

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 306/MP/2015

Coram:

**ShriGireesh B. Pradhan, Chairperson
ShriA.K.Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K.Iyer, Member**

Date of Order: 16th of March, 2017

In the matter of

Petition under Section 79 (1) (f) of the Electricity Act, 2003 regarding disputes involving Central Transmission Utility, being the nodal agency for grant of long-term open access to the inter-State transmission system.

And

In the matter of

PTC India Ltd.
2nd Floor, NBCC Tower 15, Bhikaji Cama Place,
New Delhi 110066

.....**Petitioner**

Vs.

1. Power Grid Corporation of India Limited
B-9, Qutub Institutional Area,
Katwaria Sarai, New Delhi- 110016

2. National Load Despatch Centre
Power System Operation Corporation Ltd.,
B-9, Qutub Institutional Area,
Katwaria Sarai, New Delhi- 110016

3. MP Power Management Company Ltd.
Block No.11, Shakti Bhawan, Vidhyut Bhawan
Jabalpur 482 008, Madhya Pradesh

4. Lanco Amarkantak Power Pvt. Ltd.
Lanco House, Plot No. 397, Udyog Vihar,
Phase-3, Gurgaon-122 016

.....**Respondents**

The following were present:

Shri Rajiv Bhardwaj, Advocate for the petitioner
Shri H.L.Choudhery, PTC
Shri Sitiesh Mukherjee, Advocate, PGCIL
Ms. Akansha Tyagi, Advocate, PGCIL
Shri Swapnil Verma, PGCIL
Ms. Jyoti Prasad, PGCIL
Shri Milanka Chaudhuary, Advocate, LANCO
Shri Saroj Anand Jha, Advocate, LANCO

ORDER

The Petitioner, PTC India Ltd., has filed the present petition seeking direction to Power Grid Corporation of India Ltd. (PGCIL) to reduce the quantum of LTA from 300 MW to 273 MW from the date of implementation of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 (Sharing Regulations) and to refund the extra transmission charges and fees collected since the date of reduction of LTA.

2. The submissions of the Petitioner are as under:

(a) Lanco Amarkantak Power Ltd. (LAPL) has set up a 300 MW coal based thermal powerstation (generating station) at Pathadi Village, Korba district in the State of Chhattisgarh. On 11.5.2005, LAPL entered into a Power Purchase Agreement with Petitioner for sale of 300 MW power from the generating station. PPA was subsequently amended on 2.8.2005. The Petitioner entered into a Power Sale Agreement dated 30.5.2005 with Madhya Pradesh Electricity Board (MPSEB) which was the predecessor of MP Tradeco/MP Power Management Company Ltd.

(b) The Petitioner made an application dated 22.12.2015 to CTU for grant of Long Term Open Access for supply of power from the generating station to MPSEB. The Petitioner in the said application indicated the requirements for transfer of power as per the format prescribed by CTU, namely quantum of power to be transmitted as 273 MW, Peak load to be transferred as 273 MW and average load to be transferred as 250 MW. In the meeting of the Western Region constituents held on 26.9.2005 regarding approval of long-term open access applications, it was decided to grant LTOA for 300 MW corresponding to the installed capacity and accordingly, CTU vide its letter dated 8.11.2006 granted LTOA to the Petitioner for 300 MW.

(d) The Petitioner entered into a BPTA dated 5.3.2007 with CTU. Subsequently, on 14.3.2008, LANCO terminated the PPA dated 11.5.2005 entered into with the Petitioner. The Petitioner, vide its letter dated 10.8.2009, terminated the PSA dated 30.5.2005 entered into with MPSEB.

(e) The generating station was declared under commercial operation on 9.4.2009. Even though no electricity was being injected under LTOA, CTU raised invoice for LTOA charges from May 2009. On 16.10.2012, MP Tradeco/MPPMCL and LANCO entered into a Settlement Agreement to resolve the dispute and the Petitioner and LANCO entered into an Implementation Mechanism on 24.11.2012 modifying the terms and conditions of the PPA. On 26.11.2012, the Petitioner and MP Tradeco/MPPMCL entered into a similar implementation mechanism containing the modified terms and conditions of the PSA.

(f) The Madhya Pradesh Electricity Regulatory Commission vide its order dated 1.12.2012 accorded approval to the process of power procurement under the Settlement Agreement and Implementation Mechanism under Section 86 (1)(b) of the Electricity Act, 2003. Accordingly, scheduling of power from the generating station to MP Tradeco/MPPMCL commenced from 3.12.2012.

(g) Subsequent to receipt of the bill from PGCIL for payment of LTOA charges for the month of December 2012, PTC made the payment to PGCIL and got reimbursement from MP Tradeco/MPPMCL and LANCO. MP Tradeco/MPPMCL vide its letter dated 24.4.2014 informed the Petitioner that PTC had been claiming WRLDC fees and charges as well as the LTOA charges on the basis of full installed capacity while actual injection after deducting the auxiliary consumption was only 273 MW and requested PTC to correct this anomaly by revising the BPTA to the net export quantity of 273 MW from 300 MW.

(h) The Petitioner, vide its letter dated 5.6.2014 informed PGCIL that LTOA was granted by CTU to the Petitioner on total installed capacity of the generating station. However, with the implementation of the provisions of the Connectivity Regulations, CTU is required to allow open access on the net exportable capacity. The Petitioner requested PGCIL to reduce the open access from 300 MW to 273 MW and to levy transmission charges from May 2009.

(i) In the 19th meeting for WR constituents regarding Connectivity/Open Access applications held on 5.9.2014, the issue of reduction of LTA quantum of PTC from 300 MW to 273 MW was discussed. The Petitioner vide its letter dated

3.12.2014 requested CTU to reduce LTA and amend the circulated MOM to reflect the correct position. MPTradeco/MPPMCL vide its letter dated 8.12.2014, informed PGCIL that circulated minutes did not accurately reflect the proceedings with regard to reduction of LTOA.

(j) In the 27th meeting of WPRC held on 19.12.2014, it was agreed to reduce the LTOA of the Petitioner to 273 MW in line with the originally applied quantum for Connectivity and LTOA. Subsequently, on 31.3.2015, PGCIL circulated the minutes of the 20th meeting of the WR constituents regarding Connectivity/Open Access Applications held on 17.2.2015 in which PGCIL recorded that as per the Connectivity Regulations, LTA quantum can only be relinquished fully or partly subject to payment of applicable relinquishment charges.

(k) PGCIL was requested by the Petitioner to implement the decisions of the various meetings of WR constituents with regard to reduction of LTOA. However, PGCIL has taken the position that any reduction in the LTA quantum amounts to surrendering of the LTOA and accordingly, the Petitioner would be liable for payment of the relinquishment charges in accordance with the directions to be issued by the Commission in Petition No. 92/MP/2015. The Petitioner has submitted that the subject matter of Petition No. 92/MP/2015 has no relation to the present petition and the Petitioner is only requesting for alignment of the LTA quantum with the Sharing Regulations for which there is no requirement of payment of relinquishment charges.

3. In the above background, the Petitioner has made the following prayers in the petition:

“(a) Direct the Respondents to reduce the quantum of Open Access from 300 MW to 273 MW from the date of implementation of the transmission charges Regulation, i.e. 1.7.2011;

(b) Direct the Respondent No. 1 to refund the extra transmission charges and fees collected from the petitioner since the date of reduction of the open access quantum;

(c) Pass any other or further order/s as this Commission may deem fit and proper in the facts and circumstances of the present case in the interest of justice.”

4. Notices were issued to the respondents to file their replies. Replies to the petition have been filed by Power Grid Corporation of India Ltd., Lanco Amarkantak Power Limited and M.P. Power Management Co. Ltd. The Petitioner has filed rejoinders to the replies.

Replies of the respondents:

5. LAPL has submitted that during the construction of the generating station, LAPL made an application to CTU for grant of connectivity and long term transfer of power of 230 MW in terms of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2004 (Open Access Regulations, 2004). However, subsequently, LAPL vide its letter dated 18.8.2004 informed CTU that the quantum of power to be transferred to MPSEB would be 273 MW. In the said application, the date of commencement of open access was indicated as February, 2007. LAPL has submitted that during the meeting of the WR constituents held on 26.9.2005, the decision to grant connectivity and long term access was taken in terms

of the Open Access Regulations, 2004. Pursuant to PPA dated 11.5.2005 entered into between LAPL and PTC, the latter made an application to CTU for grant of LTOA for 273 MW as the actual injection after deducting the auxiliary consumption of the generating station. PTC was granted open access on 8.11.2006 for 300 MW in terms of the Open Access Regulations, 2004. Subsequently, the Commission enacted the Sharing Regulations in the year 2010 which came into effect from 1.7.2011. As per the Sharing Regulations, 'approved injection' means the 'net generation' at the bus-bar or any other injection point of the Designated Inter-State Transmission System Customer (DIC) into the ISTS. Therefore, the concept of sharing of transmission charges shifted from the installed capacity to utilization share of the system. Based on the Sharing Regulations, the long term access charges started being levied not on the basis of the installed capacity but on the basis of the actual power being injected into the ISTS. LAPL has submitted that though the Unit-I of the generating station achieved commercial operation on 9.4.2010, PGCIL started raising bills for LTOA from the date of synchronization of Unit-I. However, POC billing to the Petitioner commenced from 1.7.2011 when the new regime for calculation for approved injection came into force. Subsequently, LAPL vide its letter dated 30.4.2014 informed the Petitioner that as specified in Schedule C of the PPA, the contracted capacity of the project at 0.85 power factor is 273 MW. Therefore, the power being injected into ISTS can never be at the installed capacity as the power generating station utilizes 9% of the installed capacity in auxiliary consumption. LAPL has submitted that since the LTOA was operationalized by CTU with effect from 1.5.2009, LAPL has been reimbursing the transmission charges to the Petitioner from 1.5.2009 till 2.12.2012. Pursuant to scheduling of power through the

Petitioner from 3.12.2012 on long term basis to MPPMCL, the Petitioner is responsible for payment of transmission charges and get it reimbursed from MPPMCL.

7. Power Grid Corporation of India Limited, vide its reply dated 16.3.2016, has submitted as under:

(a) CTU vide its letter dated 8.11.2006 communicated the approval for grant of 300 MW LTA to the Petitioner. However, after five years of undisputed LTA operation, the Petitioner vide its letter dated 5.6.2014 requested CTU that since the connectivity and LTA are two separate products in terms of the Connectivity Regulations, LTA should be reduced to 273 MW equivalent to net exportable capacity instead of installed capacity and transmission charges be levied accordingly. The Petitioner's request for reduction in LTA was discussed in the 19th meeting of WR constituents in which it was agreed that the matter would be discussed in the next meeting, after taking into account the regulatory approval and commercial aspects. However, on the contrary, the Petitioner vide its letter dated 10.10.2014 informed CTU that since its request for reduction of LTA quantum was accepted in the 19th meeting, its LTA quantum be reduced and amount already paid be refunded accordingly.

(b) In the 20th meeting held on 30.1.2015, on the petitioner's request for reduction of LTA, CTU stated that as per the Connectivity Regulations, LTA can be relinquished fully or partly subject to payment of applicable relinquishment charges.

(c) It is an admitted fact that the Petitioner had made an application for grant of 273 MW LTA. However, in the LTA meeting of Western Region held on 26.9.2005, the Petitioner was granted 300 MW LTA. Upon grant of 300 MW LTA on 5.3.2007, the Petitioner entered into the BPTA for 300 MW. Article 4 of the BPTA provides for payment of compensation in case of relinquishment of LTA by the Petitioner.

(c) The Commission, vide order dated 28.8.2015 in Petition No. 92/MP/2015 has constituted a Committee to determine the charges to be levied in case of relinquishment of LTA. Therefore, the issue whether reduction on account of 'auxiliary consumption' should be permitted with or without relinquishment charges is *sub-judice* in Petition No. 92/MP/2015. Since, there is no provision exempting reduction in LTA quantum on the basis of 'auxiliary consumption', CTU cannot be faulted for not having acceded to the requests of the Petitioner.

(d) There is no provision in the Connectivity Regulations for reduction in LTA quantum on account of auxiliary consumption and the reduction in LTA Quantum can only be effected if the LTA is relinquished fully or partly subject to payment of applicable relinquishment charges. As per Regulation 18 of the Connectivity Regulations, the process and charges for relinquishment of LTA is a regulatory process which does not carve out any exception with respect to the facts in the present case.

8. M.P. Power Management Company Limited (MPPMCL) has submitted as under:

(a) Due to certain disputes, the PPA dated 11.5.2005 entered into between the Petitioner and LAPL and the PSA dated 30.5.2005 entered into between the Petitioner and MPPMCL were terminated on 14.3.2008 and 10.8.2009 respectively. COD of Unit-1 of the LAPL's generating station was declared on 9.4.2009.

(b) MPPMCL, LANCO and the Petitioner signed a Settlement Agreement on 16.10.2012 to settle the disputes, followed by an Implementation Mechanism for PPA and PSA containing the modified terms and conditions of the PPA and PSA dated 24.11.2012 and 26.11.2012 respectively. Accordingly, on 3.12.2012 scheduling of power commenced from unit-1 to the State of Madhya Pradesh.

(c) MPPMCL, vide its letter dated 24.4.2014, informed the Petitioner that the WRLDC Fees and Charges as well as LTOA charges were being claimed by the Petitioner on the basis of full installed capacity of the plant, i.e. 300 MW, whereas the actual injection after deducting the auxiliary consumption was only 273 MW. In turn, the Petitioner and PTC informed PGCIL that at the time of obtaining LTOA for the project, the LTOA was granted on total installed capacity of the generating station instead of the injecting capacity. Accordingly, in light of the Connectivity Regulations, request was made to PGCIL to reduce the open access from 300 MW to 273 MW and to levy transmission charges accordingly.

(d) MPPMCL vide its letter dated 2.9.2015 informed PGCIL that the excess transmission charges billed and collected by PGCIL are increasing the landed

cost of power to MP periphery and causing undue burden on the consumers of the State.

(e) The prayer of the Petitioner for reduction of LTOA from 300 MW to 273 MW should be accepted by the Commission and PGCIL be directed to refund the extra transmission charges and fee collected from the Petitioner from the date of commencement of power supply along with the penal interest.

9. The Petitioner in its rejoinder has reiterated the submissions made in the petition and has submitted that in the Annexure 4 to the Petition No. 92/MP/2015, only two scenarios have been referred to: *Firstly*, where both the points of injection and drawal have changed; and *secondly* where only point of drawal changes. There is nothing regarding the relinquishment due to reduction of the approved injection by factoring in auxiliary consumption. The Petitioner has submitted that at the time of making of application for grant of LTA, Unit-1 was planned and the entire capacity of Unit-1 i.e., 300 MW was dedicated to MPSEB, the predecessor of MPPMCL, and the actual supply can only be the net of the auxiliary consumption. The Petitioner has submitted that LAPL has never scheduled more than 273 MW power to MPPMCL.

Analysis and decision:

10. We have considered the submissions of the Petitioner and the Respondents. The following issues arise for our consideration:

(a) Whether the LTA granted to the Petitioner should be considered as 300 MW as per installed capacity or 273 MW after adjusting the auxiliary consumption?

(b) If the LTA is considered as 273 MW, whether the Petitioner is required to pay the relinquishment charges for the quantum of LTOA reduced?

(c) Whether the transmission charges already paid for LTOA over and above 273 MW be refunded to the Petitioner?

Issue No.1: Whether the LTA granted to the Petitioner should be considered as 300 MW as per installed capacity or 273 MW after adjusting the auxiliary consumption?

11. LAPL has set up a 300 MW coal based thermal generating station. The Petitioner entered into a Power Purchase Agreement with LAPL on 11.5.2005 for purchase of 300 MW power. On 30.5.2005, the Petitioner entered into a Power Sales Agreement with MP Tradeco, the successor of MPSEB, for sale of 300 MW power. The Petitioner made an application for grant of open access to CTU on 22.12.2005 indicating the following requirements as per the format prescribed by CTU:

Details of Power Transfer equipment			
I.	Quantum of power to be transmitted (MW)		273 MW
II	Peak load to be transferred		273 MW
III	Average load to be transferred		250 MW
IV	Name(s) of injecting utility		Lanco Amarkantak Power Pvt. Ltd
a)	Point(s) of Injection of Power		Project Bus to 400KV Korba-Sipat S/C line of Powergrid
b)	Its quantum		300 MW
c)	Voltage level of the EHV Substation (Nearest EHV Substation and ownership of EHV Substation)		NA
d)	Name(s) of the concerned SLDC		Chhattisgarh SLDC Raipur
V	Name(s) of the drawee utility		MPSEB
a)	Point(s) of drawal of Power		All points where the interconnection between MP and POWERGRID
b)	Its quantum		300 MW

c)	Voltage level of the EHV substation (Nearest EHV substation and ownership of EHV substation)	400kv Sub-Stations of POWERGRID and MP
d)	Name(s) of the concerned SLDC	Madhya Pradesh SLDC
Note : In case of mismatch between quantum of power injected and drawal, then detail of balance power to other beneficiaries should be furnished		

12. The application of the Petitioner was discussed in the meeting of the WR Constituents at WREB, Mumbai held on 26.9.2005. In the said meeting, the following decision was taken:

“4. It was informed by POWERGRID that M/s Lanco Amarkantak has subsequently modified the expected commissioning schedule of the proposed generation project as March, 2008. Further, MPSEB vide its letter dated 28.2.2005 informed that MPSEB will be drawing power at all points where the interconnection between MP and POWERGRID system exists. Copies of letters in this regard are enclosed at Annexure-2 & 3 respectively. Therefore, in regard to Generation capacity and allocation of power to beneficiary, the following details have been taken into account:

S.No.	Gen Capacity (MW)	Pt. of injection (Quantum to be transferred) MW	Point of drawl
1.	Pathadi TPS, Madhya Pradesh-300 MW Generation set-up voltage:400 kV	400 kV Korba-Raipur line 3 from NTPC Korba switchyard (273 MW)	Interconnection points between POWERGRID and MPSEB

5. POWERGRID informed that based on the information, following strengthening in the inter-State transmission system in Western Regional Grid is proposed for transfer of power from Pathadi TPS to MPSEB:

* LILO of 400 k V Korba-Sipat S/C line at Pathadi generation switchyard.

Estimated cost-Rs. 35 crore

The proposed transmission system being dedicated system for evacuation of power from the Pathadi generation project, same shall be built and entire cost shall be borne by M/s Lanco Amarkantak.

6. MPSEB vide their letter dated 28.2.2015 requested POWERGRID to give credit to MPSEB in their wheeling charges to be paid by MPSEB for evacuation of power through the interconnections between Chhattisgarh & MP. In this regard, Member (PS), CEA

mentioned that this is a separate issue not linked with Open Access and if desired by MPSEB, same may be taken up at the appropriate forum.

7. Further it is deliberated that since entire generation of 300 MW shall be interconnected with Western Region (WR) Grid and above transmission of power involves utilization of WR Grid, M/s Lanco Amarkantak shall share the WR Tr. (transmission) charges (as per CERC norms) corresponding to the entire generating capacity of 300 MW, which shall relieve the burden on the existing constituents of WR. M/s Lanco Amarkantak agreed for the same.

8. *After deliberation, the following was agreed-*

** M/s. Lanco Amarkantak be provided Open Access with reference to their long term open access application for 25 years for inter-state transmission system of Western Region.*

- *Open access to M/s. Lanco Amarkantak shall be granted from the date of commissioning of the Pathadi (300 MW) generation project which is expected by March 2008 and also availability for above identified Tr. Strengthening scheme including signing of BPTA with POWERGRID by M/s. Lanco for sharing of WR transmission charges corresponding to 300 MW power” (emphasis supplied).*
- *The proposed transmission system strengthening scheme being dedicated system for evacuation of power from the Pathadi generation projection, same shall be built and entire cost shall be borne by M/s Lanco Amarkantak.”*

13. It is observed from the application for LTOA made by the Petitioner that while the quantum of power to be transferred and peak load to be transferred have been mentioned as 273 MW, the quantum at the point of injection of power and quantum at the point of drawal of power have been mentioned as 300 MW, corresponding to the installed capacity of the unit of the generating station. In the WREB meeting held on 26.9.2005, PGCIL informed that the generation capacity of Pathadi TPS was 300 MW and the quantum of power to be transferred at the injection point (400 kV Korba-Raipur line 3 from NTPC Korba switchyard) was 273 MW. In the meeting, it was deliberated that since the entire generation capacity would be interconnected to the WR grid, the generating station would be required to pay the transmission charges corresponding to 300 MW. It was decided that open access would be granted to LAPL for a period of 25 years from the date of commissioning of Pathadi TPS and LAPL would be required to

pay the transmission charges for 300 MW. In terms of the said decision, the Petitioner was granted the LTOA and the Petitioner entered into BPTA dated 5.3.2007 with CTU for LTOA of 300 MW. Pathadi TPS was declared under commercial operation on 9.4.2009. PGCIL started raising bills for transmission charges corresponding to 300 MW with effect from May 2009 and the Petitioner was making the payment accordingly.

14. The PPA dated 11.5.2005 entered into between the Petitioner and LAPL and the PSA dated 30.5.2005 entered into between the Petitioner and MPPMCL were terminated on 14.3.2008 and 10.8.2009 respectively. Subsequently, MPPMCL, LANCO and the Petitioner signed a Settlement Agreement on 16.10.2012 to settle the disputes, followed by an Implementation Mechanism for PPA and PSA containing the modified terms and conditions of the PPA and PSA dated 24.11.2012 and 26.11.2012 respectively. On 3.12.2012 scheduling of power commenced from Pathadi TPS to the State of Madhya Pradesh. MPPMCL vide its letter dated 24.4.2014 requested the Petitioner to take up the matter with PGCIL in order to correct the anomaly by revising the quantum mentioned in the BPTA to the net export quantity of 273 MW. The Petitioner, vide its letter dated 5.6.2014, requested PGCIL to reduce 300 MW LTOA to net export capacity of 273 MW after deduction of 9% auxiliary consumption with effect from 1.5.2009. Relevant portion of the said letter is extracted as under:

“Lanco Amarkantak Power Project Unit-1 comprises of one unit of 300 MW i.e. the installed capacity of the project is 300 MW. As per CERC Regulations, auxiliary consumption of the project is specified as 9% of the capacity. After reducing auxiliary consumption from the project, net capacity arrived at generator bus is 273 MW and the same is also available for scheduling purpose, whereas charges paid to PGCIL is for capacity of 300 MW.

In view of the above, we request you to reduce the BPTA /LTOA capacity from 300 MW to net export capacity of 273 MW, after reduction of 9% auxiliary consumption as already mentioned in the LTOA application, with effect from May 1st, 2009. You are also

requested to arrange refund or adjustment of the excess LTOA charges from May 1st, 2009 onwards from the forthcoming LTOA invoices (LANCO-MP-LTOA) accordingly.”

15. The Petitioner has submitted that even though the Petitioner had applied for LTA for 273 MW, it was decided in the WREB meeting that LTA would be granted for the installed capacity as per the CERC norm to which LAPL agreed. We are of the view that none of the parties have explained as to the provisions of the regulations under which the LTA quantum to be granted should be equal to the installed capacity. The issue of reduction of LTOA granted to the Petitioner was discussed in the WRPC meeting held on 22.11.2014 and the relevant portion of the minutes of the said meeting is extracted as under:

“19.2 Reduction of LTOA in respect of Lanco Amarkantak

PGCIL representative as regards to revision LTOA quantum of Lanco Amarkantak from 300 MW to 273 MW as requested by PTC, informed that the same has been accepted in SCM. However, MoM is awaited.

WR beneficiaries opined that if Lanco Amarkantak had applied LTOA for 300 MW then the quantum of reduction in LTOA may have the financial implications as per the provisions of the relevant CERC Regulations.

PGCIL representative informed that before the grant of connectivity, 2009 Regulations of CERC, it was in general a practice to grant LTOA alongwith connectivity to a new generator on the proposed installed capacity. Accordingly, Lanco Amarkantak was granted connectivity with an LTOA for the gross installed capacity (300 MW) and not the ex-bus capacity, though Lanco Amarkantak has applied to LTOA of 273 MW.

WRPC agreed for reduction in LTOA quantum of Lanco Amarkantak from 300 MW to 273 MW, since Lanco Amarkantak/PTC, originally, has applied for connectivity and LTOA of 273 MW only.”

Thus, PGCIL has explained that prior to the Connectivity Regulations, it was a general practice to grant LTOA alongwith connectivity to a new generator on the proposed installed capacity. It was agreed in WRPC that since the Petitioner had originally applied for connectivity and LTOA for 273 MW, LTA of the Petitioner would be reduced to 273 MW. Therefore, there was no statutory basis for granting the LTOA

corresponding to installed capacity, even though the application was made for a capacity lower than the installed capacity after adjusting the auxiliary consumption.

16. The Petitioner was granted LTOA under the Open Access Regulations, 2004. Regulation 2(b) of the Open Access Regulations, 2014 defines "allotted transmission capacity" as under:

"2(b) Allotted transmission capacity means the power transfer in MW between the specified point (s) of injection and point (s) of drawal allowed to a long term customer on the Inter-State transmission system under normal circumstances and the expression "Allotment of transmission capacity" shall be construed accordingly".

As per the above provision, allotted transmission capacity shall mean the power transfer allowed to a long term transmission customer between the specified point of injection and specified point of drawal on the inter-State transmission system under normal circumstances. The Petitioner had indicated 273 MW as the capacity for which LTOA was required. This figure has been arrived at after accounting for 9% auxiliary consumption. Since auxiliary consumption is consumed at the generating station, only the capacity net of auxiliary consumption can be scheduled between the point of injection and point of drawal. Therefore, allotment of transmission capacity under the LTOA should be net of auxiliary consumption, in the present case 273 MW. In fact, WRPC has agreed to reduce the LTOA quantum from 300 MW to 273 MW in line with the LTOA application of the Petitioner. The fact that as per the earlier decision of WREB, the Petitioner has entered into a BPTA for 300 MW cannot be held against the Petitioner and the anomaly that has been brought into the LTOA and BPTA by not granting the LTOA for the quantum applied for needs to be corrected.

17. In our view, the Petitioner had applied for LTOA for 273 MW after deducting the auxiliary consumption from the installed capacity of 300 MW of Pathadi TPS of LAPL which was overlooked at the time of granting LTOA. Since the Petitioner could inject power into ISTS for the capacity net of the auxiliary consumption, the Petitioner has been burdened with the transmission charges for the capacity corresponding to auxiliary consumption. We direct that the LTOA/LTA of the Petitioner be reduced from 300 MW to 273 MW.

Issue No.2: If the LTOA/LTA is considered as 273 MW, whether the Petitioner is required to pay the relinquishment charges for the quantum of LTOA reduced?

18. The Petitioner has submitted that pursuant to the decision in WRPC meeting to reduce the LTA from 300 MW to 273 MW, the Petitioner has been requesting the PGCIL to grant it relief for the same but PGCIL is insisting on payment of relinquishment charges for the reduced quantum of LTOA. PGCIL has submitted that in the LTA meeting of Western Region held on 26.9.2005, the Petitioner was granted 300 MW LTA and upon grant of 300 MW LTA on 5.3.2007, the Petitioner entered into the BPTA for 300 MW. Article 4 of the BPTA provides for payment of compensation in case of relinquishment of LTA by the Petitioner. PGCIL has submitted that there is no provision in the Connectivity Regulations for reduction in LTA quantum on account of auxiliary consumption and the reduction in LTA Quantum can only be effected if the LTA is relinquished fully or partly subject to payment of applicable relinquishment charges. PGCIL has submitted that since, there is no provision exempting reduction in LTA quantum on the basis of 'auxiliary consumption' from payment of relinquishment charges, CTU cannot be faulted for not having acceded to the requests of the Petitioner. PGCIL has further submitted that the Commission, vide order dated 28.8.2015 in

Petition No. 92/MP/2015, has constituted a Committee to determine the charges to be levied in case of relinquishment of LTA. Therefore, the issue whether reduction on account of 'auxiliary consumption' should be permitted with or without relinquishment charges is *sub-judice* in Petition No. 92/MP/2015 and the request of the Petitioner will be decided in the light of the decision in Petition No.92/MP/2015.

19. We have considered the submission of the parties. In our view, reduction of the LTOA/LTA quantum from 300 MW to 273 MW cannot be considered as relinquishment of LTA in terms of Regulation 18 of the Connectivity Regulations. The Petitioner's case is not that it applied for LTOA for 300 MW and now it seeks revision of LTOA to 273 MW after reducing auxiliary consumption. On the other hand, the Petitioner's case is that it applied for LTOA for 273 MW after reducing the auxiliary consumption from the installed capacity of 300 MW, but based on the decision in NREB, the Petitioner was granted LTOA corresponding to the installed capacity. We have noticed that there was no statutory basis for granting LTOA corresponding to the installed capacity. Even, as per the statement of PGCIL recorded in the minutes of WRPC meeting held on 22.11.2014, it was a general practice to grant LTOA alongwith connectivity corresponding to the installed capacity. Thus, the LTOA quantum granted to the Petitioner and included in the BPTA was the result of the decision in WREB and not as per the LTOA application of the Petitioner. What the Petitioner has sought is rectification of the LTOA quantum in the BPTA corresponding to the capacity for which LTOA was applied for. In our view, the case of the Petitioner is not covered under Regulation 18 of the Connectivity Regulations and the Petitioner is not required to pay any relinquishment charges for seeking the reduction of LTOA quantum corresponding to the capacity applied for.

Since the issues involved in Petition No.92/MP/2015 relate to determination of stranded capacity on account of relinquishment of LTOA/LTA and the quantum of relinquishment charges that is required to be charged in accordance with Regulations 18 of the Connectivity Regulations, the decision in the said case is not relevant to the decision on the prayers of the Petitioner in the present case. PGCIL has clearly fallen into error by holding that the prayer of the Petitioner would be decided in the light of the decision in Petition No.92/MP/2015.

Issue No.3: Whether the transmission charges already paid for LTOA over and above 273 MW be refunded to the Petitioner?

20. The Petitioner has been paying the transmission charges for 300 MW whereas the injectible capacity of the Pathadi TPS is only 273 MW after accounting for the auxiliary consumption. In other words, the Petitioner has been paying the transmission charges for 27 MW capacity on account of auxiliary consumption for which transmission capacity is not utilized by the Petitioner. The Petitioner has sought a direction to PGCIL to reduce the LTOA/LTA quantum from 300 MW to 273 MW from the date of implementation of the Sharing Regulations i.e. from 1.7.2011. Though, the date of commercial operation of the generating station was 9.4.2009, in the light of the specific prayer of the Petitioner to effect reduction from 1.7.2011, we direct that the LTOA quantum of the Petitioner shall be reduced from 300 MW to 273 MW with effect from 1.7.2011 and the corresponding provisions in the BPTA and TSA shall be deemed to have been amended accordingly. The Petitioner shall be entitled to refund of transmission charges corresponding to 27 MW with effect from 1.7.2011. The charges towards such refund shall be adjusted from the amount collected through Short Term

Open Access within a period of 6 months from the issue of the order after off-setting the benefit of STOA charges received by the petitioner, if any.

21. The petition is disposed of in terms of the above directions.

Sd/-
(Dr. M.K.Iyer)
Member

sd/-
(A.S.Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson