowing fully well that payment of application fees is a pre-requisite for consideration of its application, the consequence of non-payment of application fee on account of dishonour of cheque has to be borne by DB Power. In so far as CTU is concerned, it should not have accepted the application in the first instance unless it was accompanied by a demand draft or banker's cheque or the transaction reference of RTGS payment.

74. The Commission desires that there should be transparent system of handling of applications for LTA/MTOA by CTU. All applications for MTOA and LTA should be made online for which CTU should make appropriate arrangement. The applications shall be accepted online if the payment of application fees has been made through RTGS/NEFT. Wherever the applicant is required to submit application bank guarantee, the scanned copy of the bank guarantee shall also be uploaded and the original bank guarantee shall be submitted within one week alongwith copy of the application made online. CTU shall put in place a system of intimation of acknowledgement within two working days of receipt of application or original documents wherever required. Any application incomplete in any respect shall be summarily rejected and intimation to that effect be given to the applicants. We direct that this system shall be put in place and operationalised with effect from 1.4.2015. Suitable amendment to the Detailed Procedure to give effect to the above directions be submitted by CTU for approval of the Commission within one month of issue of this order.

Issue No.9: Whether the application of DB Power has been correctly considered by CTU as an application made in January 2014?

75. DB Power has submitted that CTU should be stopped from rejecting its application made during the month of November 2013 on account of dishonor of cheque after having accepted all along the payment through cheque till the issue of order dated 22.9.2014. CTU has submitted that when the cheque submitted by DB Power got dishonoured, the application made in the month of November 2013 became liable to be rejected. DB Power subsequently made the requisite payment towards application fee through a demand draft

on 22.1.2014 and the valid application can be said to have been received by the CTU only on the date on which demand draft was submitted by DB Power.

76. From the sequence of events as enumerated in para 70 of this order, it is noticed that CTU has proceeded to process the cases of the LTA Customers including DB Power based on the PPAs submitted by them in August 2013 for change of region to Southern Region. Accordingly, CTU circulated the agenda in September 2013 for the meeting to be held on 3.10.2013. Further in the meeting held on 3.10.2013, a decision was taken to grant LTA to these applicants from the capacity that was going to be available with effect from 1.6.2014 and 1.8.2014. DB Power has stated that CTU sought fresh application for change of region pursuant to which DB Power filed an application dated 25.11.2013 accompanied with a cheque of ₹3 lakh. It was incumbent on the CTU to check whether the application is supported by requisite application fee in the manner prescribed in the Detailed Procedure. When the Detailed Procedure spoke about demand draft or RTGS, there was no question of accepting cheque for payment of application fees. It is noted that as per para 3.6 of the Detailed Procedure, an incomplete application or application not found to be in conformity with the procedure and regulations shall be rejected. Therefore, CTU should have considered the application of DB Power as incomplete since it was not accompanied by demand draft or RTGS Transaction number and should have summarily rejected the application. CTU by accepting the cheque created an impression that payment of application fees through cheque is permissible which is against the provisions of the Detailed Procedure. Moreover, ICICI bank sent a mail to CTU about the signature mismatch on 19.12.2013. CTU should have immediately informed DB Power about the dishonor of cheque and rejected its application. Instead CTU vide its letter dated

20.12.2013 has intimated about the grant of LTA to DB Power. CTU has obviously not linked the non-realization of cheque with the issue of the letter granting LTA. CTU intimated about the non-realization of cheque only on 22.1.2014, i.e. more than one month after it was returned by ICICI Bank. Further, CTU accepted a demand draft submitted on the same day. Even at that stage, it was incumbent on CTU to inform DB Power that the priority of its application has been shifted from November 2013 to January 2014 when the draft was received and its LTA application would be considered accordingly. CTU has not done so and in the minutes of the meetings held on 28.3.2014 and 21.5.2014, and in the agenda for the meeting dated 1.9.2014, CTU has treated the application of DB Power having been made in November 2013. CTU in its affidavit dated 8.10.2014 has submitted that the issue of dishonor of cheque came to light only in September 2014 and accordingly, the mistake was rectified by treating the application as having been made in January 2014. This plea of CTU cannot be accepted as CTU has not only failed to act according to the Detailed Procedure by accepting the cheque but has treated the dishonor of cheque very casually. The question therefore arises as to whether DB Power is absolved of its responsibility to ensure due compliance of the Detailed Procedure simply because CTU accepted its cheque in the first instance and subsequently accepted the demand draft and did not reject its application. In our view, DB Power knowing fully well that payment of application fees is a pre-requisite for consideration of its application, the consequence of non-payment of application fee in the prescribed mode alongwith the application has to be borne by DB Power. Moreover, DB Power cannot take shelter under the principle of promissory estoppel when DB Power has itself failed to comply with the requirement of the Detailed Procedure. Reliance of DB Power on the judgement in Krishan Kumar Mediratta Vs. Phulchand

Agarwala, [(1977) 2 SCC 5] is not of much help as in that case, fee was paid and credited to treasury in time but was deficient whereas in the present case the fees were not credited to the account of CTU in November 2013. Therefore, we find no infirmity in the decision of CTU not to consider the application as having been made in November 2013.

Issue No. 10: Whether DB Power had a right to be heard when his application for LTA was not considered alongwith the applications for the month of November 2013?

77. DB Power has submitted that the decision of CTU in its letter dated 22.9.2014 for not considering DB Power's application dated 25.11.2013 along with the applications received during the month of November, 2013 and to defer its priority to January, 2014 has severe civil consequences and has been taken without affording an opportunity of hearing to DB Power. According to DB Power, such a decision has seriously prejudiced its interest, as DB Power has proceeded to declare the commercial operation of its generating station as well as the dedicated transmission line on the basis of the LTA granted in December, 2013 on the basis of the same application dated 25.11.2013 and non-operationalisation of LTA already granted to it will result in a loss of ₹40 crore per month. As already observed, CTU accepted the cheque from DB Power which was not permissible under the Detailed Procedure and subsequently, without linking the dishonor of cheque with further processing of its application, proceeded to give intimation about LTA vide its letter dated 20.12.2013. Further, CTU issued three agenda notes on 13.3.2014, 15.5.2014 and 22.8.2014 and held three meetings on 28.5.2014, 21.5.2014 and 1.9.2014 regarding LTA. In the agenda note dated 22.8.2014 issued in connection with the LTA meeting dated 1.9.2014, CTU had proposed to discuss the LTA applications for power transfer to Southern Region from various applicants in NEW grid. The agenda note has been circulated to DB Power among

others. The minutes of the meeting of 1.9.2014 has not been issued. However, CTU while granting the LTA vide letter dated 22.9.2014 has recorded the reasons for non-consideration of the application of DB Power as under:

"At this juncture, while processing the case for granting LTA, it was found that though the application from M/s DB Power was received in the month of November, 2013, as per the CERC regulations the requisite application fee was submitted in the month of January, 2014. Accordingly, the application of DB Power to be treated as an application filed in the month of January, 2014. Accordingly, for the month of November, 2013, M/s Jindal Power, M/s KSK Mahanadi, M/s BALCO are being considered for the grant of LTA against the present available ATC as mentioned above in para-3."

Thus CTU has excluded the name of DB Power from the list of the applications made in November 2013 after recording cogent reasons. DB Power was aware of the fact of dishonor of its cheque which was informed by CTU in January 2014. DB Power was further aware that it made the payment of application fee in January 2014 through demand draft. In the facts of the case, no useful purpose would have been served if CTU had given a personal hearing to DB Power, particularly when CTU has recorded the reasons for not considering the application of DB Power alongwith the applications made in November 2013. In any case, the application of DB Power has not been rejected but its priority has been relegated to January 2014 for valid reasons recorded in CTU's letter dated 22.9.2014.

78. We intend to note that CTU has not followed the Connectivity Regulations and Detailed Procedure in letter and spirit while processing the LTA application of DB Power for change of region to Southern Region. First of all, CTU accepted the application without checking whether it is complete in all respects. The application was incomplete as it was not accompanied by either demand draft or payment through RTGS. The application should have been rejected. Secondly, CTU accepted cheque for payment of application fee in November 2013 but sent the cheque for realization in December 2013. Despite the fact that the cheque was returned by the bank on 19.12.2013, CTU considered the application as

valid and intimated grant of LTA vide its letter dated 20.12.2013. There was therefore, complete disconnect between the return of cheque by the bank on 19.12.2013 and intimation of LTA on 20.12.2013. Thirdly, CTU intimated DB Power about the dishonoring of cheque almost one month after the cheque was returned by the bank. Instead of rejecting the application and cancelling the LTA, CTU accepted the demand draft in January 2014. In our view, CTU has dealt with the case of DB Power in most casual and unprofessional manner and such an approach only results in litigation and adversely affects the process of grant of LTA/MTOA. CTU is cautioned to be careful in future and put in place a transparent method of handling the LTA/MTOA applications to avoid recurrence of such instances.

Petition No.393/MP/2014: DB Power Ltd.

79. This petition has been filed by DB Power challenging the letter dated 22.9.2014 issued by CTU granting LTA on the basis of the LILO to KSK Mahanadi Power Limited and Bharat Aluminum Company Limited on the existing lines in the absence of the dedicated transmission lines. DB Power is aggrieved that CTU in the meeting of the Long Term Access for Western and Southern Region held on 28.3.2014 had refused to allocate LTA to DB Power on the ground that it was connected through a LILO and did not have a dedicated transmission line at the relevant point of time.

80. DB Power has submitted the following in support of its contention:

- (a) Pursuant to the execution of the PPA dated 19.8.2013 by DB Power with TANGEDCO, DB Power has submitted the copy of the PPA to CTU to allocate LTA for 208 MW to Southern Region. Subsequently, DB Power made a formal application

on 25.11.2013 in the format prescribed in the Detailed Procedure stated to be on the verbal directions of CTU for a period from 1.2.2014 till 30.9.2028 with injection and drawal points in the Western Region and Southern Region respectively. CTU vide its letter dated 20.12.2013 granted LTA for 208 MW to DB Power with effect from 1.8.2014 on account of the scheduled commissioning of the 765 kV Sholapur-Raichur S/c line.

(b) CTU in the meeting for Long Term Access in Western Region and Southern Region held on 28.3.2014 considered the case of the LTA applicants for grant of LTA on the basis of the ATC of 150 MW available at that point of time. WRLDC in the said meeting submitted that LTA cannot be accommodated on the interim arrangements due to reliability issues and therefore, IPPs should inject LTA power into the grid only after commissioning of their dedicated transmission lines. Accordingly, it was decided that the said ATC can be allocated to applicants based on the preparedness of their generation as well as their dedicated transmission lines. Since Jindal Power Limited had declared the COD of its 1st unit of Tamnar generating station and was connected to ISTS through dedicated Raigarh -Tamnar 400 kV D/c Line, it was found to be eligible for grant of LTA and was accordingly granted LTA for 150 MW. Though 1st unit of the generating station of DB Power was ready for commercial operation by February 2010 and was connected through a LILO on one circuit of Raigarh-Raipur 400 kV transmission line, it did not have a dedicated transmission line in place. Similarly, the COD of four units of BALCO was not declared and the said units were connected through LILO. Both DB Power and BALCO were not granted LTA during the meeting held on 28.3.2014. Subsequently

in the meeting of Long Term Access held on 21.5.2014, the request of KSKMPL to allocate LTA on interim arrangement was refused as it did not have a dedicated transmission line.

(c) Although meeting for Long Term Access of Western Region and Southern Regions were held on 24.7.2014 and 1.9.2014, no decision with regard to LTA was taken in these meetings. However, in the LTA letter dated 22.9.2014, CTU has allocated LTA to KSK Mahanadi for 179 MW and to BALCO for 36 MW despite these generators not having any dedicated transmission lines. Such grant of LTA on LILO is arbitrary and discriminatory since in an identical situation, DB Power was denied allocation of LTA in the meeting held on 28.3.2014 for not having the dedicated transmission line. CTU has resorted to such allocation of LTA on the LILO in order to save itself from the potential financial claims of KSKMPL on account of delay in implementation and commissioning of Champa Pooling sub-station under the scope of PGCIL.

(d) The reasons and grounds cited for non-operationalisation of LTA to DB Power in the meeting held on 28.3.2014 and to KSKMPL in the meeting dated 21.5.2014 are squarely applicable to the case of KSKMPL and BALCO in order dated 22.9.2014 and therefore, allocation of LTA on LILO to KSKMPL and BALCO are liable to be quashed.

81. DB Power has made the following prayers in the petition:

"(a) Pass an appropriate direction or order declaring the allocation of Long Term Access on LILO of existing lines vide impugned letter dated 22.9.2014 issued by PGCIL as null and void, being illegal arbitrary, malafide and discriminatory;

(b) Quash the Long Term Access allocated on the basis of LILO of existing lines by PGCIL vide its impugned letter dated 22.9.2014;

(c) Direct PGCIL to allocate Long Term Access in favour of the Petitioner on pro-rata basis out of the declared available transmission capacity of 365 MWs;

(d) Pass an ad-interim, ex-parte order restraining PGCIL from giving effect to the Long Term Access allocated on the basis of LILO of existing lines by PGCIL vide impugned letter dated 22.9.2014 during the pendency of the present proceedings before this Hon'ble Commission."

82. DB Power also filed IA No. 55/2014 for impleading Kerala State Electricity Board, Karnataka Power Transmission Corporation Limited, Tamil Nadu Generation and Distribution Corporation Limited, KSK Mahanadi Power Company Limited, Bharat Aluminum Company Limited as respondents. The Commission during the hearing of the petition on 15.10.2014 allowed the IA and directed the parties to complete the written pleadings by 24.10.2014. In response, NLDC, CTU, KSK Mahanadi have filed their replies vide affidavits dated 21.10.2014, 27.10.2014 and 4.1.2014 respectively. DB Power has filed rejoinder to the reply of CTU vide affidavit dated 7.11.2014 and CTU has filed a reply to the rejoinder vide affidavit dated 17.11.2014. DB Power has also filed affidavit dated 10.11.2014 to bring certain documents on record.

83. CTU in its reply has refuted the allegations of DB Power and has submitted as under:

(a) The LILO arrangement for grant of Connectivity and Access to ISTS is permitted as per Regulation 8(3) of the Connectivity Regulations. However, the LILO arrangements in case of the DB Power, KSK Mahanadi and BALCO have been granted for a different reason i.e. as an interim arrangement till their respective dedicated transmission lines are available. DB Power has completely misinterpreted

the Regulation 8(3) of the Regulation 2009 by stating that the said clause is not an enabling provision and it can be exercised only during the grant of connectivity and not during the stage of operationalization or allocation of LTA on LILO arrangement.

(b) While assessing whether or not LTA can be made effective, CTU takes into account such factors as (i) the state of the grid in the vicinity; (ii) status of all generating stations in the proximity; (iii) their connection arrangements; (iv) status of access, if any etc. Based on these considerations and detailed power system studies, if it is found that grid security is not affected, then grant of LTA is considered even if generating station is connected on interim arrangement through LILO. All relevant factors including the delay in the Champa pooling station due to delay in availability of land was taken into consideration. The facts that KSK was already availing MTOA of 400 MW on one LILO, the 2nd LILO was also available, and the combined capacity under MTOA and LTA is 579 MW (400 MW + 150 MW) were taken into consideration while granting LTA to KSK. The reasons for granting LTA to KSK have been recorded in the Statement of Reasons. The reasons for grant of LTA to KSK are also equally applicable to BALCO.

(c) In the meeting held on 28.03.2014, the limited issue was utilization of 150 MW ATC that became available on account of cancellation of MTOA to Corporate Power following the judgment of the Appellate Tribunal. In the said meeting, the preparedness of IPPs were assessed for utilization of 150 MW ATC that became available from 01.02.2014. It was assessed that apart from Ms Jindal Power, no other generation project had achieved COD and also their dedicated transmission

lines were not ready. Accordingly, the 150 MW ATC was allocated to Jindal Power. Therefore, the approach of CTU is not discriminatory but on the basis of efficient and economic utilization of ISTS at given point of time. LTAs granted vide CTU letter dated 22.9.2014 were based on the present system conditions and recent developments in the context of discussions held with constituents on various issues related to grant of LTA and directions of the Commission.

(d) As regards the allegation of financial liability on account of contractual failure on the part of PGCIL to construct the Champa Pooling station in time, it has been submitted that under Regulation 12(2) of the Tariff Regulations for the period 2014-19, in the event of delay in commissioning of the associated transmission system as on SCOD of the generating station, the transmission licensee has been mandated to arrange evacuation system from the generating station at its own arrangement and cost till the associated transmission system is commissioned. CTU has submitted that such provision has been made in the Tariff Regulations looking into the possibility of delay in commissioning of the transmission projects on account of ROW issues, land acquisition etc. Moreover, the primary reason for granting connectivity on LILO to KSK was the technical feasibility of power injection without compromising the grid security on account of the developments that took place from march, 2014 to September, 2014 viz. removal of LILO of DB Power, commissioning of 2nd LILO from KSK to the Riagarh-Raipur 400 kV D/C, and confirmation by NLDC and WRLDC about the technical feasibility after having carried out necessary system studies.

(e) The claim of DB Power that it was technically ready for generation from 23.2.2014 but did not declare COD in Feb, 2014 because of non-availability of corridor against long term PPA with TANGEDCO, is baseless as DB Power's transmission line was not ready even when it declared the COD of its generation project in June, 2014.

84. KSK Mahanadi Power Company Limited (KMPCL) has submitted that presently there is no regulations requiring operationalizing of LTA solely through dedicated lines and prohibiting LTA on LILO lines. On the other hand, Regulation 8(3) specifically envisages connectivity to be given on LILO lines. CTU and POSOCO in the past in a few cases discouraged the grant of LTA on LILO lines and have taken the stand that LTA would be given only when the dedicated lines to be established by the generators are ready. In all these cases, the sub-stations and onward transmission systems of PGCIL were completed but the dedicated transmission lines of the generators were not ready. In case of KMPCL, its generating station was envisaged to be connected through a dedicated transmission line to a new 765 kV sub-station to be constructed and commissioned by PGCIL at village Pamgarh/Madanpur in the State of Chhattisgarh. KMPCL completed the dedicated line from its generating station to proposed sub-station station of PGCIL at Pamgarh/Madanpur and commissioned it in August 2012. However, on account of the cancellation of land allotment by the State Government, PGCIL was required to find an alternate location for the sub-station. A new site has been acquired by PGCIL at TAGA Village about 20 kms away and the sub-station is currently under construction. On account of the delay of the sub-station, PGCIL in the 30th Standing Committee Meeting proposed on interim arrangement of LILO on Raipur-Raigarh 400 kV line. As a result KMPCL has constructed two double

circuit 400 kV lines at a cost of over ₹70 crore for a distance of 30 kms as an interim arrangement. KMPCL has further stated that it is extending the existing dedicated transmission line from the location of the original Champa pooling station to the new sub-station at TAGA which is nearer completion and would be completed much before the sub-station of PGCIL is ready. KMPCL has submitted that grid safety has not been compromised as the specification of the interim arrangement met the "N-1 reliability" standard prescribed by CEA/Grid Code besides special protection system installed in the generating units of KMPCL.

85. Karnataka Power Transmission Corporation Limited (KPTCL) which has been impleaded as the 6th Respondent has filed its statement of objections to the petition vide affidavit dated 13.1.2015. KPTCL has submitted that the long term open access means right to use the inter-State transmission system for a period of twelve years to twenty five years. The Regulations require that while considering long term open access it is necessary to conduct a system study and also ensure that the required augmentation of the system or construction of a new transmission line has to be planned and implemented. In case of long term access, the question of approval with inbuilt temporary measures such as providing of LILO as an interim arrangement does not arise. Providing of such interim measures is contrary to the very objective of grant of long term access under Connectivity Regulations. In case of long term open access, a system study is required. KPTCL has further submitted that Regulation 8 (3) of the Connectivity Regulations specifically requires the design features of the dedicated transmission line and the time frame for completion of the transmission line. In case connectivity is to be granted by LILO of an existing or proposed line, the same is also to be specified and approved at the time of approval of the

long term arrangement itself. In case of DB Power, the long term access arrangement originally granted was not based on LILO arrangement and therefore the question of proposing a LILO as a temporary measure now is contrary to the initial approval and hence cannot be granted. Accordingly, KPTCL has placed its serious objection for grant of LTA on LILO arrangement even on a temporary basis.

86. NLDC in its reply dated 21.10.2014 has submitted that under Regulation 13 of the Connectivity Regulations, CTU has the responsibility to carry out the system study while processing the applications for long term access and factoring the safety of system is the paramount responsibility of CTU while granting LTA. NLDC has further submitted that it is in agreement with CTU that LTA on LILO of existing line should be discouraged. NLDC has also submitted that it has filed Petition No. 30/MP/2014 to bring to the notice of the Commission the threat to the system due to the interim LILO being granted.

87. We have considered the submission of the parties. The following issues arise for our consideration:

(a) Issue No.11: Whether LTA can be granted on LILO arrangement?

(b) Issue No.12: Whether CTU has erred in allowing LTA to KMPCL on the LILO?

Issue No.11: Whether LTA can be granted on LILO arrangement?

88. It is noticed that CTU has been allowing evacuation of power on LILO as an interim arrangement for drawal of start-up power, commissioning activity and injecting power into the grid upto the margin available. CTU has admitted that it had provided LILO arrangements initially as an interim arrangement on one circuit each of Raigarh-Raipur pool

400 kV 2XD/c lines to DB Power, KSK Mahanadi, Korba West and RKM till their respective dedicated transmission lines are available. In the meeting of long term access of WR and SR constituents held on 28.3.2014, CTU granted LTA of 150 MW to Jindal Power Limited since it had commissioned its generating station and dedicated transmission line. It is further noticed from the minutes of the said meeting that DB Power and BALCO requested for permission for LTA on interim arrangement till their dedicated system is completed. WRLDC stated in the said meeting that LTA cannot be accommodated on the interim arrangement due to grid reliability issues and therefore IPPs were advised to inject LTA power into the grid only after commissioning of their dedicated transmission line. Apparently, DB Power has not challenged the decision made in the meeting dated 28.3.2014. In the subsequent meeting held on 21.5.2014, DB Power informed that one unit of its generating station would be declared on commercial operation on 1.6.2014 and the dedicated transmission line would be declared on commercial operation on 31.5.2014. With reference to the request of KMPCL to grant LTA on interim arrangement, CTU clarified that as per the decision taken in the meeting held on 28.3.2014, LTA would be operationalized only on completion of dedicated transmission line. However, it is noticed from the letter dated 22.9.2014 issued by CTU, KMPCL was granted LTA for 179 MW through the LILO on Raipur-Rajgarh 400 kV line. In the Statement of Reasons CTU has stated that considering the delay in availability of the Champa pooling station, studies were carried out to examine the adequacy of the transmission system for transfer of 900 MW power and it was seen that 900 MW can be evacuated over 4 Nos. of 400 kV lines. The reason for grant of LTA to KMPCL has been given as under:-

"21. Therefore, CTU is of the view that LTA to KSK should be provided on LILO on 2 ckts of Raipur-Rajgarh 400 kV line as a special case, particularly when KSK has declared COD of its generation project and also have long term PPA. The case of providing LTA on LILO

arrangement shall not be considered as precedence. However, KSK need to commission their dedicated line upto Champa pooling station matching with the commissioning schedule of Champa pooling station, otherwise the LTA granted to KSK would be discontinued."

It is noticed that CTU had refused to grant LTA on LILO in the meeting dated 28.3.2014 and 21.5.2014 on the ground that LILOs are temporary arrangements and granting LTA on the LILO is not in the interest of grid security. The conditions which were prevailing during the meeting dated 21.5.2014 when LILO to KMPCL was refused were also prevalent during the meeting dated 22.9.2014 when the LTA was granted to KMPCL on LILO. In our view, CTU has not shown consistency in its approach in the matter of granting LTA on LILO which has led to a sense of discrimination among the generators who are similarly placed.

89. In the above background, the question is whether LTA should be granted on LILO or not, we have to consider the provisions in the Connectivity Regulations. Regulation 8 (3) of Connectivity Regulations provides as under:

"8 (3) While granting connectivity, the nodal agency shall specify the name of the sub-station or pooling station or switchyard where connectivity is to be granted. In case connectivity is to be granted by looping-in and looping-out of an existing or proposed line, the nodal agency shall specify the point of connection and name of the line at which connectivity is to be granted. The nodal agency shall indicate the broad design features of the dedicated transmission line."

Further the Statement of Reasons issued in connection with the Connectivity Regulations provides as under:

"42. As regards suggestion of CSPTCL that connectivity should not be granted by LILO of existing line, no reason has been given. We are not in agreement with the same and that many times a line is made LILO for optimum resource utilisation. However, which would be best method of connectivity, would be decided by the CTU."

90. From the above provisions, it emerges that granting connectivity on LILO is not prohibited. There is no specific provision for allowing or debarring LTA on LILO. However, we are of the view that if LILO arrangement has been included at the planning stage, LTA

should be allowed on LILO since all requirements of grid security are taken care of in such cases. However, where LILO has been allowed as a purely temporary arrangement pending construction of the dedicated transmission lines, LTA should not be allowed as a matter of course. In such cases, CTU in consultation with CEA and POSOCO should carry out system studies to ascertain that granting LTA on LILO will not adversely impact the power evacuation of other generators in the region and most importantly, whether the System Protection Schemes are in place to allow injection of power under LTA. Therefore, we leave it to CTU to decide on case to case basis whether LTA should be granted on LILO after carrying out necessary system studies and factoring all contingency measures for grid security in consultation with POSOCO and CEA. We would also like to emphasize that CTU should decide such issues in a transparent manner by holding the meeting of the stakeholders.

91. Coming to the grievance of DB Power, it is noted that under the Connectivity Regulations, no access is permitted prior to the commercial operation of the generating units which are permitted to inject power during testing including full load testing as infirm power. Therefore, the generating stations are permitted to inject power into the grid by availing any form of access only after the commercial operation of the generating stations. In that context, it is appropriate on the part of CTU to ascertain the preparedness of the generating station for commercial operation for the purpose of grant of LTA. In the meeting held on 28.3.2014, CTU assessed the preparedness of the generating stations. The response of DB Power in this regard was recorded as under:

"DB Power Ltd. - They stated that they have declared COD of 1st unit of their 2X600 MW plant near Korba in Chhattisgarh on 28.2.2014, however, power is not being scheduled from their unit. WRLDC informed that they have not received any communication regarding declaration of COD. They further informed that they are presently connected through LILO

of one ckt. of Raigarh-Raipur 400 kV line and their dedicated line to Rajgarh (Kotra) is complete except 2 multi-circuit towers near sub-station approach which they are sharing with Athena Chhattisgarh. Their dedicated line shall be completed by end May, 2014."

In the subsequent meeting held on 21.5.2014, the status of the generation plant and dedicated transmission line of DB Power was recorded as under:

"The representative of DB Power informed that one unit of 600 MW shall be declared on commercial operation on 1st June, 2014 and COD of dedicated line is 31st May 2014. In this regard, POWERGRID stated that the IPPs should submit the dates based on realistic schedule. DB Power confirmed the above schedule."

It is apparent from the above that there was no confirmation about the COD of the generating station of DB Power as on 28.3.2014. DB Power in the meeting dated 21.5.2014 confirmed that commercial operation of its generating station would be declared on 1.6.2014. Based on the state of preparedness of DB Power, CTU did not allow LTA prior to the COD of the unit/dedicated line. In case of KMPCL, two units of its generating station were declared under commercial operation prior to the decision dated 22.9.2014. Thus, the case of KMPCL as on 22.9.2014 stands on a different footing from the case of DB Power as on 28.3.2014 and therefore, the allegation of discrimination against CTU is not made out.

Issue No.12: Whether CTU has erred in allowing LTA to KMPCL on the LILO?

92. Next we consider whether CTU has kept the grid security in view while granting the LTA to KMPCL vide its letter dated 22.9.2014. CTU has given the following reasons for grant of LTA to KMPCL:

"20. In the present case, KSK Mahanadi Power Company Limited has commissioned 2 units of 600 MW each out of total 3600 MW capacity. The generation developer has been granted LTA with dedicated transmission system comprising 2 nos. of 400 kV quad D/c line (to be implemented by the generation developer) from their switchyard to Champa Pooling station (being implemented by POWERGRID) considering the full capacity of the generation project. Commissioning of Champa s/s has been delayed due to issues in acquisition of land, change in location from the earlier identified site and contractual issues. Anticipating the delay in commissioning of Champa s/s, KSK was provided connectivity through 2 nos of LILO lines to two circuits of Raipur-Raigarh 400 kV line. Both these LILOs are in operation.

In view of unavailability of Champa Pooling station, studies have been carried out to examine adequacy of the transmission system for transfer of 900 MW of power (400 MW MTOA & 500 MW LTA) through the existing system wherein it has been seen that power upto 900 MW can be evacuated over 4 nos. of 400 kV lines. These studies have been carried out considering the status of other IPPs in the vicinity and their status of LTA and MTOA.

21. Therefore CTU is of the view that LTA to KSK should be provided on LILO of 2 ckts of Raipur-Raigarh 400 kV line as a special case, particularly when KSK has declared COD of its generation project and also have long term PPA. The case of providing LTA on LILO arrangement shall not be considered as a precedence. However, KSK need to commission their dedicated line upto Champa pooling station matching with their commissioning schedule of Champa pooling station, otherwise the LTA granted to KSK would be discontinued.”

From the above, it emerges that CTU has carried out the studies keeping in view the status of the IPPs in the vicinity and the status of their LTA and MTOA before deciding whether LTA can be granted to KMPCL within the available capacity without having any adverse impact on the grid. As regards the allegation that the CTU has permitted LTA on LILO to KMPCL on commercial consideration while denying the similar treatment in case of DB Power, we are of the view that CTU has taken the decision in case of both DB Power and KSK after considering the facts of each case at given point of time. On account of the shifting of Champa pooling station to TAGA, CTU could not stick to the timeline to match with the dedicated transmission line of KMPCL. After the shifting of the pooling station, KMPCL is constructing an additional line length of around 20 km. Under the circumstances CTU has allowed LTA on LILO to KMPCL after keeping in view the grid security. This decision of the CTU cannot be called in question because CTU denied LTA on LILO to DB Power on 28.3.2014. The decision of CTU in case of KMPCL was an exception in view of the facts of the case as KMPCL had made its dedicated transmission line which could not be operationalised due to shifting of the pooling station of CTU. However, in case of DB Power, the construction of dedicated transmission line was within its scope and it was permitted to use the LILO for start-up power only. It was the responsibility of DB Power to

complete the dedicated transmission line before injecting power under LTA. Moreover, POSOCO as the System Operator objected to grant of LTA on LILO as it would affect grid security. Considering all these factors, CTU denied LTA on LILO to DB Power. In case of KMPCL, CTU has satisfied itself that grid security has been taken care of before permitting LTA on LILO. We do not find any infirmity in the decision of CTU to permit LTA on LILO to KMPCL.

93. We are of the view that LTA on LILO shall be allowed if the LILO arrangement has been considered at the planning stage. In other cases, LTA may be allowed by CTU on LILO as a temporary measure due to delay on account of reasons like RoW, forest clearance, etc, till the time originally planned system becomes available, subject to the system studies carried out by CTU establishing that grant of LTA on LILO will not affect system security. CTU has granted LTA on LILO to KMPCL under exceptional circumstances and after taking into consideration the grid security.

94. Petition No.393/MP/2014 is accordingly disposed of in terms of the above.

Petition No.382/MP/2014: Emco Energy Ltd.

95. Emco Energy Limited (Emco) has filed this petition challenging the CTU letter dated 22.9.2014 granting long term access on the ground that its application for long term access was granted priority in the month of December 2013 instead of November 2013 as a result of which it was denied consideration for grant of LTA. Emco has submitted that as an Independent Power Producer, Emco has built, owns and operates a 600 MW generating station at Warora, District Chandrapur, Maharashtra. Emco was granted LTA to Western Region by CTU on 17.1.2009 and it executed a BPTA on 17.1.2009 for a capacity of 520

MW. Emco is stated to have developed its dedicated transmission line from its power plant to Bhadravati sub-station of CTU in October 2012 and two units of its generating stations were commissioned in March 2013 and September 2013. Emco is also stated to have executed PPA with Maharashtra Electricity Distribution Company Limited (MSEDCL) and Dadra & Nagar Haveli (DNH) and has been supplying power to these utilities since 17.3.2014 and 7.7.2014 respectively, by utilizing its LTA as per BPTA.

96. Emco has further submitted that its bid to supply 150 MW power on LTA to TANGEDCO made through GMR Energy Trading Limited was accepted for the period from 1.6.2014 to 30.9.2028. Consequently, Emco applied to CTU on 16.11.2013 alongwith a copy of LOI issued by TANGEDCO for change of LTA beneficiary from Madhya Pradesh Power Transmission Co. Ltd. in Western Region to TANGEDCO in Southern Region and concomitant changes to Emco's LTA allocation to enable it to schedule 150 MW to TANGEDCO. Emco has submitted that CTU failed to respond to its letter dated 16.11.2013. Subsequently, Emco made another request dated 27.11.2013 to CTU enclosing the PPA signed with TANGEDCO for change of region. CTU vide its letter dated 13.12.2014 directed Emco to apply LTA for the quantum for which PPA has been signed. Emco submitted the application on 18.12.2013 alongwith the application fees. Emco has submitted that its application was considered as having been made in December, 2014. CTU invited those applicants who had made the applications in November 2013 to participate in the meetings held on 28.3.2014, 21.5.2014 and 1.9.2014. Consequently, Emco was not invited in these meetings. In the agenda for the meeting to be held on 1.9.2014 circulated vide its letter dated 22.8.2014, CTU showed Emco's application against the month of December 2013. CTU in its letter dated 22.9.2014 has decided to allocate

LTA to KSK Mahanadi Power Co. Limited, Jindal Power Limited and Bharat Aluminium Company Limited which have been impleaded as Respondent Nos. 2, 3 and 4 in the petition.

97. EMCO submitted that CTU's directions to submit a fresh LTA application for supply of power to SR is contrary to para 22.8 of the detailed procedure. Emco has submitted that as per para 22.8 of the Detailed Procedure, a fresh LTA application involving change of region is required to be made only when the the transmission work is to be undertaken by CTU or any other inter-State transmission licensee. In the instant case, no fresh application is necessary when no transmission work is required to be taken up notwithstanding the fact there is change in the region and therefore, there is no need for fresh application.

98. Emco has further submitted that CTU's decision to consider the applications of November applicants are based on a misreading of Regulation 10 of Connectivity Regulations and is in clear violation of the proviso to Regulation 10(1) of the said regulations. Emco has submitted that as per the said proviso, in the case of applications for LTA, where transmission capacity is inadequate and augmentation of the transmission system is required, all applications received between June 30 and December 31 in the relevant year shall be considered together and accorded the same treatment and therefore, CTU is bound to consider other relevant criteria to grant LTA to applicants who have applied between June 30 and December 31 in a given year since the Connectivity Regulations are silent about the relative priority to be accorded to applicants falling within the same pool. Emco has submitted that one of the main relevant criteria for grant of relative priority under the Connectivity Regulations must necessarily be the state of

readiness of the power plant of the LTA applicant and the dedicated transmission line of such power plant. Though CTU in the minutes of the meetings dated 28.3.2014 and 21.5.2014 had agreed that declaration of commercial operation of generating unit and commercial operation of dedicated transmission line from the power plant to ISTS would form the basis of LTA allocation, CTU by its letter dated 22.9.2014 has diverged from this long standing practice and procedure and has granted LTA to KMPCL and BALCO who were not ready to utilize the LTA granted to them. Emco has submitted that CTU's interpretation of Regulation 10 which formed the basis of the letter dated 22.9.2014 would create create unfair situations and arbitrary results contrary to the Electricity Act, 2003 and Articles 14 and 19 of the Constitution of India due to the following reasons:

(a) Given that LTA is allocated for a period of 12 years to 25 years, the zone of consideration of 1 month prescribed according to CTU's interpretation of Regulation 10 of the Connectivity Regulations for determination of 'relative priority' between LTA applicants is arbitrary. The differentiation of LTA applicants on such narrow zone of consideration has no reasonable nexus with the purpose sought to be achieved by the Connectivity Regulations and the Electricity Act, 2003 to ensure the development of an efficient and economical transmission system.

(b) CTU's interpretation of Regulation 10 of connectivity Regulations means that the LTA applicants placed in materially different situations be meted the same treatment i.e. the generating companies who are not ready and able to use the LTA would be accorded higher or same relative priority as the generating companies who are not ready and able to utilize LTA as soon as allotted to them.

(c) CTU's interpretation of Regulation 10 of Connectivity Regulations would create stranded capacity as LTA is allocated to generating companies which are not ready and able to utilize LTA.

99. Emco has made the following prayers in the petition:

- “(i) Quash and set aside Respondent No. 1's Memorandum dt 22.09.2014;
- (ii) Declare that Respondent No.1's letter dt.13.12.2013 is illegal, arbitrary and void;
- (iii) Quash and set aside the allocation of LTA to Respondent No.2 and Respondent No.4;
- (iv) Direct Respondent No.1 to re-determine the 'relative priority' of the Petitioner's application dt. 16.11.2013, or alternatively, direct Respondent No.1 to consider the Petitioner's application dt.16.11.2013 at the same relative priority as any other valid and eligible application received in November, 2013;
- (v) In the interim, pending the final decision of the instant petition, stay the operation of the Memorandum dt.22.09.2014 issued by Respondent No.1, restrain Respondent No.1 from granting LTA to the SR to any generating company.”

100. Emco has filed an IA No. 49/2014 on 26.9.2014 seeking a direction to stay the letter of CTU dated 22.9.2014 and to restrain CTU from granting LTA from SR to any generating company pending final decision of the petition.

101. The Commission vide order dated 1.10.2014 after noting the request of learned counsels for KSEB, TANGEDCO and KPTCL directed Emco to implead these utilities as respondents in the petition. Further, during the hearing of the petition on 15.10.2014, the Commission directed Emco to implead Essar Power Ltd and PTC India Ltd. as respondents. Accordingly, Emco has impleaded these entities as respondents and has filed the amended memo of parties vide affidavit dated 22.10.2014. Replies to the petition have been filed by CTU, Jindal Power Limited, KSK Mahanadi Power Company Limited, Kerala State Electricity Board Limited.

102. CTU has filed two affidavits i.e. the affidavit dated 8.10.2014 in which CTU has placed its submission with regard to the interpretation of Para 22.8 of the Detailed Procedure and the affidavit dated 7.11.2014 in which detailed para-wise replies have been given. In its affidavit dated 27.10.2014, CTU has submitted that if the contention of Emco to consider the date of submission of PPA as an application for change of region is accepted for the sake of argument, then the same principle would be applicable to other applicants also. CTU has indicated the details of submission of copy of PPA and formal application in the prescribed format by the affected IPPs as under:

Sl. No.	Name of the LTA applicant	Quantum (MW)	Submission of copy of PPA	LTA application in prescribed format
1.	Ind-Bharat (Utkal) Power Limited	500	13.8.2013	3.12.2013
2.	Bharat Aluminium Company Ltd.	100	23.8.2013	23.11.2013
3.	DB Power Ltd.	208	23.8.2013	25.11.2013
4.	Jindal Power Ltd.	400	28.8.2013	28.11.2013
5.	KSK Mahanadi Power Company Ltd.	500	-	27.11.2013
6.	Bharat Aluminium Company Ltd.	100	23.11.2013	11.12.2013
7.	Dhariwal Industries Ltd.	100	25.11.2013	21.12.2013
8.	EMCO Energy Ltd.	150	27.11.2013	20.12.2013
9.	Kerala State Electricity Board	140.5	-	31.12.2013
10.	Adhunik Power & Natural Resources Ltd.	100	19.12.2013	7.1.2014
11.	NVVN Limited	20	-	10.1.2014
12.	BESCOM	450	-	24.3.2014
13.	Kerala State Electricity Board Ltd.	233.75	-	30.4.2014

CTU has submitted that if the date of submission of PPA is taken as the criteria for allocating LTA, then the applicants at ser No.1,2,3&4 are in the list of relative priority and in case, the date of submission of LTA applications in the prescribed format is taken as the criteria for allocating the LTA, then the applications at ser Nos. 2,3,4 &5 are in the list of relative priority and in neither of the cases, Emco would figure in the list of relative priority. CTU has submitted that CTU's decision to treat the date of fresh LTA application made by generating companies seeking a mere change in the region supplied as the relevant date

for determination of relative priority has been taken by deliberating the issue with the constituents as recorded in the minutes for the meetings dated 28.3.2013 and 21.5.2014. CTU in the said meeting was carrying on the consultation process for the first set of requests for the change of region and therefore, till the consultation process for the first set is over, calling other requests would have unnecessarily created confusion.

103. In response to Emco's contention for clubbing of LTA applications on six monthly basis, CTU has submitted that in the instant case, the third proviso to Regulation 10(1) of the Connectivity Regulations is not applicable. CTU has submitted that Regulation 7 of the Connectivity Regulations prescribes a timeframe of 120 days for processing the LTA applications where augmentation of transmission system is not required and 180 days where augmentation of the transmission system is required. First proviso to Regulation 12(1) requires that where augmentation of transmission system is required for granting open access, then certain conditions need to be fulfilled. In such cases third proviso to Regulation 10(1) pertaining to clubbing of applications is applicable. When the augmentation of transmission system is not required, third proviso to Regulation 10(1) is not applicable. CTU has submitted that if the date of PPA is taken as the criteria for allocating LTA, then the applicants at ser Nos. 1,2,3&4 of the table (para 89) would figure in the relative priority with the requirement of LTA for 1208 MW. In the alternative, if the date of submission of LTA applications in the prescribed format is taken as the criteria for allocating LTA, then the applicants at ser Nos. 2,3,4 & 5 would figure in the list of relative priority and the requirement of the said would be 1208 MW. CTU has submitted that in either case, the total quantum was less than 1250 MW ATC that was likely to be available pursuant to commissioning of Raichur-Sholapur line and hence no additional system

strengthening was required. CTU has submitted that in the instant case, clubbing on six monthly basis as per third proviso to Regulation 10(1) is not applicable.

104. In its affidavit dated 9.10.2014, CTU has refuted the allegation of Emco that CTU's directions to Emco to make a fresh application for change of region from WR to NR is contrary to Para 22.8 of the Detailed Procedure as no transmission work would be affected on account of Emco's application. CTU by comparing the provisions of 4th proviso to Regulation 12(1) with para 22.8 of the Detailed Procedure has submitted that there is no difference between the two except the addition of words "before the transmission works are taken up by CTU or inter-State transmission licensee" in the Detailed Procedure. CTU has submitted that such provisions were made in the Detailed Procedure to address the issue of frequent changes sought by the LTA applicants with respect to the drawee points/target regions. CTU has submitted that frequent changes in the region lead to delay in firming up the transmission system and therefore, the intent was to allow changes in the drawee regions through withdrawal of earlier applications and filing of fresh applications. CTU has further submitted that the original Connectivity Regulations had a provision that "Provided also that the exact source of supply or destination of off-take, as the case may be, shall have to be firming up and notified to the nodal agency at least three years prior to the intended date of availing the long term access or such other period estimated by Central Transmission Utility for augmentation of the transmission system, whichever is lesser, to facilitate such augmentation". CTU has submitted that since not enough Case-I bids were coming from the States for signing of LTA, this proviso was subsequently deleted through an amendment dated 23.3.2012 and the following were substituted:

"Provided that a generating company after firming up the beneficiary through signing of long term power purchase agreements shall be required to notify the same to the nodal agency along with the copy of PPA".

CTU has submitted that it was the understanding of CTU that once an applicant has been granted LTA based on target region, he no more remains an LTA applicant and qualifies as a LTA customer and accordingly, the provisions pertaining to LTA applicants in the Connectivity Regulations and the Detailed Procedure are not applicable to LTA customers. In this connection, CTU has relied on Regulation 2(m) of the Connectivity Regulations which provides that LTA customer means a person who has been granted LTA. CTU has submitted that it expressed the above understanding in the meeting of the constituents held on 28.3.2014 while dealing with the applications for LTA received from 4 IPPs along with the signed PPAs in the month of August 2013. CTU deferred the decision to review the priority till clarification in this regard in response to its letter dated 20.11.2013 was received from the Commission. CTU has further submitted that in the meeting held on 21.5.2014, it was decided after detailed deliberation with all stakeholders that in case of change of region, fresh application would be required and the date of fresh application would be considered as the reference date for deciding the priority for grant of LTA. CTU has further submitted that the said decision is also supported by 5th Proviso to Regulation 12 (1) of the Connectivity Regulations which provides that when there is any material change in the region to which electricity is to be supplied, a fresh application would be required to be made. Accordingly, CTU has considered Emco's application for grant of LTA with a change of region as made in the month of December, 2013.

105. KMPCL in its affidavit dated 4.11.2014 has submitted that the Emco's contention to treat the letter of intimation in November 2013 as sufficient for processing for grant of LTA

is contrary to Regulation 12 of Connectivity Regulations and Detailed Procedure. KMPCL has submitted that the purpose of prescribing a standard procedure is to ensure that the applications should be made by bonafide persons and not by persons who speculate with regard to LTA capacity and are able to wriggle out easily. As regards the contention of Emco that the applications should be considered on six monthly basis and not on monthly basis, KMPCL has submitted that as per first proviso to Regulation 10 (1) of Connectivity Regulations relating to relative priority, the applications have to be considered on monthly basis. The purpose of third proviso to Regulation 10(1) is that when based on the long term applications, there is requirement to create new system, the system planning and augmentation will not be carried out for each application, but on a six monthly basis after taking into account all applications received during six months. KMPCL has further submitted that while the third proviso applies for the purpose of system planning and augmentation requirements, the grant of open access is not dealt with in the third proviso but is covered by the main regulation and the first proviso. KMPCL has also submitted that part of the transmission system through which power is transferred from WR to SR is on the transmission system created pursuant to the BPTA signed by KMPCL with CTU whereas no such line has been built for Emco. As regards the contention of Emco about the grant of LTA to KMPCL on LILO arrangement, KMPCL has submitted that KMPCL has already built the dedicated transmission line from its generating station to the original location of Champa sub-station. The original location of Champa sub-station has to be shifted on account of force majeure events and CTU has planned the alternate sub-station at TAGA which would take time. Accordingly CTU has proposed the interim LILO lines

which are built keeping the grid safety and grid code requirements of N-1 and SPS on the generating units to ensure grid safety.

106. KSEBL in its written submission dated 10.11.2014 has submitted that as per Regulation 10 of the Connectivity Regulations pertaining to relative priority, the applications for LTA and MTOA are to be processed separately and the issue of priority is restricted only to processing application for LTA received during a month where an application seeking access for longer term is to have priority. System augmentation is linked with long term access and LTA applicants are required to provide sufficient lead time to CTU to plan and execute the scheme of Connectivity Regulations. In case of transmission of power to Southern Region, the LTA quantum sought in November and December 2013 is 2198.5 MW and quantum applied upto April, 2014 is 3002.25 MW. Thus, the requirement of planning and executing the transmission schemes for meeting these huge requirements becomes all the more important. KSEBL submitted that according to CTU, the additional margin established on a synchronous inter-connection NEW grid with SR with the commissioning of the Raichur-Sholapur 2XS/C 765 kV line is 1250 MW. Against this margin, MTOA requests for 700 MW received in August 2013 were to be disposed before 10.10.2013 and MTOA applications received in September, October and November, 2013 are for 1615.2 MW. KSEBL has submitted that the additional margin created is not sufficient to meet the requirement of MTOA application in which event it has to be allotted on pro-rata basis as per the detailed procedure. KSEBL has further submitted that on account of severe congestion between NEW grid and SR, LTA applications received in November, 2013 totaling 1208 MW has to necessarily take the second route of coordinated planning for augmentation of the transmission system based on the LTA applications

received between July and December, 2013 in accordance with third proviso to Regulation 10 (1) of the Connectivity Regulations and the Detailed Procedure. KSEBL has submitted that CTU is mandated under Regulation to follow the second route and process all LTA applications received upto December, 2013 and plan for the augmentation of the transmission system to meet the requirement of 2198.5 MW of LTA applications. KSEBL has prayed that the LTA granted by CTU through the letter dated 22.9.2014 be declared as null and void.

107. KPTCL vide its affidavit dated 25.10.2014 has submitted its statement of objection to the petition. KPTCL has submitted that the entire exercise undertaken by CTU in granting LTA in favour of KMPCL, JPL and BALCO is unsustainable being contrary to the specific provisions of the Connectivity Regulations. KPTCL has submitted that the change in the name of the beneficiary and the region, and the submission of an intimation to that effect, shall result in the whole process being repeated for a fresh grant of LTA. KPTCL has further submitted that the whole process of requiring an application to be made in advance providing the requisite details regarding beneficiaries and location of the generating company would be defeated, and the entire process of consultation with the STUs and the study under Regulation 13 would be defunct, if the applicants were to obtain long term access merely by seeking modification in the application. The WR and the SR are two different locations, and the procedure prescribed under the Act and the Rules for granting LTA to the WR is to be repeated before granting Open Access to the SR.

108. Jindal Power Limited (JPL) in its affidavit dated 3.11.2014 has submitted that no relief has been prayed by Emco against JPL which has at best been impleaded as a

proforma party. JPL has further submitted that Emco's prayer regarding quashing and setting aside letter dated 22.9.2014 does not affect JPL as the letter dated 22.9.2014 only recognizes the fact that 150 MW ATC has already been allocated to JPL and is already in operation. As regards the processing of long term access applications, JPL has submitted that as per Regulation 10, all applications for long term access are required to be processed on first come first served basis and applications received in the same month shall be treated as having arrived concurrently. The exception carved out by 3rd proviso to Regulation 10 is that applications for long term access which require planning and augmentation of transmission system, such planning and augmentation is required to be considered on 30th June and 31st December in each year. This is also supported by para 12 of the Statement of Reasons which provides that in order to facilitate orderly planning by CTU and CEA, all the applications of long term access would be considered six monthly twice a year, so as to facilitate bunching of projects coming together during those six months through transmission planning. JPL has submitted that the applications which do not require planning or augmentation are to be considered on a month to month basis on first-come- first- served criteria. In the case of JPL, the applications for LTA were not on the basis that it would require any planning or augmentation and therefore were rightly considered on the basis of relative priority on first come first serve basis in accordance with the Connectivity Regulations.

109. We have considered the submission of parties. The main issue involved in the petition of Emco is whether its application should be considered for the priority of November 2013 as claimed by Emco or December 2013 as decided by CTU. Emco has

also raised certain other issues like relative priority of consideration of applications requiring system strengthening and applications not requiring system strengthening.

110. It is further noticed that CTU has issued a Statement of Reasons alongwith the letter dated 22.9.2014 in which four issues have been discussed which had a bearing on the decision of the CTU for grant of LTA to the applicants for the month of November 2013. These issues are: (a) Consideration of applicants who had applied for regularization of LTA through fresh applications in the month of November 2013; (b) Grant of part LTA; (c) inter-se priority between LTA and MTOA when both types of applications are under process; and (d) whether long term access can be provided on LILO lines. CTU has approached the Commission for revision of Detailed Procedure on the issue of inter-se priority between LTA and MTOA and grant of part LTA vide letter dated 16.7.2014. In paras 88 to 91 of this order, we have dealt with the issues pertaining to LTA on LILO lines. From the submissions of DB Power in Petition No.376/MP/2014, of Emco in Petition No.382/MP/2014 and the various issues raised by CTU, the following issues arise for our consideration:

(a) Issue No.13: Whether fresh applications will be required to be made for change of region?

(b) Issue No.14: Whether Emco's application will be considered as an application made in November 2013 or December 2013?

(c) Issue No.15: How will the applications for MTOA and LTOA be processed?

(d) Issue No.16: Whether LTA shall be granted for part capacity till the full capacity to accommodate all LTAs is available?

(e) Issue No.17: What treatment should be accorded to the power allocated by Ministry of Power?

(f) Issue No.18: Whether the applicant which seeks change of region is required to pay the relinquishment charges for the LTA of the target region?

Issue No.13: Whether fresh applications will be required to be made for change of region?

111. Both DB Power and Emco have submitted that they were granted LTA to the target regions based on system studies in the year 2010. Southern Region was not indicated by both as target region. After both generators were declared as successful bidders for supply of power to TANGEDCO, they submitted their PPAs to CTU and requested for change of regions. CTU however asked the generators to submit fresh applications which DB Power and Emco submitted in November and December respectively. Both generators insist that fresh applications are mere formalities and are not required under the Connectivity Regulations or Detailed Procedure.

112. CTU has submitted that as per the amended proviso to Regulation 12 of the Connectivity Regulations, a generating company after firming up the beneficiaries through signing of long term Power Purchase Agreements shall be required to notify the same to the nodal agency along with copy of the PPA. CTU has submitted that in line with the said provision, 4 generators namely, Ind-Bharat, BALCO, Jindal Power and DB Power submitted their PPA with TANGEDCO and requested for change in region. CTU was of the view that Regulation 12 deals with fresh application for LTA and after an IPP has been granted LTA, it will be considered as an LTA customer and will no more remain LTA applicant.

Accordingly the requests from these generators were covered in the agenda circulated in September 2013 for the meeting to be held on 3.10.2013. Based on the decision in the meeting, these IPPs were issued intimation letter for grant of LTA in December 2013. Since some of the stakeholders insisted that fresh applications are required to be taken for change of region, CTU asked these generators to submit fresh application for change of region and considering the provisions of relative priority in accordance with Regulation 10, CTU has decided to consider the month of LTA application as the criteria for giving priority with regard to grant of LTA.

113. Regulation 12 of the Connectivity Regulations deals with the applications for long-term access which is extracted as under:

"12. Application for long-term access

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

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

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

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

Provided also that in cases where there is any material change in location of the applicant or change by more than 100 MW in the quantum of power to be interchanged using the inter-State transmission system or change in the region from which electricity is to be procured or

to which supplied, a fresh application shall be made, which shall be considered in accordance with these regulations.

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

114. By virtue of the second amendment to Connectivity Regulations made on 21.3.2012, third proviso to Regulation 12(1) was substituted and an additional proviso was added above fourth proviso as under:

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

Provided that a generating company after firming up the beneficiaries through signing of long term power purchase agreement shall be required to notify the same to the nodal agency alongwith copy of the PPA."

115. From the above regulations, it is apparent that the application for grant of long term open access shall contain the details of the name of the entity or entities to whom electricity is proposed to be supplied or from whom electricity is proposed to be procured, and quantum of power and other details as may be required by CTU in the Detailed Procedure. First proviso to Regulation 12 (1) provides that where the quantum of power has not been firming up either for supply or for procurement, the applicant shall give an indicative quantum of power along with the target region. As per second proviso the liability of the applicant for transmission charges shall be determined on the basis of the indicative quantum of power along with the target region to which power is proposed to be supplied or from which power is proposed to be procured. Third and fourth provisos relate to long term customers who have been granted LTA. Third proviso as it existed prior to amendment

mandates the long term customers to firm up the exact source of supply or destination of off take at least three years prior to the indented date of availing long term access or such lesser period as indicated by CTU for augmentation of the transmission system. However, the amended provision requires the CTU or transmission licensees to take up the augmentation in phases corresponding to capacity which is likely to be commissioned in a given timeframe. The newly added proviso requires the generating company to inform the CTU about the beneficiaries after signing of the long term PPA. Fourth proviso to Regulation 12 (1) provides for the circumstances under which fresh application shall be made by the LTA customers which shall be considered in accordance with the Regulations. These circumstances are as under:-

- (a) Where there is any material change in location of the applicant.
- (b) Where there is change by more than 100 MW in the quantum of power to be interchanged using inter-State transmission system.
- (c) Where there is change in the region from which electricity is to be procured or to which electricity is to be supplied.

Change of location of the applicant will materially affect the point of injection or point of drawal which will require system studies to decide the connectivity or additional system strengthening for scheduling the power. Since it involves change of injection or drawal points, fresh applications will be required. Change by more than 100 MW in quantum of power to be interchanged using the inter-State transmission system, will have to be considered in the context of the LTA granted to the target region. For example, if a

generator has taken LTA to three regions namely, Northern, Western and Eastern Regions for a particular quantum for each region and intends to change the quantum of injection by more than 100 MW in any of these regions, it will be required to make a fresh application. This is based on the premise that quantum of power of less than 100 MW is likely to be adjusted within the margin available in the regions for which LTA has been granted on the basis of system studies. In this connection, the following observations in the Statement of Reasons are relevant:

“44. A number of persons have suggested that a fresh application should not be made a requirement for small changes of locations and small variations in injection. We are in agreement with the above suggestion and only material change in location and deviation of injected power greater than 100 MW will require submission of fresh application. Similar change in the regulation for long term access has been made.

66. POWERGRID has commented that change in destination/beneficiary also affects planning. Regulation, as modified, provide for submission of a fresh application in case of any major change in location or change in quantum of power by more than 100 MW.”

Therefore, whenever there is change in injection of power by more than 100 MW, there is a requirement for fresh system studies to determine the capacity of the transmission system. Similarly, a distribution company or a consumer seeking change of quantum of drawal by more than 100 MW for which LTA has been granted will be required to make a fresh application to facilitate necessary system studies to decide the capacity of the transmission system. In other words, change in injection or drawal of power of less than 100 MW to the target region for which LTA has been granted will not require fresh application. Situations may arise when an LTA customer requests for change in quantum of less than 100 MW, say 90 MW, but subsequently he requests for change of quantum by another 90 MW. In such cases, CTU shall seek fresh application when the second request is made as both the requests taken together are more than 100 MW. However, this limit of

100 MW will not be applicable if the LTA customer is seeking LTA to a new target region either for supply of power or for procurement of power as such cases will be covered under the third scenario i.e. where there is change of region to which power is to be supplied or from which power is to be procured.

116. In the light of the above discussion, the Fourth proviso (fifth proviso after the amendment) shall be implemented by CTU as under:

(a) An LTA customer i.e. a person who has been granted LTA shall be considered as an LTA applicant when he is seeking change of location or change in the injection of quantum of power or change in target region(s).

(b) In case of change in location or change in the region involving change in drawal or injection point (other than the target region specified in the LTA already granted), fresh application as per the procedure is required to be made.

(c) In case of change in quantum of power by more than 100 MW to the region to which LTA has been granted, fresh applications will be required.

(d) In cases of change in quantum of power to the same region (for which LTA has been granted) by less than 100 MW, written requests shall be considered by CTU. If a subsequent request is made for the same region and the quantum of change of power in the first and second requests taken together exceeds 100 MW, then CTU shall ask for fresh application when the second request is made.

Issue No.14: Whether Emco's application will be considered as an application made in November 2013 or December 2013?

117. Emco has argued that as per Para 22.8 of the Detailed Procedure, fresh application is required to be made before the transmission systems are implemented and there is no requirement of fresh application after the transmission system is implemented. Para 22.8 of the Detailed Procedure is extracted as under:

"22.8. In cases where there is any material change in location of the applicant or change in the quantum of power to be interchanged using ISTS (by more than 100MW) or change in region from which electricity is to be procured or to which electricity is to be supplied before the transmission works are taken up by CTU or inter-State transmission licensee other than CTU, a fresh application shall be made and earlier application shall be considered closed and application money for that application forfeited."

It is noticed that the Detailed Procedure requires making of fresh application before the transmission works are taken up by the CTU or the inter-State transmission licensee. CTU has submitted that the said provision has been inserted in order to avoid frequent change in the region and delay in firming of the transmission system. There are two situations in which an LTA customer (i.e. a person who has been granted LTA) can seek change in location or change in quantum of injection of power or change of region i.e. (a) before execution of the transmission system by the CTU for which LTA has been granted and, (b) after execution of the said transmission system. The first situation is covered under para 22.8 of the Detailed Procedure. At the time of making the Detailed Procedure, it was thought that the generating companies would be able to firm up the beneficiaries and sign the PPAs before the execution of the transmission systems and accordingly a provision was made in the Detailed Procedure requiring the LTA customers to intimate about the changes in the location or in quantum of injection of power or in the change of region so that the same can be included in the system planning before start of the

execution. This has apparently not happened as many State utilities did not come forward for long term PPAs. It must be appreciated that transmission planning is a dynamic activity dependent on the combined requirement of generation and load. Therefore, the second situation has arisen when there is request for change in quantum of injection of power or change in region after transmission systems based on the LTAs or system strengthening have either been implemented or are in the process of implementation. It cannot be argued that CTU cannot ask for fresh application for change of region only because there is no provision in the Detailed Procedure for fresh application after the transmission works are taken up by CTU or an inter-State transmission licensee. In our view, Regulation 12(1) of Connectivity Regulations and Para 22.8 of the Detailed Procedure have to be harmoniously read. Since fourth proviso to Regulation 12(1) is applicable to both situations, a fresh application will be required to be made when there is change in region since it requires system studies in terms of Regulation 13(1) to determine the availability of the transmission system to grant LTA. On receipt of the application, the nodal agency is required to conduct the system study and consult with STUs, if the State network is likely to be used. CTU, based on the system studies, is required to specify the ISTS that would be required to give long term access. In the event, the augmentation of the existing inter-State transmission system is required, the same shall be intimated to the applicant. Therefore, the CTU without carrying out the system studies will not be in a position to take a decision when intimation is made by an LTA customer for change of region or change in the quantum of power to be interchanged on the ISTS. Under the Connectivity Regulations and the Detailed Procedure, CTU can undertake the system study only if the application has been properly made in accordance with the Regulations and the Detailed Procedures. In our

view, mere submission of the Power Purchase Agreement by an LTA customer which involves change of region does not create a vested right in its favour for consideration for allocation of LTA to the new region without making a fresh application.

118. It is noticed that based on the LTAs granted, Emco had entered into a BPTA with CTU on 17.9.2009 for supply of 520 MW power to the constituents of Western Region. Emco submitted a letter dated 16.11.2013 to CTU intimating about the award of bid by TANGEDCO for supply of 150 MW from 1.6.2014 to 13.9.2028 and requesting for change in LTA beneficiaries in the BPTA of dated 17.1.2009 as under:-

S. No	Target Beneficiary &	Approved LTA Quantum	Modification requested
1.	MPPCL(WR)	100 MW	0 MW
2.	MSEDCL(WR)	200 MW	170 MW
3.	DNH(WR)	200 MW	200MW
4.	WR Constituent	20 MW	0MW
5.	TANGEDCO(SR)	0 MW	150 MW
Total		520 MW	520 MW

Emco requested to make necessary changes in the LTA allocation to enable it to schedule delivery w.e.f. 1st June, 2014 as per PPA. The same request was repeated on 27.11.2013. CTU in its letter dated 13.12.2013 advised Emco to apply for LTA for the quantum for which PPA has been signed. Consequently Emco applied for LTA on 20.12.2013. Emco has alleged that had CTU advised Emco immediately after receiving the PPA to make fresh applications, then Emco could have made the application in November 2013 and could have been considered alongwith November applicants. In our view, the relevant proviso under Regulation 12(1) of Connectivity Regulations is amply clear that for change in region, a fresh application is required to be made and Emco should not have waited for the response from CTU for making the fresh application. In the light of our decision that for change of region, fresh application is required to be made, the date of

priority of Emco will reckon with reference to December 2013 when it made the application. Emco has further submitted that consideration of LTA applications on monthly basis for determination of relative priority is arbitrary. This aspect has been dealt with in later part of this order. Emco has alleged that it was not invited by CTU to participate in the LTA meeting which is in violation of the procedure and practice being followed by CTU and therefore, the decision to deny LTA to Emco was taken at its back. It appears to us that CTU in its letter dated 22.9.2014 considered the applications for the month of November 2013 and the application of Emco having been made in December 2013 could not have been considered alongwith the applications made in November 2013 as CTU is required to maintain month-wise inter se seniority while processing LTA applications.

Issue No.15: How will the applications for MTOA and LTOA be processed?

119. In the Statement of Reasons to the letter dated 22.9.2014 issued with the letter dated 22.9.2014 granting LTA, CTU has dealt with relative priority between LTA applications and MTOA applications when both are simultaneously under process. The issue arose on account of the position taken by KSEBL during consultation process that the MTOA applications made in October 2013 should get priority over the LTA applications made in November 2013. CTU in para 15(d) of the said Statement of Reasons has stated as under:

“If two applications, one for MTOA and another for LTA are under process simultaneously, even if received during different months, the question is whether the priority is to be accorded to the access that is intending to use the transmission system for one to three years or to the access which intends to use the system for 12 to 25 years. Going by spirit of the regulation that LTA has priority over MTOA and at the same time, both are to be processed in different queues, it is prudent that as long as MTOA is under process and LTA request is received, then LTA should have priority as it gives more certainty to the grid operation and opportunity for network utilization over longer period.”

CTU has included the above interpretation in the proposed amendment to the detailed Procedure which is under consideration of the Commission. Pending approval of the Commission, CTU has accorded priority to LTA applicant over MTOA applicant when both are under process even though LTA application has been received one month later i.e. when the MTOA application is still under process. Accordingly, CTU has processed the applications for LTA received in the month of November 2013 before processing the applications for MTOA received in October 2013.

120. In the above context, there is a requirement to examine the provisions of the Connectivity Regulations and Detailed Procedure with regard to the processing of LTA applications and MTOA applications and their relative priority. Regulation 9 of Connectivity Regulations deals with relative priority between LTA and MTOA applications which are extracted as under:

“10. Relative priority

(1) Applications for long-term access or medium-term open access shall be processed on first-come-first-served basis separately for each of the aforesaid types of access:

Provided that applications received during a month shall be construed to have arrived concurrently;

Provided further that while processing applications for medium-term open access received during a month, the application seeking access for a longer term shall have higher priority;

Provided also that in the case of applications for long-term access requiring planning or augmentation of transmission system, such planning or augmentation, as the case may be, shall be considered on 30th of June and 31st of December in each year in order to develop a coordinated transmission plan, in accordance with the perspective transmission plans developed by the Central Electricity Authority under section 73 of the Act;

Provided also that if an intra-State entity is applying for long-term access or medium-term open access, concurrence of the State Load Despatch Centre shall be obtained in advance and submitted along with the application to the nodal agency. The concurrence of the State Load Despatch Centre shall be in such form as may be provided in the detailed procedure.

(2) Where necessary infrastructure required for energy metering and time-blockwise accounting already exists and required transmission capacity in the State network is available, the State Load Despatch Centre shall convey its concurrence to the applicant within ten working days of receipt of the application.

(3) In case SLDC decides not to give concurrence, the same shall be communicated to the applicant in writing, giving the reason for refusal within the above stipulated period.”

121. In the Connectivity Regulations, long term access has been defined as “the right to use the inter-State transmission system for a period exceeding 12 years but not exceeding 25 years.” Medium term open access has been defined as “right to use the inter-State transmission system for a period exceeding 3 months but not exceeding 3 years”. Regulation 9(1) provides that the applications for LTA and MTOA shall be processed separately on first come first served basis. The first proviso to Regulation 9(1) provides that the applications received during a month shall be construed to have arrived concurrently. Both these provisions read together mean that all LTA applications received during a month shall have same inter-se priority among themselves. The expression “on first cum first served” basis will only mean that the applications for LTA received during a particular month shall have priority over the LTA applications received during the subsequent month. Processing of LTA applications is further subject to third proviso to Regulation 9(1) which requires the CTU to consider all applications requiring transmission system planning or augmentations to be processed on six monthly basis as on 30th June and 31st December of each year for developing coordinated transmission plan. Therefore, among the LTA applications, there are two categories i.e. one category not requiring system augmentation and which can be accommodated within the existing system available or planned for the period for which LTA has been sought, and the other requiring further system planning and augmentation. Since the applications received during a previous month will have priority

over the applications received during the current month, it follows that in cases where system strengthening is not required, the applications will have to be considered for allocation of LTA on monthly basis. In cases where system strengthening is required, the applications will be processed on six monthly basis. The question therefore arises as to what is the timeline which should be followed by CTU for processing the applications. In this connection Regulation 13(1) and (2) are relevant which are extracted as under:

"13. System Studies by the Nodal Agency

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

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

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

Thus as per the above provisions, CTU on receipt of the applications will be required to invariably carry out a system study for long term access as expeditiously as possible to ensure that LTA is granted within the timeline specified in Regulation 7. Based on the system studies, the CTU shall specify the inter-State transmission system required to give long term access. In case of requirement of augmentation of transmission system, the same shall be intimated to the LTA applicants. Since no timeline for system study for LTA applications has been specified in the Regulations, we are of the view that CTU should carry out the system study in the month following the month in which the applications have been made. The Detailed Procedure provides as under for processing of LTA applications:

“24. PROCESSING OF APPLICATIONS

24.1. Assessing the adequacy of transmission capacity/system strengthening requirement

24.1.1. The applications shall be processed on first-come-first-served basis. The applications received during a month and upto the last day of the month shall be construed to have arrived concurrently. In case of applications received by post, the date of receipt of application at POWERGRID office shall be considered as the date of application.

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

.....

i. The study may reveal that:

(a) If system study reveals that transmission system commissioned / planned in the time frame of desired long-term access is adequate and separate system strengthening is not required for effecting desired long-term access. In such cases the nodal agency shall prepare proposal for grant of long-term access and forward the same to respective constituents of concerned region(s), CEA and the applicant. This proposal shall be discussed and formalized in the regional transmission planning forum and RPC of the concerned region(s). The intimation for grant of LTA as per the provisions of Regulations shall be communicated to the applicant and RLDC/NLDC within 120 days from the date of application as per the Regulations with copy of all the constituent States of the region(s) involved, transmission licensee (if any), concerned RPC(s) and CEA.

(b) There is a constraint in transmission system expected to be available by the time frame of commencement of desired long-term access and system strengthening is necessary for effecting desired transaction. The nodal agency shall carry out studies to identify system strengthening in accordance with the perspective plans made by the CEA covering all aspects of IEGC. Such transmissions system augmentation planning shall be considered on 30th of June and 31st of December in each year in order to develop a coordinated transmission plan. The applications received during 1st half of the calendar year shall be considered together by 30th June and finalized by 31st December of the same calendar year. Similarly, application received during the 2nd half of the calendar year shall be considered together by 31st December and finalized by 30th June of the next calendar year. The intimation for grant of LTA as per the provisions of Regulations shall be communicated to the applicant and RLDC/NLDC with copy to all constituent States of the region(s) involved, transmission licensee (if any), concerned RPC(s) and CEA.

If there is more than one application for long-term access in the same complex in similar time frame, the nodal agency shall undertake joint studies and prepare a consolidated proposal for transmission system strengthening.

ii. While granting long-term access in ISTS, the nodal agency shall communicate to the applicant, the date from which long-term access is granted and an estimate of the transmission charges likely to be payable based on the prevailing costs, prices and methodology of sharing of transmission charges specified by CERC. The time frame of the construction of the facilities of the applicant and the CTU shall be clearly laid

out, so as to match the two as closely as possible, for optimum utilization of resources."

Thus as per the Detailed Procedure, if the system strengthening is not required, the CTU shall prepare a proposal for long term access and forward the same to the applicant, CEA and respective constituents of the concerned region and the proposal shall be discussed and formalized in the regional transmission planning forum and RPC of the concerned region. It is noteworthy to mention that the timeline specified in Regulation 7 for grant of LTA is 120 days from the date of applications and since the applications received during a month shall be construed to have arrived concurrently, the timeline will start from the last day of the month in which applications were received. Therefore, as per the discussion hereinabove, CTU on receipt of the applications in a month (1st month) shall carry out a system study by 15th of the following month (2nd month) and publish the study results. If the LTAs can be accommodated within the available capacity, it shall prepare a proposal for grant of LTA and take it to the Standing Committee and RPC Forum. The process should be completed within the next 90 days and the LTA intimation should be issued to the LTA applicants within 120 days from the last day of the month in which applications were made.

122. If the study reveals that there is constraint in the transmission system expected to be available by the timeframe of commencement of the desired long term access and system strengthening is necessary for effecting the same, the Detailed Procedure provides that CTU shall carry out studies to identify system strengthening in accordance with the perspective plan made by CEA covering all aspects of the Grid Code. The Detailed Procedure further provides that the applications received during first half of the calendar year shall be considered by 30th June and finalized by 31st December of the said calendar

year and applications received during second half of the calendar years shall be considered by 31st December and finalized by 30th June of the next calendar year. The Detailed Procedure also provides that where there is more than one application for long term access in the same complex in similar timeframe, CTU shall take joint studies and prepare a consolidated proposal for transmission system strengthening. The system strengthening requirement including transmission voltage level, conductor configuration, broad cost estimates, expected commissioning schedule etc. shall be identified by CTU in consultation with CEA and respective regional constituents and intimated to the LTA applicants. It is noticed that Regulation 7 provides for a timeframe of 180 days from the last day of the month in which the application was received by CTU for processing the application for long term access requiring augmentation of transmission system. However, the Detailed Procedure outlines a timeline of about 6 to 11 months for processing the LTA applications requiring system augmentation. In our view, there is requirement to undertake studies for system augmentation within a period of 3 months from the last date of the month in which applications were received and intimate about the identified system strengthening within a period of next 3 months so that the applications are disposed of within a period of 180 days as required under Regulation 7 of the Connectivity Regulations. This should require amendment of third proviso to Regulation 10 of the Connectivity Regulations to provide that the application shall be considered as on 31st March, 30th June, 30th September and 31st December of the year for the purpose of studies to decide on the system strengthening for grant of long term access in line with the coordinated transmission plan. We direct the staff of the Commission to initiate the process for amendment of the Connectivity Regulations and CTU to propose the amendment to the Detailed Procedure in this regard. As the

Connectivity Regulations and Detailed Procedure stand today, the LTA applications requiring system strengthening will have to be clubbed as on 30th June and 31st December and after carrying out the system studies the LTA applicants shall be intimated about the additional system strengthening by 31st December of the same year and 30th June of the following year respectively.

123. Regulation 9 of the Connectivity Regulations provides for the criteria for long term access and medium term open access. The said regulation is extracted as under:-

"9. Criteria for granting long-term access or medium-term open access

(1) Before awarding long-term access, the Central Transmission Utility shall have due regard to the augmentation of inter-State transmission system proposed under the plans made by the Central Electricity Authority.

(2) Medium-term open access shall be granted if the resultant power flow can be accommodated in the existing transmission system or the transmission system under execution:

Provided that no augmentation shall be carried out to the transmission system for the sole purpose of granting medium-term open access:

Provided further that construction of a dedicated transmission line shall not be construed as augmentation of the transmission system for the purpose of this regulation."

124. As per the above provisions, while long term access would have to be awarded with due regard to the augmentation of inter-State transmission system proposed under the plans made by the CEA, MTOA shall be granted if the resultant flow can be accommodated in the existing transmission system or the transmission system under execution. Moreover, no system strengthening is required for medium term open access. Further Regulation 20 provides that on receipt of the applications for MTOA, CTU shall carry out system studies in consultation with all concerned. Regulation 21(1) provides that CTU shall grant MTOA if it is satisfied that requirements of Regulation 9(2) have been met i.e. resultant flow on account of MTOA can be accommodated within the existing transmission system or system

under execution. Regulation 20(1) further provides that CTU may grant MTOA for a period less than that sought for by the applicant. As already mentioned, the period of MTOA is from 3 months to three years. From the above, the considerations for processing and grant of MTOA can be stated as under:

(a) MTOA applications shall be considered if the existing transmission capacity or the capacity under execution has the margin to accommodate power flow for a period ranging from 3 months to 3 years.

(b) As per the Regulations, no capacity shall be augmented for MTOA. MTOA shall be granted on the margin available on account of augmentation of transmission system for long term access or system strengthening which are not sufficient to grant entire quantum of long term access applied for.

(c) The period of MTOA granted can be varied by CTU for the reasons to be recorded in writing. Non-availability of sufficient capacity can be considered as one of the reasons for allocating lesser capacity than that applied for by an MTOA applicant.

125. The next question for consideration is how the applications for MTOA and LTA received during a particular month shall be considered. In the light of the discussion herein earlier regarding processing of applications and grant of LTA and MTOA in accordance with the provisions of Connectivity Regulations and Detailed Procedure, the LTA and MTOA applications received during a month shall be processed as under:

(a) LTA applications and MTOA applications received during a month shall be processed separately. LTA applications received during the same month shall have higher priority over MTOA applications if there is overlapping period for which LTA and MTOA have been sought.

(b) Since all applications for LTA and MTOA received during a month shall be construed to have arrived concurrently, all applications for LTA received during the month shall have same priority. Similarly, all applications for MTOA received during a month shall have same priority, subject to the condition that applications seeking access for longer term shall have higher priority.

(c) The principle of 'first-come-first served' basis shall mean that the MTOA applications received during a month shall have priority over the MTOA applications received in the following month or subsequent months. Similarly, LTA applications received during a month shall have priority over the LTA applications received during the following month or subsequent months. In other words, applications shall be processed month-wise and inter-se priority shall be maintained month-wise. This is subject to the conditions that all applications fulfill all laid down conditions and criteria in the Connectivity Regulations and Detailed Procedures like submission of PPA etc.

(d) MTOA applications received in a month prior to the month in which LTA applications were received will have priority over LTA applications i.e. MTOA applications received in October 2013 will have priority over LTA applications received in November 2013.

(e) CTU shall undertake system studies based on the MTOA and LTA applications received during a particular month within 15 days from the last day of the month in which applications are received.

(f) The scope of system study shall be whether the adequate transmission capacity is available for accommodating the requirement of all LTA and MTOA applications made during the month. If the applicants have applied for supply of power to two or more regions and capacity is available to accommodate the cumulative requirement for one or more regions but not for all regions, then the applications shall be processed for grant of LTA to the region or regions for which capacity is available and further system studies shall be undertaken for system augmentation for grant of LTA to the region(s) for which capacity is not available. Where capacity is available to accommodate all LTA applications, the applications shall be further processed in accordance with Detailed Procedure to grant the LTA within 120 days.

(g) CTU has expressed that consideration of MTOA applications on the basis of systems under execution is very difficult on account of Right of Way and Forest Clearance etc. CTU has requested that MTOA be given in existing margin only. Staff is directed to examine this proposal in consultation with stakeholders.

(h) The decision to allocate the LTA on existing margin shall be taken before granting MTOA on applications of the same month i.e. within 40 days. For example, if the MTOA and LTA applications are received during March 2014, CTU would decide through system studies whether LTA(s) can be granted on margins or not. In

case, LTA can be granted on available transmission capacity, such quantum shall be earmarked for LTA. If there exists margins after earmarking of the corridor for LTA applications of the same month, it would be released to MTOA applicants of the same month. Where transmission capacity has been earmarked for LTA, CTU shall prepare the proposal for grant of LTA and forward the same to respective constituents of the concerned region, CEA and the applicant. After consultation, LTA shall be granted as per the Connectivity Regulations and Detailed Procedure.

(i) LTA applications which cannot be accommodated within available capacity shall be bunched six-month wise i.e. January to June and July to December. System Studies will be undertaken by CTU in consultation with CEA and the constituents of the regions involved to identify the systems which require strengthening or augmentation. The applications are to be processed as per Regulation 7 within six months from the last date of the month in which application was received, the applications received from January to June shall be processed by 31st July of the year and applications received from July to December shall be processed by 31st January of the next year. Therefore, the system study shall be undertaken by CTU in by 15th of July for the applications from January to June and by 15th of January next year for the applications received during July to December and the results shall be declared by 31st July and 31st January respectively. Thereafter, the augmentation and system strengthening shall be finalized by 31st December of current year and 30th June of the next year for the applications received during January to June and July to December respectively in consultation with all concerned as per the timeline given in Detailed Procedure.

(j) The applicants who have been granted MTOA are required to sign the MTOA Agreement and submit requisite bank guarantee within 30 days from grant of MTOA. If the MTOA applicants do not sign the MTOA Agreements and/or submit bank guarantee within a period of 30 days, CTU shall inform the applicants that the MTOA shall be cancelled by CTU and the resultant capacity shall be considered in the system study for the month in which MTOA was cancelled.

126. CTU has submitted that when both LTA applications and MTOA applications are simultaneously under process, priority shall be accorded to LTA applicants over MTOA applicants even if LTA application has been received one month later i.e. in the period when MTOA application is still under process. In our view, if the LTA applications and MTOA applications received during a month are to be processed separately but simultaneously. MTOA applications received during a month shall have priority over the LTA applications of the subsequent month.

Issue No.16: Whether LTA shall be granted for part capacity till the full capacity to accommodate all LTAs is available?

127. CTU has stated in the Statement of Reasons to the letter dated 22.9.2014 approving long term access that during the consultation process some of the stakeholders opined that if the ATC available in the existing/planned system is not adequate to accommodate the entire capacity of all the LTA applicants of a month under consideration, then ATC cannot be allocated on pro-rata basis and in such cases, LTA to such applicants should be granted associated with additional network expansion which may take 3 to 4 years for completion. However, CTU felt that since the Connectivity Regulations allowed for grant of LTA with or without system strengthening based on the likelihood of accommodating the power flows in

the existing and under construction/planned transmission system and the spirit of the Electricity Act, 2003 is to accord non-discriminatory approach in open access, LTA for a given capacity should be granted on pro-rata basis amongst the LTA applicants with equal priority. CTU has also proposed amendment to the Detailed Procedure in this regard and submitted the amendment with the comments of stakeholders alongwith the views of CTU for approval of the Commission. Pending approval of the Commission to the Detailed Procedure, CTU has allocated ATC among eligible LTA applicants on pro-rata basis considering the factors such as (i) generation projects seeking LTA have achieved COD; (ii) ATC is available for transfer of power which shall enhance progressively;(iii) Long term PPAs have been signed between IPPs and Tamil Nadu; (iv) There should be non-discriminatory approach in allocation of LTA; and (v) the Commission in its order dated 8.8.2014 had confirmed that there was no stay on the processing of the applications for LTA.

128. CTU had proposed certain amendments to the Detailed Procedures which included a proposal to grant part LTA. The Commission directed CTU to invite the comments of stakeholders on the proposal and submit the same alongwith the recommendations of CTU thereon. CTU submitted the proposal vide its letter dated 16.7.2014. The Commission sought the views of CEA and POSOCO on the proposal. POSOCO in its reply dated 20.11.2014 has commented that date of commencement of LTA should not be earlier than 4 years from the last date of the month in which application has been made. POSOCO has submitted that in that event there will be no requirement of granting part LTA as LTA would be effective after 4 years by which time the additional transmission system can be planned and implemented. POSOCO has further submitted that where the long term applicants

seek access to the network, the entire quantum applied for has to be allowed if required by augmenting the transmission system.

129. As regards the part LTA, the Commission is of the view that the Connectivity Regulations and Detailed Procedure do not envisage grant of part LTA. As already discussed, all applications during a month shall be considered together for grant of LTA. A system study will be carried out to find out whether sufficient capacity is available to grant LTA to all LTA applicants in the time frame for which LTAs have been sought. If on the basis of system studies it is found that sufficient capacity is available to grant LTA to all LTA applicants, CTU shall proceed further to process the applications for grant of LTA. If on the other hand the study shows that on account of transmission constraints, system augmentations are necessary, then CTU shall bunch all applications received during January to June and July to December and carry out further system studies in July of same year and January of next year to decide the system augmentations required and intimate the same to the LTA applicants. Only after the LTA applicants sign the LTA Agreement and thereby accept the responsibility for payment of transmission charges and provide the construction bank guarantee, the transmission lines will be undertaken by CTU for execution. In our view, granting part LTA is not only against the regulations but also will lead to avoidable litigations as too many LTA applicants will compete for limited capacity. The argument of the CTU that since some IPPs signed long term PPA with Tamil Nadu, CTU thought it imperative to grant part LTA to these IPPs on the consideration that availability of LTA will increase progressively to accommodate the entire capacity under the LTAs. In our view, such an approach is not in the interest of development of transmission system for long term conveyance of power. In these cases, since sufficient capacity is not

available for grant of LTA, CTU should have considered the cumulative capacity of these IPPs for system augmentation after adjusting the capacity already available and should have indicated target dates for operationalisation of LTA. The available capacity should have been allowed to be utilized by grant of MTOA till capacity for LTA is available after system augmentation. It is noticed that CTU vide letter dated 28.11.2013 advised DB Power to relinquish the MTOA so that his LTA application can be considered. Subsequently, DB power surrendered its MTOA of 208 MW as suggested by CTU which was allotted by CTU among 4 generators, including DB power from 01.06.2014 to 31.07.2014 on a pro-rata basis. In our view, both MTOA applications and LTOA applications against the same PPA can be considered by CTU for different time horizons. If the LTA is going to be available after 3 to 4 years from the date of applications due to ongoing system strengthening/augmentation, there is no reason as to why the IPPs shall be denied MTOA for the intervening period. In our view, grant of part LTA shall not be permitted and the applicants shall be granted LTA for the full capacity after required system augmentation. However, part operationalisation of LTA after the scheduled date of operationalization shall be permitted only when for reasons beyond control, some of the required transmission systems considered for full LTA are not available by the scheduled date. In case of generating station with multiple units, LTA shall be operationalised if the transmission systems are available for evacuation of entire contracted power from a particular unit.

130. In the light of our above discussion, we are of the view that part LTA granted by CTU vide its letter dated 22.9.2014 as also vide its earlier letters dated 20.12.2014 and 7.3.2014 based on the applications for the month of November 2013 cannot be sustained.

Accordingly, we set aside the said letter and direct the CTU to process the applications in accordance with our directions above.

Issue 17: What should be the treatment of the power allocated by Ministry of Power out of the unallocated power at its disposal and temporarily surrendered firm share?

131. It is noticed that Ministry of Power allocated 376 MW power to Southern States for one month from 1.7.2014 to 31.7.2014 and subsequently from 1.8.2014 to 31.3.2014 has been a contentious issue among the parties. CTU has submitted that LTA has not been allocated by CTU for the said power. It is also not clear whether MoP had consulted POSOCO or CTU regarding the available transmission capacity before allocating such power. However, as per Regulation 2(m) of Connectivity Regulations, the person who is allocated such power is considered as a long term customer. In other words, there is no requirement of making application for LTA by the person who has been allocated power from central generating station by MoP. This issue was considered by the Commission in its order dated 11.10.2013 in Petition Nos. 93/MP/2013 and 96/MP/2013 and in in para 40 of the said order, the Commission directed as under:

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

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

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

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

“Note 2

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

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

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

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

133. In the context of the order dated 11.10.2013 as quoted in para 128 above, POSOCO vide its letter dated 26.8.2014 has submitted that during the curtailment of open access on account of transmission bottlenecks, STOA would be curtailed first, followed by MTOA and then followed by LTA and within a category, curtailment shall be carried out on pro-rata basis. Since one long term customer cannot be granted priority over another, POSOCO has sought clarification about the words “at the bottom of the other long term customer” used in para 40 of the order of the Commission. It is clarified that curtailment of LTA including the allocation by MoP will be governed by the provisions of Regulation 25 of the Connectivity Regulations which is extracted as under:

“25. Curtailment

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

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

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

Issue No. 18: Whether the applicant which seeks change of region is required to pay the relinquishment charges for the LTA of the target region?

134. Regulation 18 of the Connectivity Regulations provides for the relinquishment of transmission charges as under:

"18. Relinquishment of access rights

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

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

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

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

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

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

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

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

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

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

Treatment of the applications for MTOA and LTA raised for the subsequent months in Petition No.92/MP/2014.

136. In the light of the discussion on various issues, we are of the view that CTU shall undertake the exercise to deal with the applications for MTOA from June 2013 onwards and that of LTA from November 2013 onwards. Since the timelines for consideration of the MTOA applications received during the months of June 2013 to December 2014 are already over, we direct that the pending applications shall be considered month-wise as under:

(a) There are no LTA applications from June 2013 to October 2013. Therefore, the MTOA applications received during these months shall be considered month-wise after carrying out the system studies.

(b) The applicants for whom the duration of MTOA as on 1.3.2015 is more than three months but are not ready to operationalise the MTOA with effect from 1.3.2015 shall be excluded from consideration for grant of MTOA. It is clarified that the applicants whose end date for MTOA is less than three months from 1.3.2015 shall not be considered for grant of MTOA. Further the eligible applicants so shortlisted are required to submit their readiness for operationalisation of MTOA by 18.02.2015.

(c) CTU shall decide the allocation of MTOA and convey to the MTOA applicants by 25.2.2015. All pre-operationalisation formalities shall be completed to make it effective from 1.3.2015.

(d) CTU shall display all relevant information prominently on its website for expeditious disposal of the MTOA applications in a transparent and time bound manner.

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

months. The processing of applications for all the months upto December, 2014 shall be completed sequentially as early as possible. In the event of all the LTA applications for a month not getting accommodated in the available capacity, the LTA applications received during the month and subsequent months upto December, 2014 shall be processed for grant of LTA through system studies.

Declaration of Total Transfer Capacity and Available Transfer Capacity

138. In accordance with para 16 of the Detailed Procedure, Nodal Agency i.e. CTU is required to declare Total Transfer Capability (TTC) for four years, which may be revised by CTU due to change in anticipated network topology or change of anticipated generation or load at any of nodes giving reason for such changes. This issue was deliberated in our order dated 08.08.2014 and the Commission directed CTU in Para 58 of the said order to give month-wise ATC for the year 2014-15 for effective use of margin available in the corridor for the benefit of the beneficiaries. CTU has not complied with our directions. CTU has submitted that it is difficult to declare ATC for four years due to uncertainty involved in the commissioning of generation and transmission systems and TTC/ATC can be declared for one year. We are not in agreement with CTU. We consider that declaration of TTC/ATC in advance is essential to give effect to our directions in this order in a transparent manner. CTU is directed to publish month-wise ATC for the year 2014-15 by 23.2.2015 and for the year 2015-16 by 15.3.2015. Failure to publish the information shall be construed as non-compliance of our directions and shall be dealt with in accordance with the provisions of the Electricity Act, 2003.

Summary of Decisions

139. The summary of our decisions in these petitions is enumerated below:

- (a) On the issue of calculation of availability of corridor in the Month of June, 2014 for considering the applications made in June, 2013 for grant of MTOA, we find that the CTU has considered the available capacity as 211 MW. However, the auxiliary power consumption with reference to the allocation by MoP has not been taken into consideration while calculating the transmission margin. CTU is directed to consider the auxiliary power consumption for calculating the transmission margins. (Para 26)
- (b) As per the prevailing provisions of the Connectivity Regulations, systems under execution are allowed to be considered for calculation of the transmission margins for the purpose of grant of MTOA. CTU has submitted that on account of uncertainties associated with the commissioning of the transmission system on account of various problems, only the transmission systems which have been commissioned should be taken into consideration for calculating the margins. We direct staff of the Commission to examine this issue in detail. (Para 33)
- (c) For making application for MTOA, unconditionally accepted LOI in case of Case 1 bidding shall be accepted as a Sale Purchase Agreement subject to the condition that the concerned MTOA applicant shall submit the PPA within 35 days from the last date of the month in which application is made. If the PPA is not submitted before the said date, the application shall not be considered for grant of MTOA. In case of NVVNL, the PPA was signed on 18.7.2013 and the decision on the MTOA

application for the month of June, 2013 was originally taken by CTU on 8.8.2014. Therefore, the application of NVVNL made in the month of June, 2013 shall be considered as eligible. Similar treatment shall be given to any other applicant in such situation in subsequent months which falls under Case-I bidding documents of Ministry of Power, Government of India. (Para 39)

(d) In case of sale and purchase of power other than through Case-I bidding, Lol shall not be accepted as Sale Purchase Agreement for the purpose of applying for MTOA. In such cases Sale Purchase Agreement between the seller and buyer of electricity which satisfy the basic conditions of contract under the Indian Contract Act, 1876 duly signed by the authorized representatives of the parties shall only be accepted alongwith the MTOA application. (Para 41)

(e) Allocation of MTOA shall be made only once, based on the applications received during a month and there will be no further allocation even if capacity becomes subsequently available on account of non-utilization of MTOA allocated during the month. The resultant unutilized capacity shall be considered by CTU in the relevant month(s) when the fact of non-utilization of MTOA comes to the knowledge of the CTU. The prayer of EPMPPL for allocation of resultant capacity on account of non-utilization of MTOA by PTC and IEPL is rejected. (Para 45 & 47)

(f) The prayer of BALCO and PTC for grant of preparatory time of 3.5 months for operationalization of MTOA after grant of MTOA is rejected as the Connectivity Regulations do not envisage the same. (Para 58)

- (g) CTU shall consider the MTOA applications made during June, 2013 afresh in the light of the directions/decisions in this order. (Para 59)
- (h) As per the Connectivity Regulations read with Detailed Procedure, the application fee for making MTOA is payable through Demand Draft/Banker's Cheque/RTGS only. Applications received with fees in other modes are not acceptable. CTU failed to follow the provisions of the Detailed Procedure in letter and spirit. The application of DB Power made alongwith the cheque was liable to be rejected. However, since CTU instead of rejecting the application has accepted Demand Draft in place of dishonoured cheque in the month of January, 2014, the application of DB Power shall be considered alongwith the applications received during January, 2014. With effect from 1.4.2015, only online applications and payment through RTGS/NEFT shall be accepted for which CTU shall put in place the necessary infrastructure and procedure. (Para 74 & 76)
- (i) CTU has not followed the Connectivity Regulations and Detailed Procedure in letter and spirit while processing the LTA application of DB Power for change of region to Southern Region. CTU is cautioned to be careful in future and put in place a transparent method of handling the LTA/MTOA applications to avoid recurrence of such instances. (Para 78)
- (j) LTA on LILO shall be allowed if the LILO arrangement has been considered at the planning stage. In other cases, LTA may be allowed by CTU on LILO as a temporary measure due to delay on account of reasons like RoW, forest clearance, etc, till the time originally planned system becomes available, subject to the system studies

carried out by CTU establishing that grant of LTA on LILO will not affect system security. CTU has granted LTA on LILO to KMPCL under exceptional circumstances and after taking into consideration the grid security. (Para 93)

(k) For change of region or for injection of power of more than 100 MW in the region in which LTA has been granted, fresh applications will be required to be made. The LTA customers will be required to relinquish the capacity surrendered in the previous region in accordance with the Connectivity Regulations and Detailed Procedure. (Para 116)

(l) Priority of the LTA application shall be taken as the month in which the application complete in all respects as per the Connectivity Regulations and Detailed Procedures is made. Emco was required under the regulations to make fresh application for change of region. The prayer of Emco for considering its letters dated 16.11.2013 and 27.11.2013 as LTA application made during November 2013 is rejected. (Para 118)

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

- i) For disposing the applications for LTA and MTOA, CTU shall make separate lists for MTOA and LTA applications received during the month. The inter-se priority will be applicable between the months in which applications for each category (LTA and MTOA) are received i.e. applications of an earlier month shall have priority over applications of a latter month. MTOA applications received during a month will have

priority over the LTA applications received during the subsequent month(s).

- ii) Between the LTA and MTOA applications received during the same month, LTA application shall have higher priority if there is over-lapping in the period for which LTA and MTOA have been sought.
- iii) Among the MTOA applicants in a month, the inter-se priority will be determined on the basis of the durations for which MTOAs have been sought i.e. MTOA applications with a longer duration shall have priority over MTOA applications with shorter duration.
- iv) CTU shall carry out system study for the month of the application (1st month) by the 15th of 2nd month to examine the adequacy of transmission system corresponding to the timeframe of commencement of power through long term access and medium term open access.
- v) Based on the study, CTU shall identify the capacity which can be granted to LTA applicants after taking into account the transmission capacity commissioned/planned in the time frame of desired long term access. LTA applications shall be segregated based on the directions of flow of power. If the capacity so identified is expected to be available from a prospective date and is adequate to accommodate all LTA applications made during the month for a particular direction, the

capacity for LTA shall be earmarked and blocked and CTU shall start the process in accordance with the Detailed Procedure. If any MTOA application of the same month can be accommodated before the start of LTA or in the time frame for which MTOA has been sought, then MTOA shall be granted.

- vi) Part LTA shall not be granted to LTA applicants where the available capacity is inadequate to accommodate all the LTA applications received during a month.
- vii) If the capacity is not adequate to accommodate all LTA applications received during the month, then the LTA applications shall be considered on six monthly basis for the purpose of system augmentation i.e. the applications received from January to June and from July to December, as the case may be. CTU shall carry out further studies to find out the system strengthening required and give intimation about the same to the LTA applicants as per the timeline given in Detailed Procedure. In the meantime, MTOA applications shall continue to be considered on the margin available. (Para 125)

(n) After grant of LTA whether on the existing capacity or capacity under augmentation, there may be occasions when some of the transmission systems associated with the LTA do not get commissioned by the date of commencement of LTA as indicated by CTU in the LTA agreement expected time frame on account of reasons beyond the control of CTU or any other inter-State transmission licensee executing transmission

systems. In such cases, operationalization of LTA on part capacity shall be allowed after the aforementioned target date of commencement of LTA. (Para 129)

(o) MoP shall seek prior confirmation from CTU regarding availability of capacity before allocating power out of the unallocated power or power surrendered by beneficiaries in the Central Generating Stations, as it is not permissible to curtail the existing MTOA and LTA to accommodate such allocation of power made by MoP. The allocation by MoP shall have the priority of LTA and in case of curtailment of power, the provisions of Regulation 25 (2) of the Connectivity Regulations shall be applicable. (Para 133)

(p) As CTU has expressed difficulty in deciding the stranded capacity on account surrender of LTA or reduction of LTA on account of change in region, CEA is directed to suggest methodology to work out stranded capacity and the formula for calculating corresponding relinquishment charges of LTA. Till a decision is taken based on the recommendations of CEA, CTU shall continue to take the relinquishment charges wherever required in accordance with Regulation 18 of the Connectivity Regulations. (Para 135)

140. In the light of the above decision, MTOA for the applications made during the month of June, 2013 and LTA applications made during the month of November, 2013 granted by CTU vide its letters dated 22.9.2014 are set aside. CTU is directed to re-consider the LTA and MTOA applications for these months and the applications for the subsequent months in accordance with the directions in this order. It is noted that CTU has granted LTA to Jindal Power Limited for 150 MW as against its application for 400 MW on the basis of the

decision taken in the LTA meeting held on 28.3.2014. As already decided in this order, grant of part LTA is not in conformity with the provisions of the Connectivity Regulations and Detailed Procedure and accordingly, LTA application dated 28.11.2013 made by Jindal Power is held invalid. The LTA application of Jindal Power shall also be considered alongwith the applications for LTA received during the month of November, 2013. However, since part LTA granted to Jindal Power has been operationalised, we direct that Jindal Power Limited shall be allowed to inject power under the part LTA till the LTA applications for the month of November, 2013 are disposed of and LTA granted to Jindal Power shall stand modified in the light of the decision taken by CTU.

141. Staff of the Commission is directed to examine the issues as detailed in the order and submit them for consideration of the Commission. The issues are summarized hereunder:

- (a) To process the case for making provisions in the Connectivity Regulations and Detailed Procedure for online filing of applications, online tracing of applications, payment of application fees only through RTGS/NEFT, publication of system studies on the website of the CTU, etc.
- (b) To examine the issue of Application Bank Guarantee in case of MTOA and to suggest appropriate amendment to the Connectivity Regulations to provide to Application Bank Guarantee or any other suitable deterrent to bring seriousness among the MTOA applicants.

- (c) To examine the request of CTU to allow grant of MTOA on the margins available in the existing transmission systems only, and not in the 'transmission system under execution'.
- (d) To examine reservation of capacity for MTOA and STOA transactions in consultation with CEA, CTU, POSOCO and Power Exchanges.
- (e) To examine whether LTA applications requiring system augmentation can be considered on quarterly basis.
- (f) To initiate the process of amendment in the Connectivity Regulations to bring in consistency between Regulation 7 and the corresponding provision in the detailed procedure.

142. Before parting, we intend to deal with an important procedural issue i.e. the manner in which the statutory bodies like CTU and POSOCO shall seek clarifications or interpretation of the regulations issued by the Commission in the event of encountering any difficulty in giving effect to the regulations. Both CTU and POSOCO have been vested under the Electricity Act, 2003 with statutory functions to be discharged in accordance with the regulations notified by the Commission. CTU and POSOCO have been approaching this Commission for clarification or interpretation of the provisions of various Regulations when they encounter difficulties in the course of implementation of the regulations. It is clarified that if the proposal for interpretation or clarification of the regulations is made through letters, it is not possible to make stakeholder consultation before giving clarification or interpretation. Therefore, it is desirable that CTU and POSOCO should file appropriate

application for clarification/interpretation if they encounter any difficulties in giving effect to the regulations so that the Commission can give necessary clarification/interpretation after hearing the parties who are likely to be affected. However, if the CTU or POSOCO proposes any amendment to the regulations, self contained proposal can be made through letters which shall be examined and considered by the Commission for the purpose of amendment of regulation in accordance with the provisions of the Electricity Act, 2003 and Electricity (Procedure for Previous Publication) Regulations, 2005.

143. Petition Nos. 92/MP/2014 alongwith IA Nos. 43/2014, 51/2014, 52/2014, 54/2014, 56/2014 & 59/2014, Petition No.376/MP/2014, Petition No.382/MP/2014, Petition No. 393/MP/2014 and Review Petition No. 25/RP/2014 are disposed of in terms of the above.

Sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(M. Deena Dayalan)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson