

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 60/RP/2016

in

Petition No. 10/SM/2014

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Dr. M.K. Iyer, Member

Date of Order: 19th December, 2017

In the matter of

Review Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for review of order dated 30.6.2016 in Petition No.10/SM/2014.

And

In the matter of

1. Power Company of Karnataka Ltd.
KPTCL Building, Kaveri Bhawan,
K.G.Road, Bangaluru-560 009
2. Bangalore Electricity Supply Company Ltd.
K.R.Circle, Bangaluru-560 001
3. Mangalore Electricity Supply Company Ltd.
Paradigm Plaza, AB Shetty Circle,
Mangalore-575 001
4. Gulbarga Electricity Supply Company Ltd.
Station Main Road, Gulgarga-585 102
5. Hubli Electricity Supply Company Ltd.
Navanayar, PB Road,
Hubli-580 025
6. Chamundeshwari Electricity Supply Company Ltd.
No. 927, LJ Avenue, New Kantharaja,
Urs Road, Sarwathipuram, Mysore-570 009

.....Petitioners

Vs

1. Southern Regional Load Despatch Center
29, Race Course Road,
Bengaluru - 560009



2. National Load Despatch Center
B-9, Qutab Institutional Area, Katwaria Saria,
New Delhi – 110016

3. Central Transmission Utility (CTU)
Saudamini, Plot no. 2, Sector-29,
Gurgaon-122001

4. Southern Region Power Committee (SRPC)
29, Race Course Cross Road,
Bengaluru - 560009

5. Udupi Power Corporation Ltd.
Second Floor, Le-Parc Richmonde,
51, Richmond Road, Bengaluru-560025

6. Punjab State Power Corporation Limited
The Mall,
Patiala - 147001

7. Karnataka Power Transmission Corporation Ltd
Kaveri Bhavan, K.G.Road,
Bengaluru – 560009

...Respondents

Following were present:

Ms. Swapna Seshadri, Advocate, PCKL
Ms. Suparna Srivastava, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL

ORDER

The present Review Petition has been filed by Power Company of Karnataka Ltd.(PCKL) and ors. under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 103 (1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking review of the order dated 30.6.2016 in Petition No. 10/SM/2014 wherein the Commission held that the Review Petitioner is liable to pay transmission charges for the period from 1.7.2011 to 30.4.2015 for deemed operationalization of long term open access to the extent of 939 MW, despite the fact that no LTA was ever given to the Review Petitioner.



2. Aggrieved by the said order dated 30.6.2016, the Review Petitioners have filed this petition seeking review on the following issues:

(i) Liability to pay from 1.7.2011 is against Regulation 8 (6) of the Sharing Regulations;

(ii) Liability to pay for 94 MW (share of PSPCL) is against Regulation 8 (6) of the Sharing Regulations;

(iii) Liability to pay for the entire tariff of Mysore Hassan System is against Annexure-1 of the Sharing regulations.

Submission of the Petitioners

3. The Review Petitioners vide affidavit dated 4.10.2016 have submitted as under:

(a) The Commission's decision is against the express provisions of the Sharing Regulations and also there are several errors apparent on the face of record in computing the LTA Quantum, date of levy of charges, etc.

(b) The Commission in para 4 of the order has noted the submissions of KSEB wherein it is clearly stated that since there is no power allocated to KSEB as a pre- condition for its consent, Mysore-Hassan line as Regional Strengthening Scheme is no more valid. The fact is that on 18.10.2009, the review petitioners had clarified that they did not require to apply for LTA since the power from the Udupi Power Corporation Limited (UPCL) would be evacuated from the 400 KV lines being constructed by KPTCL and that the Hassan-Mysore line is also catering the needs of Kerala through 400 kV D/C Kozhikode lines and 220 KV S/C Mysore-Kaniyampet line. As per Regulations 4.1 and 4.3 of the CERC (Indian Electricity Grid Code) Regulations, 2010 LTA was not required by the review petitioners

(c) At Para 7 of the Order dated 30.6.2016, the Commission has noted the submissions of the CTU regarding the details of the LTA wherein it has clearly stated that the power was to be evacuated through the Kemar line of KPTCL and that the Hasan-Mysore 400 kV D/c line is under the regional system strengthening scheme. The fact is that UPCL sought LTA for 939 MW out of which the share of the Review Petitioners i.e. 845 MW is being evacuated through the UPCL-Hassan & UPCL- Kemar lines and the LTA was only required to give the 94 MW by UPCL to PSPCL. The Review Petitioners did not require any LTA.

(d) CTU in its reply had also clearly stated that there was no need for the Review Petitioners to sign the LTA in the present case. Further, there is no provision in the Sharing Regulations or the Connectivity Regulations which provide for the concept of deemed open access. It cannot be that open access is deemed to be granted or operationalised without applying for the same, signing of BPTA / TSA specific to such a corridor and without following the other procedures provided in the Connectivity Regulations. Therefore, the levy of charges on the Petitioners is against the provisions of the Regulations and is bad in law.

4. The Review Petitioners have further submitted that there are several errors in the Order dated 30.6.2016 wherein specific provisions of the Regulations have been ignored and the same has been detailed as under:



Liability to pay from 1.7.2011 is against Regulation 8 (6) of the Sharing Regulations

5. The Review Petitioners have mainly submitted as under:

(a) CTU had contended that the open access would be effective from the later of the following dates:

- (i) Date of commissioning of the generation project i.e. 19.8.2012;
- (ii) Date of commissioned of the dedicated transmission system i.e. 25.8.2012;
- (iii) Date of signing of the tariff agreement.

(b) In terms of Regulation 8 (6) of the Sharing Regulations the PoC charges cannot be levied prior to commissioning of the generating station on the review petitioners and charges for the period 1.7.2011 to 19.8.2012 have to be paid by UPCL.

Liability to pay for 94 MW (share of PSPCL) is against Regulation 8 (6) of the Sharing Regulations

6. The Review Petitioners have submitted that in Para 11 of the order dated 30.6.2016, the Commission has noted the submissions of PSPCL and stated that since no power is flowing, no charges should be levied on PSPCL. However, Regulation 8 (6) of the Sharing Regulations states that the charges payable by such generators for such Long Term supply shall be billed directly to the respective Long Term customers based on their share of capacity in such generating stations. Therefore, for 94 MW which is the share of PSPCL, there can be no question of levying the charges on the review petitioners. These charges need to be paid either by UPCL or by PSPCL and this is also fortified by Article 4.9 of the PPA. The Petitioner has further submitted that out of the total quantum of 939 MW about 280 MW is being evacuated through 2x220kV UPCL-Kemar line which is owned by Karnataka. Therefore, effective power being transmitted through the 400 kV line is only 659 MW and out of this, 94 MW is the share of power of PSPCL and the share of ESCOMs of Karnataka is 565 MW.

Liability to pay for the entire tariff of Mysore-Hassan system is against Annexure-I of the Sharing Regulations

7. The Review Petitioners have submitted that at Para 14 of the order dated 30.6.2016, the Commission has noted the submissions of CTU that the Hassan-Mysore 400 kV D/C transmission line has been commissioned as a regional strengthening scheme. This has been agreed to by all the beneficiaries in the 24th Standing Committee Meeting of SR on 18.6.2007 and the 6th Meeting of SRPC on 15.2.2008. None on the beneficiaries have challenged this position. Sharing Regulations Annexure-I clearly provide that the YTC for system strengthening schemes shall be billed through the POC Mechanism. Therefore, the SRPC Minutes cannot be ignored and levy the entire charges on the Petitioner. These aspects decided by the Commission are against the specific provisions of the Sharing Regulations itself. It is submitted that primacy has been given to the Statutory Regulations by the Supreme Court in PTC India vs. CERC (2010) 4 SCC 603. Further, if the Regulations have been notified, they are binding on all including the Commission. Therefore, if the statutory Regulations provide for a particular manner of recovery, the same should be followed and is binding on all including this Commission.

8. The Review Petitioners have further submitted that if the charges for 934 MW are computed as per Para 41(c) of the Order dated 30.6.2016, the amount payable to PGCIL for the period of 46 months works out to approximate about ₹323 crore considering PoC least injection slab rate of SR as per the prevailing orders of the Commission. However actual PoC charges including any other charges may work out to larger amount for a period of 46 months. The transmission tariff approved by the Commission for the Mysore-Hassan Transmission system vide Order dated 11.3.2013 in Petition No. 190/TT/2011 is ₹57 crore for a period of 36 months. However, as a result of the calculation and imposition of POC on the Review Petitioners, amount of ₹323.80



crore is being paid for the use of the same asset. This is beyond any reason and will lead to unjust enrichment at the cost of the consumers in the State of Karnataka.

9. The Review Petition was admitted vide order dated 15.12.2016 and notices were issued to the respondents with directions to file replies. The Respondents, Udupi Power Corporation Limited (UPCL), Southern Regional Power Committee (SRPC) and Central Transmission Utility (CTU) have file their replies in the matter and the Review Petitioners have filed their rejoinder to the said replies.

Reply of UPCL

10. UPCL vide affidavit dated 29.12.2016 has submitted as under:

(i) The 400 kV dedicated transmission line from UPCL generating station to Hasan sub-station of CTU was commissioned by KPTCL on 25.8.2012, whereas Unit-II of UPCL has achieved COD on 19.8.2012. Therefore, UPCL's generating station was not connected to either 400 kV dedicated transmission line of KPTCL and/or CTU system as on COD of Unit-II. Hence, CTU system was not utilized by UPCL prior to commercial operation of the generating station. In view of the above, UPCL shall not be held liable to pay any transmission charges to CTU prior to COD of Unit-II i.e. 19.8.2012.

(ii) UPCL had supplied entire capacity of 1200 MW to Karnataka ESCOMs till 3.6.2016. Further UPCL has commenced the supply of Contracted Capacity of 11 MW to MUPL from 4.6.2016 under STOA by duly paying open access charges to CTU and STUs as per applicable regulations.

(iii) The share of PSPCL in UPCL's power station is being supplied to the Review Petitioner and hence the Review Petitioner is the beneficiary for 94 MW in addition to its share of 845 MW. Since there is a beneficiary for 94 MW capacity and UPCL cannot be held liable to pay transmission charges for such capacity.

Reply of Southern Regional Power Committee (SRPC)

11. SRPC vide affidavit dated 11.1.2017 has submitted as under:

(i) Para 15 in the Review Petition by PCKL, states that whatever are the charges for the period 1.7.2011 to 19.8.2012 (COD of Unit-2) have to be paid by the generator directly. However, the APTEL in its judgment dated 15.5.2015 in Appeal No.108 of 2014 has stated that delay in commissioning of the 400 kV line, which was the

responsibility of PCKL, resulted in capacity of UPCL being stranded even though it was ready for generation.

(ii) At para 36 of the Order dated 30.6.2016 in Petition No. 10/SM/2014, 400kV D/C Hassan – Mysore transmission line was planned as Associated Transmission System of UPCL's generating station for evacuation of power to the beneficiaries. Hence, beneficiaries are required to pay the transmission charge for the above line from its CoD, i.e., 1.7.2011.

(iii) Para 41 (b) in the Order in Petition No. 10/SM/2014 dated 30.6.2016 states that since Karnataka ESCOMs were drawing power from UPCL corresponding to their share (845 MW) as well as share of PSPCL (94 MW), they shall be liable to pay the POC injection charges for the LTA quantum granted to both Karnataka and PSPCL and POC drawal charges for the LTA quantum granted to PSPCL.

12. The Review Petitioners vide affidavit dated 13.1.2017 have filed additional information as under:

(a) ESCOMs of Karnataka have received a bill of ₹34.62 crore for October, 2016 and ₹34.62 crore for November, 2016 considering the LTA of UPCL.

(b) The SRPC vide letter dated 20.10.2016 has informed POWERGRID that the total amount to be recovered from the Review Petitioners is ₹298.76 crore for the period from 1.7.2011 to 30.4.2015.

(c) The transmission tariff approved by the Commission for the Mysore-Hassan Transmission system vide order dated 18.2.2016 in Petition No. 492/TT/2014 for the period 2011-2014 and 2014-2015 (from 1.7.2011 to 31.3.2015) is ₹75.60 crore. However, as a result of the calculation and imposition of POC on the Review Petitioners are now being asked to pay ₹298.76 crore for the use of the same asset. This is beyond any reason and will lead to unjust enrichment at the cost of the consumers in the State of Karnataka.

(d) The Review Petitioners under the threat of disconnection have paid the amounts under protest and accordingly, prayed that the Commission may direct POWERGRID not to recover any other amounts till the time the present review petition is decided by the Commission.

(e) 94 MW is the LTA allocated to PSPCL and in case this is not required by PSPCL, PSPCL should relinquish the LTA as per Regulation 18 of the Connectivity Regulations.

(f) As per load flows in the network, it is observed that the load of 460 MW is being drawn through 400kV D/C Mysore-Khozhikode line to Kerala and around 80 MW through 220kV S/C Mysore- Kaniyampet line. Hence, the Hassan-Mysore 400kV line

has to be considered as regional strengthening scheme and charges shall be borne by all beneficiary of southern region.

(g) As per the actual load flows, out of the total LTA quantum of 939 MW, 424 MW of power flows through 2x220kV UPCL-Kemar line owned by Karnataka. Hence, effective power transmitted through the 400kV Hassan-Mysore line is 515 MW. Out of this, 94 MW is the share of power of PSPCL. Hence the share of ESCOMs of Karnataka works out to 421 MW. Hence, it is prayed to revise LTA quantum to 421 MW instead of 939 MW.

Rejoinder to the reply of UPCL

13. The Review petitioner vide affidavit dated 13.3.2017 have submitted its rejoinder to reply of UPCL as under:

(a) One of the principle contentions is that the delay in the commissioning of its generating station has been condoned as having been due to force majeure reasons. Such condonation was in the context of time overrun and IDC / IEDC in the process of tariff determination by this Commission and thereafter in appellate proceedings before the APTEL.

(b) UPCL has wrongly relied on the decision of the APTEL in Appeal No.108 of 2014, wherein the issue was in regard to condonation of delay in commissioning of generating station of the UPCL Unit-II. However in the present petition the issue is with regard to liability of the Petitioners to pay charges from 1.7.2011, when COD of the generating plant of UPCL is 19.8.2012. The main contention is that POC charges are not payable at all since there is no concept of retrospective operationalisation of open access. Without prejudice to the same, in any event the charges cannot be levied prior to 19.8.2012 on the Petitioners and charges for the period 1.7.2011 to 19.8.2012 have to be paid by the UPCL.

(c) UPCL is an embedded generator in the State of Karnataka and LTA was required only for quantum of power tied up with PSPCL for the share of 94 MW and LTA was not required for 1080 MW power share of the petitioner. Further, the charges ought not to be levied on all the Petitioners as out of the total quantum of 939 MW about 424 MW is being evacuated through 2x220kV UPCL-Kemar line owned by Petitioners. Therefore, effective power being transmitted through the 400 kV line is only 515 MW out of which 94 MW is the share of PSPCL and accordingly, the share of Petitioners works out to 421 MW.

(d) In this background, the LTA allocated to NR is for the share of 94MW power of PSPCL from UPCL power plant and they are the long term customer. PSPCL has not filed any application as per regulation 18 of the Connectivity Regulations for Relinquishment of access rights. In the absence of such procedure, PSPCL has to pay the charges w.r.t. the 94 MW contracted capacity as per Regulation 8(6) of the Sharing Regulations.



Rejoinder to the reply of SRPC

14. The Review petitioners vide affidavit dated 13.3.2017 have reiterated its submissions made in rejoinder to the reply filed by UPCL and mainly submitted as under:

(a) The Hassan- Mysore 400 kV D/C transmission line was developed as a system strengthening scheme and not to cater to any particular distribution company/companies. This has been agreed by all the beneficiaries in the 24th Standing Committee Meeting of Southern Region on 18.6.2007 and the 6th Meeting of SRPC on 15.2.2008. In given circumstances, the SRPC Minutes cannot be ignored based on the reply now filed by SRPC.

(b) SRPC has no basis to claim that the COD of UPCL is 1.7.2011, since, the generating station got commissioned on 19.8.2012. Accordingly, the charges cannot be levied prior to 19.8.2012 and charges for the period 1.7.2011 to 19.8.2012 have to be paid by the UPCL as per the Regulation 8 (6) of the Sharing Regulations.

Reply by CTU

15. CTU vide affidavit dated 27.4.2017 has submitted as under:

(a) The nature of the grievances raised and the pleadings made in the Petition do not show any error apparent on the face of the record. It is an appeal in disguise of a review where the order has been challenged on merits and thus present Review Petition is not maintainable.

(b) UPCL signed PPAs with Karnataka for 845 MW and with Punjab for 94 MW on 26.12.2005 and 29.9.2006 respectively and accordingly applied to CTU for grant of LTA for evacuating power from its project to the two beneficiaries. The said application was discussed in the 24th Meeting of Standing Committee on Power System Planning in SR held on 18.6.2007 and the following evacuation scheme was finalized:

a) Dedicated Transmission system for NPCL to be owned, operated and maintained by Nagarjuna Power Corporation Ltd.

- (i) NPCL switchyard - Hasan 400 kV quad D/C line
- (ii) Provision of 1x315 MVA 400/220 kV transformer at NPCL switchyard
- (iii) 220 kV D/C line from NPCL switchyard to local substation, viz. Kemar

b) Transmission system to be taken as Regional Strengthening scheme

- (i) Hasan-Mysore 400 kV D/C line”

(c) LTA was granted to UPCL vide intimation dated 28.6.2007 and UPCL was requested to sign the requisite BPTA for sharing the transmission charges.



(d) In a subsequent meeting held on 18.12.2009, KPTCL informed that the entire power from UPCL was to be evacuated through 400 kV D/C line constructed by it and therefore it was not required to apply for LTA for evacuating the power.

(e) The Petitioner, PCKL has wrongly contended the fact that 400 kV D/C Hassan-Mysore line was a regional line and had been proposed as part of evacuation scheme for UPCL, since injection at Hassan would have overloaded the 220 kV Hassan-Mysore line and was not related to UPCL and that no LTA was required for power evacuation to Karnataka.

(f) LTA had been granted to Karnataka as a whole and the Review Petitioners were aware that the sub-station at Hassan through which the 845 MW was to be evacuated, was not a local sub-station but was that of CTU with a transformation capacity of 2x315 MVA and as such, any power flow through it was necessarily through ISTS.

(g) The Commission in order dated 30.6.2016 had examined the PPAs dated 26.12.2005 and 29.9.2006 entered into by UPCL with Karnataka and PSEB respectively and concluded that it was under the provisions of the said PPAs that KPTCL had developed the power evacuation lines from the generating station to Hassan/Kemar/Kavoor. The 400 kV quad D/c line from the switchyard of UPCL to the 400/220 kV sub-station of CTU at Hassan was thus the transmission line for power evacuation from the project, being built by KPTCL under the terms of the PPA. Therefore, the contention of the Review Petitioners that because power from UPCL was to be evacuated from the 400 kV line constructed by KPTCL (an intra-State line) and therefore no LTA was required for the same, is completely misconceived and cannot be sustained.

(h) In the 14th Meeting of SR constituents held on 27.8.2010, it has been recorded that the 220 kV transmission system to Kemar/Kavoor was to be used for power evacuation till the 400 kV UPCL- Hassan was completed. Therefore, power from UPCL was to be received by Karnataka through the 400 kV UPCL-Hassan line built under the PPA with UPCL, Hassan being a 400/220 kV CTU sub-station and from where the Hassan-Mysore 400 kV line emanated as part of regional strengthening scheme.

(i) Since the scheduling of UPCL is under the jurisdiction of SLDC, therefore the Review Petitioners may be directed to seek scheduling data from SLDC and place the same on Affidavit before this Commission with respect to the scheduling of 18.5 MW share of PSPCL after enhancement of generation capacity. Except for the said 18.5 MW power, the remaining power from UPCL was availed by the Review Petitioners who is liable to share the transmission charges corresponding to the power availed by them including the enhanced quantum for Karnataka and Punjab.

(j) As per the applicable Regulations, if the ISTS identified for the grant of LTA is commissioned and the generation project (inter-alia including dedicated transmission line) is delayed, then the liability for payment of LTA charges lies on the LTA customer. In the instant case, the 400 kV Hassan-Mysore D/c line was commissioned on 1.7.2011. Similarly, the generating units-I and II of UPCL were commissioned on

11.4.2010 and 19.8.2012 respectively and the dedicated line was commissioned on 25.8.2012. Therefore, there is delay in construction of dedicated transmission line vis-a-vis the system strengthening. SRPC Secretariat has recommended that the LTA was required to be operationalized w.e.f 1.7.2011. Accordingly, the liability of payment of LTA charges started from the date of commissioning of system strengthening.

16. In response to reply of CTU, the Review petitioners vide rejoinder dated 29.6.2017 have mainly reiterated its submissions filed in rejoinder to the reply filed by UPCL and SRPC. It is further argued that since UPCL is an embedded generator, they are not liable to pay POC charges. As per Regulation 8 (6) of the Sharing Regulations, the POC charges cannot be levied prior to commissioning of the generating station on the review Petitioners and if any, charges for the period from 1.7.2011 to 19.8.2012 have to be paid by Respondent, UPCL. The Review Petitioners have also denied the contention of CTU that 939 MW was to be injected at Hassan 400 kV/ 220 kV sub-station. It has been claimed that there was ambiguity regarding transfer of power due to which the parties were not ready to sign the BPTA.

17. During the hearing on 6.7.2017, the learned counsel for the respondent, PGCIL submitted that the present petition is not maintainable since the nature of grievances raised in the petition does not indicate any error apparent on the face of the record within the meaning of Order 47 Rule 1 of the Code of Civil Procedure, 1908. It has also submitted that the review petition is an appeal in disguise, where the order of the Commission has been challenged on merits. It has further submitted that it is a settled principle of law that the power of review can be exercised only for correction of a mistake and not to substantiate a view. Accordingly, it has submitted that the petition is liable to be dismissed. The Commission after hearing the parties directed the petitioner to file written submissions on the issue of 'maintainability'.

18. In compliance to the above directions, the Review Petitioners vide affidavit dated 21.7.2017 have filed their written submissions on maintainability and has submitted as under:

(a) As regards liability to pay from 1.7.2011, the Review Petitioner has submitted that there is an error in respect of date of commissioning of the Hassan-Mysore line. The Commission in order dated 30.6.2017 in Petition No. 10/SM/2014 has noted that the date of commissioning of the asset as 1.7.2011, whereas, in the 22nd SRPC Meeting it has been noted that the said line was commissioned on 31.7.2012.

(b) The Petitioner has relied on the judgments of the Hon'ble Supreme Court in *Board of Control for Cricket in India Vs. Netaji Cricket Club* [(2005) 4 SCC 741] and *Lily Thomas Vs. Union of India* [(2000) 6 SCC 224] to contend that the review petition is maintainable on the ground that a mistake of fact amounts to sufficient reason for review.

(c) The Petitioner has contended that making Review Petitioners liable to pay transmission charges before the commercial operation of the generator is i.e. 19.8.2012 is against the Regulation 8 (6) of the Sharing Regulations.

(d) There is a clear discrepancy in the Commission's observations in the said order as Hassan-Mysore line has been considered as "Regional Strengthening Line" in para 25 and para 40 of the order whereas, it is considered as Associated Transmission System in para 36 of the order. This has led to exorbitant increase in transmission charges as compared to transmission tariff approved by the Commission for Hassan-Mysore transmission line.

(e) The Petitioner has claimed that the POC charges applied at Hassan injection point should be based on actual power being injected at Hassan and not at 939 MW considering that 424 MW is also transmitted through 220 kV D/C UPCL-Kemar lines owned by the Review Petitioner.

Analysis and Decision

19. We have considered the submissions made by the parties. Based on the contentions of the Review Petitioners, following issues arise for our consideration:

- (1) Whether the Review Petitioner required LTA?
- (2) What should be the Date of Commercial Operation (CoD) of 400 kV D/C Hassan-Mysore line?
- (3) Whether UPCL is liable to pay Transmission charges from 1.7.2011 to 19.8.2012?
- (4) Is PCKL liable to pay charges for PSPCL share of 94 MW?

(5) Whether liability to pay for the entire tariff of Mysore-Hassan system is against Annexure-I of the Sharing Regulations?

20. The issues raised by the Review Petitioners are considered in the subsequent paragraphs.

Issue No. (1): Whether the Review Petitioner required LTA?

21. Regulation 8 (6) of the Sharing Regulations provides as under:

"(6) For Long Term customers availing supplies from inter-state generating stations, the charges payable by such generators for such Long Term supply shall be billed directly to the respective Long Term customers based on their share of capacity in such generating stations. Such mechanism shall be effective only after "commercial operation" of the generator. Till then, it shall be the responsibility of generator to pay these charges."

22. As per the above provisions, for long term customers availing supplies from inter-State generating stations, the charges payable by such generators for such Long Term supply shall be billed directly to the respective Long Term customers based on their shares of capacity in such generating stations.

23. The Review Petitioners are stated to have clarified on 18.10.2009 that they did not require to apply for LTA since the power from the Udupi Power Corporation Limited would be evacuated from the 400 KV lines being constructed by KPTCL, hence no liability should arise on the Review petitioners.

24. CTU vide affidavit dated 24.7.2014 has submitted that

"UPCL signed PPAs with Karnataka for 845 MW and with Punjab for 94 MW on 26.12.2005 and 29.9.2006 respectively and accordingly applied to CTU for grant of LTA for evacuating power from its project to the two beneficiaries. The said application was discussed in the 24th Meeting of Standing Committee on Power System Planning in SR held on 18.6.2007 and the following evacuation scheme was finalized:"

c) Dedicated Transmission system for NPCL to be owned operated and maintained by Nagarjuna Power Corporation Ltd.

(iv) NPCL switchyard - Hasan 400 kV quad D/C line

(v) Provision of 1x315 MVA 400/220 kV transformer at NPCL switchyard

(vi) 220 kV D/C line from NPCL switchyard to local substation, viz. Kemar

- d) **Transmission system to be taken as Regional Strengthening scheme**
(ii) Hasan-Mysore 400 kV D/C line”

25. We have perused the minutes of the meeting of the 24th Standing Committee from website of CEA and it is observed that the representative of Karnataka was present in the above meeting held on 18.6.2007. However, while the transmission system was being finalized in the Standing Committee, no submission was made by Karnataka that it did not require this LTA. Only thereafter on 18.10.2009, Karnataka had stated that it did not require the LTA. In view of this, it can be concluded that Karnataka was in agreement to have this LTA during deliberations of the 24th meeting of Standing Committee on Power System Planning.

Issue No. (2): What should be the Date of Commercial (CoD) Operation of 400 kV D/C Hassan-Mysore line?

26. The Review Petitioners have submitted that the date of commissioning of Hassan-Mysore line is 31.7.2012 based on the minutes of 20th and 22nd SRPC meeting. It is observed that the Minutes of the said meeting refer to the letter submitted by KSEB wherein, it has been stated that the Hassan-Mysore line was commissioned on 31.7.2012. The content of the KSEB letter was also noted in the Minutes of the 22nd SRPC meeting. The Petitioners have relied solely on the letter of KSEB to contend that the COD of Hassan-Mysore line was 31.7.2012 instead of 1.7.2011. The date of commercial operation of the Hassan-Mysore line was considered by the Commission in order dated 11.3.2013 in Petition No. 190/TT/2011 for determination of tariff from date of commercial operation (1.7.2011) to 31.3.2014 for Hassan-Mysore line. The Commission in the said order further observed as under:

“xxx...Therefore, the subject transmission line was ready for inspection only on 17.6.2011 and it was not ready for energisation as on 16.6.2011. Inspection was

carried out by CEA on 29.6.2011 and certificate was issued on 30.6.2011. The line was put under commercial operation only on 1.7.2011.”

27. Since the said order dated 11.3.2013 with regard to date of COD for Hassan – Mysore line had not been challenged by any parties before any forum, the same has attained finality. In view of this, we find no error apparent on the face of the order as regards the date of commissioning of the Hassan-Mysore line. Therefore, there is no ground for review on this count.

Issue No. (3): Whether UPCL is liable to pay Transmission charges from 1.7.2011 to 19.8.2012?

28. The Commission in order dated 30.6.2016 in Petition No. 10/SM/2014 has observed as under:

“27. We are in agreement with the recommendations of SRPC. In our view, the LTA of UPCL shall be operationalised with effect from COD of 400 kV Hassan-Mysore D/C transmission line i.e. from 1.7.2011 and shall be effective from the same date. LTA has been granted for 939 MW i.e. Karnataka 895 MW and Punjab 94 MW. 400 kV Hassan-Mysore line was commissioned on 1.7.2011. Therefore, payment of transmission charges for the 400 kV Hassan-Mysore line has to commence with effect from 1.7.2011. Further, BPTA has not been signed so far towards LTA sought by Udupi. Despite the non-signing of BPTA, power is flowing on 400 kV Hassan-Mysore D/C transmission line. As submitted by UPCL in SRPC, 845 MW injection at Hassan has been based as per the load flow study of KPTCL. In other words, the ESCOMs of Karnataka have been drawing their shares of power as well as the share of Power of Punjab from Udupi through the 400 kV Hassan-Mysore D/C transmission line. In our view, even though ESCOMs of Karnataka and PSPCL have not signed the BPTA towards LTA sought by Udupi, since the Hassan-Mysore line has been commissioned on 1.7.2011. LTA is deemed to have been operationalized with effect from 1.7.2011.

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30. We have considered the submissions of the respondents. Since, KPTCL and PSPCL have signed PPA with UPCL, they are the Long Term customers of the inter-State generating station of UPCL. It is noted that UPCL had applied to CTU for grant of LTA for 1015 MW with 90% share of Karnataka and 10% share of Punjab. CTU granted LTA to UPCL for 939 MW in the month of June, 2007. However, PSPCL is not availing this power. UPCL has also entered into the PPA with KSEB for supply of 18.5 MW on short term basis on 9.4.2014 for period from 1.6.2014 to 31.5.2015...”

29. The Review Petitioners have contended that in terms of Regulation 8 (6) of the Sharing Regulations, the transmission charges cannot be levied prior to the date of

commercial operation of the generator (19.8.2012) and accordingly, the generator is liable to pay for the charges for the period from 1.7.2011 to 19.8.2012. The respondents UPCL and SRPC have stated that the responsibility of construction of dedicated line was on the Review Petitioner. UPCL vide affidavit dated 29.12.2016 has stated that APTEL vide its judgment dated 15.5.2015 in Appeal No. 108 of 2014 had upheld the decision of this Commission to condone the delay in the commissioning of Unit-II which was the responsibility of the PCKL.

30. We have considered the submissions of the parties. It is observed that the first unit of generating station was declared under commercial operation on 11.11.2010 and the second unit on 19.8.2012. UPCL vide affidavit dated 29.12.2016 has stated that the delay of 16 months (April 2011 to August, 2012) in the commissioning of Unit-2 is due to delay on the part of PCKL whose responsibility was to ensure 400 kV lines from UPCL switchyard. Hence, we are not inclined to consider any relief on this account.

Issue No. (4): Is PCKL liable to pay charges for PSPCL share of 94 MW?

31. The Commission in order dated 30.6.2016 in Petition No. 10/SM/2014 has observed as under:

“30...In our view, Karnataka as a long term customer has availed more than 90% power from UPCL. On the other hand, Punjab is not availing power from UPCL. Therefore, Karnataka is liable to pay the transmission charges for long term supply from UPCL's generating station towards LTA of entire 939 MW in terms of Regulation 8 (6) of the Sharing Regulations.”

32. The Review Petitioners have contended that the decision of the Commission to make the Petitioner liable to pay charges for PSPCL's share of 94 MW is against Regulation 8 (6) of the Sharing Regulations. The Review Petitioners have also relied on Article 4.9 of the PPA to claim the charges towards 94 MW and it should be paid by respondents, UPCL or by PSPCL. However, the respondent, UPCL has stated that it

had supplied entire capacity of 1200 MW to Karnataka ESCOMs till 3.6.2012 and the share of PSPCL is being supplied to the Review Petitioners and hence the Review Petitioners are the beneficiaries of 94 MW being PSPCL's share and that the respondent cannot be made liable to pay transmission charges for such capacity.

32. We have examined the matter in the light of Regulation 8 (6) of the Sharing Regulations and the provisions of PPA. From the above submissions, it is evident that the Review Petitioners are re-agitating the same issue which has been extensively dealt with by the Commission in order dated 30.6.2016. We agree with the submissions of respondents, UPCL and SRPC that the review petitioners have sought to re-argue the case on merits and the same is beyond the scope of review. Accordingly, review on this count is rejected.

33. The Review Petitioners have further contended that out of the total LTA quantum of 939 MW, 424 MW of power flows through 2 x 220 kV UPCL-Kemar line owned by Karnataka and hence, the effective power transmitted through the 400 kV D/C Hassan-Mysore line is 515 MW. It has also stated that out of this, 94 MW is the share of power of PSPCL and hence, the share of the ESCOMs of Karnataka (review petitioners) works out to 421 MW. The matter has been examined. The load flow analysis is carried out under PoC mechanism for determination of injection/withdrawal rates of DICs. However, the actual liability of transmission charges corresponds to the LTA quantum only. In view of this, the prayer of the review petitioners to consider LTA quantum of 421 MW instead of 939 MW cannot be accepted and there is no error apparent in our order.

Issue No. (5): Whether liability to pay for the entire tariff of Mysore-Hassan system is against Annexure-I of the Sharing Regulations?

34. The Commission vide order dated 30.6.2016 in Petition No. 10/SM/2014 had observed as under:

“31. SRPC has illustrated in its submission that withdrawal PoC Charges (Rs./Month) of Karnataka would have remained same irrespective of whether UPCL's LTA is made effective or not Under PoC mechanism, prior to Third Amendment of Sharing Regulations, the long term customer was required to pay withdrawal charges as well as injection charges of the generator. We are in agreement with contention of SRPC that Karnataka withdrawal PoC Charges (Rs./Month) may have approximately remained same irrespective of UPCL's LTA was made effective or not, therefore, Karnataka shall not be liable to pay any additional withdrawal charges towards operationalization of LTA for Udupi and is liable to pay only the UPCL injection PoC Charges (Rs./Month) for the minimum injection slab rate for southern region for the application period from 1.7.2011 to 30.4.2015. After issuance of the Third Amendment of Sharing Regulations which came into effect from 1.5.2015, injection charges are not being calculated separately. Therefore, Karnataka would pay the withdrawal charges as per the provisions of the Sharing Regulations. In our view, whenever Punjab wishes to take power from UPCL generating station, it will make fresh application to CTU for grant of LTA. From the next quarter of issue of this order LTA for UDUPI shall be considered in PoC calculations. Karnataka should pay such charges within 6 months of issue of bill by CTU. The charges so collected from Karnataka shall be reimbursed back to DIC of ISTS in next month bill.”

35. The Review Petitioners have stated that transmission tariff approved by the Commission for the Mysore-Hassan Transmission system vide Commission's order dated 11.3.2013 in Petition No. 190/TT/2011 is ₹57 crore for a period of 36 months. However, they have submitted that after applying the calculation as per the POC mechanism, an amount of ₹323.80 crore is incurred which leads to exorbitant charges and will lead to unjust enrichment at the cost of the consumers in the State of Karnataka.

36. We have considered the submissions of the parties. The Commission after considering the deliberations of the meeting held on 31.3.2015 had taken a conscious view in order dated 30.6.2016 that Karnataka would pay only the UPCL injection PoC Charges (₹/month) for the minimum injection slab rate for Southern Region for the application period from 1.7.2011 to 30.4.2015. The Commission had also directed in the

said order that after the 3rd amendment to the Sharing Regulations, which came into effect from 1.5.2015, Karnataka would pay the withdrawal charges. In view of this, we find no error apparent on the face of the order dated 30.6.2016. Accordingly, review on this ground is rejected.

37. Petition No. 60/RP/2016 is disposed of in terms of the above.

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

-Sd/-
(A.S. Bakshi)
Member

-Sd/-
(A.K. Singhal)
Member

-Sd/-
(Gireesh B. Pradhan)
Chairperson