

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 20/MP/2017
alongwith
IA No. 47/2017**

**Coram:
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M. K. Iyer, Member**

Date of Order: 9th of March, 2018

In the matter of:

Petition under Section 79 (1)(c) of the Electricity Act, 2003 read with Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Access in inter-State transmission and related matters) Regulations, 2009 and Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010.

And

In the matter of

Kanti Bijlee Utpadan Nigam Limited
NTPC Bhawan, Core-7, Scope Complex, 7, Institutional Area,
Lodhi Road,
New Delhi – 110 003

Vs.

1. Central Transmission Utility,
Power Grid Corporation of India Limited,
'Saudamini', Plot No. 2, Sector 29,
Gurgaon-122001
2. Bihar State Power Holding Company Ltd.,
(BSPHCL), Vidyut Bhawan, Bailey Road,
Patna- 800 021
3. North Bihar Power Distribution Company Ltd. (NBPDC),
Vidyut Bhawan,
Bailey Road, Patna (Bihar) 800001



4. South Bihar Power Distribution Company Ltd. (SBPDCL),
Vidyut Bhawan, Bailey Road, Patna (Bihar) 800001
5. Jharkhand Urja Vikas Nigam Ltd.
Engineering Building, HEC Township,
Dhurwa, Ranchi – 834 004
6. Jharkhand Bijli Vitran Nigam Ltd.,
Engineering Building, HEC Township Dhurwa,
Ranchi – 834 004
7. GRIDCO Ltd.,
Janpath, Bhubaneshwar – 751 022
8. West Bengal State Electricity Distribution Company
Ltd., Vidyut Bhawan, Bidhannagar, Block DJ,
Sector-II, Salt Lake City,
Kolkata – 700 091
9. Power Department,
Govt. of Sikkim,
Kazi Road, Ganktok, Sikkim – 737 101
10. Damodar Valley Corporation,
DVC Towers, VIP Road,
Kolkata, West Bangal-700 054
11. Eastern Regional Load Despatch Centre
14, Golf Club Road,
Tollygunge,
Kolkata -700 033
12. Eastern Regional Power Committee
14, Golf Club Road,
Tollygunge, Kolkata -700 033

Parties présent :

Ms. Swapna Seshadri, Advocate, KBUNL
Shri Sankar Saran, Advocate, NTPC
Shri R.B. Sharma, Advocate, WBSEDCL
Ms. Himanshi Andley, Advocate, GRIDCO
Shri R.K. Mehta, Advocate, GRIDCO
Ms. Harapriya Behera, GRIDCO



Ms. Suparna Srivastava, Advocate, PGCIL
Shri Sawpnil Verma, PGCIL
Shri Dilip Rozekar, PGCIL
Ms. Jyoti Prasad, PGCIL
Shri Subhendu Mukherjee, ERLDC
Ms. Shabari Pramanick, POSOCO
Shri Ashok Rajan, POSOCO
Shri S.S. Barpanda, NLDC

ORDER

The Petitioner, Kanti Bijlee Utpadan Nigam Limited (KBUNL), has filed the present petition under Section 79 (1)(c) of the Electricity Act, 2003 read with Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Access in inter-State transmission and related matters) Regulations, 2009 ("Connectivity Regulations") and Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 (Sharing Regulations) seeking certain directions with regard to signing of the LTA Agreement by the beneficiaries of the generating station MGTS Stage II with the CTU, issue of jurisdiction for scheduling of the power from the generating station and non-applicability of PoC charges for the power scheduled to Bihar.

Brief of the Case

2. The Petitioner, which is a Subsidiary company of NTPC Limited (holding 65% equity) and Bihar State Power Generating Company Limited (holding 35% equity), has set up a 610 MW (Stage-I = 2x110 MW and Stage-II = 2x195 MW) Muzaffarpur Thermal Power Station (MTPS) (hereinafter referred to as 'the generating station') in Eastern Region. The Stage-I of the generating station has been supplying 100% power to Bihar (NBPDC and SBPDCL). The issue in the instant petition is related with MTPS Stage II.



3. The Petitioner has submitted that the following facts have led to the filing of the present petition:

(a) The Ministry of Power, Government of India vide its letter dated 10.12.2010 allocated the power generated from MTPS Stage II amongst beneficiaries in the Eastern Region i.e. Respondent Nos.2 to 10. The Petitioner entered into Power Purchase Agreements dated 27.12.2010 with Respondent Nos.2 to 10. As per the GoI allocation, majority share of power from MTPS Stage II (i.e. 67.7% or 268.4 MW) is allocated to Bihar who shall draw power through its own transmission infrastructure. Remaining power of 121.6 MW is allocated to other beneficiaries i.e. Jharkhand, GRIDCO, West Bengal, Sikkim and DVC. The delivery of the power is at the bus-bar of the generating station.

(b) The Petitioner made an application dated 1.6.2011 to Power Grid Corporation of India Limited (PGCIL) for grant of connectivity and long term access on behalf of the beneficiaries (other than Bihar allocation/ share of power) for evacuation of 121.6 MW power from MTPS Stage-II in accordance with the Connectivity Regulations. The Petitioner has submitted that such a process had been followed to facilitate process of LTA and as per consent given by the beneficiaries in terms of para 3.2 of the PPA.

(c) PGCIL vide its letter dated 26.4.2012 granted LTA of 121.6 MW LTA for evacuation of power from MTPS Stage-II subject to signing of the LTA Agreement with PGCIL in terms of Regulation 15 of the Connectivity Regulations and Detailed Procedure made thereunder.



- (d) The Petitioner, vide its letters dated 28.4.2015 and 5.1.2017 requested the beneficiaries to sign the LTA agreement, as per consent given by them in the PPA. However, none of the beneficiaries except Jharkhand signed the LTA Agreement.
- (e) Subsequently, PGCIL gave a notice to the Petitioner on 25.1.2017 to get the LTA Agreement signed within 15 days, failing which LTA granted to the petitioner would be liable for revocation.
- (f) Unit 1 of MTPS Stage II was in the advance stage of commissioning and the trial run was likely to start as on the date of filing the petition. Therefore, the consequence of non-signing of LTA by Respondent Nos. 5 to 10 was adversely affecting the Petitioner. The Petitioner has submitted that cancellation of LTA is not the solution but steps should be taken for signing the LTA Agreement and operationalization of such LTA corresponding to shares of beneficiaries from the respective units from the dates of CoD.
- (g) The second issue arose with regard to scheduling of power from the generating station. ERLDC has denied scheduling and trial operation by limiting the injection to 126 MW quantum of connectivity. On 25.1.2017, the ERPC convened a meeting of all the stakeholders to sort out issue of scheduling. The views of all parties were recorded in the minutes of the meeting. Representative of CEA opined in the said meeting that the connectivity of KBUNL Stage II is with State network and KBUNL bus is Bihar STU node and therefore, connectivity granted by CTU may have to be withdrawn as in case of Simhadri generating station of NTPC. Bihar



expressed its apprehension about imposition of PoC charges as per prevailing principles adopted by POSOCO and CTU even though there are sufficient no. of 220 kV Ckts are available for scheduling by ERLDC. Other beneficiaries of Eastern Region raised the issue of additional STU charges for wheeling of power through ISTS to draw their share from ISTS lines directly connected at State bus thus imposing both STU as well as CTU PoC charges in the event of scheduling by SLDC.

(h) In consideration of the divergent views as recorded in the MoM, it was unanimously decided in the meeting that SLDC Bihar may be allowed to do the scheduling for MTPS Stage II keeping in mind the operational expediency and uniqueness of the generation switchyard as well as grid sub-station for Bihar Intra-State network, subject to Commission's approval in terms of Regulation 6.4.3 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 (Grid Code).

(i) The Petitioner has sought the approval of control area jurisdiction in line with Regulation 6.4.3 of the Grid Code. Accordingly, the Petitioner has made the following prayers:

“(a) Kindly direct the Respondents No. 5 to 10 to sign necessary documents required for execution of LTA with CTU; Alternatively, as beneficiaries have agreed to sign LTA agreement in the PPA with NTPC, the LTA agreement / TSA may be taken as deemed signed.

(b) In the meanwhile, CTU may kindly be directed not to cancel the LTA granted for MTPS Stage-II for 121.6MW.

(c) Approve the Jurisdiction Issue for MTPS Stage-II scheduling as SLDC Bihar.

(d) In the event of scheduling by RLDC, no PoC charges may be levied on Bihar. Similarly in the event of scheduling by Bihar SLDC, transmission charges/



wheeling charges and transmission/ Wheeling losses of Bihar should not be levied on other beneficiaries.”

4. Notices were issued to the respondents to file their replies. Replies to the Petition have been filed Eastern Regional Load Despatch Centre (ERLDC), West Bengal State Electricity Distribution Company Ltd. (WBSEDCL), Power Grid Corporation of India Ltd.(PGCIL), Grid Corporation of Odisha Ltd.(GRIDCO) and Damodar Valley Corporation (DVC).

Replies of the Respondents:

5. Eastern Regional Load Despatch Centre (ERLDC), vide its reply dated 16.3.2017 has submitted as under:

(a) As per the definitions of Applicant and Connectivity along with the SOR to the Connectivity Regulations, the connectivity with inter-State transmission system can be given to a generator with at least 250 MW of injection into the inter-State transmission system.

(b) PGCIL granted connectivity of 126 MW out of 390 MW to the Petitioner on 26.4.2012 and for the remaining 264 MW, the Petitioner has no connectivity either with CTU or STU. As per Regulation 6.3. A.1(viii) and 6.3 A.1(ix) of the Grid Code, clearance for COD of 100% of installed capacity after trial run could not be granted since KBUNL has connectivity with inter-State transmission system of only 32.3% (126 MW) of installed capacity (390 MW). The Petitioner was requested to restrict its infeed injection upto its connectivity limit of 126 MW.



(c) The physical loss in the system remains fixed irrespective of whether loss is applied on a particular transaction or not. Exempting some types of transactions from loss would only increase the burden on other entities. Therefore, in the event of scheduling power from KBUNL by ERLDC, POC injection and POC withdrawal losses would be applied to all the beneficiaries of the Petitioner. Further, for preparing the net drawal schedule of Bihar State Power Holding Company limited (erstwhile Bihar State Electricity Board), estimated transmission losses shall be deducted and LTA from KBUNL to Bihar State Power Holding Company Limited (BSPHCL) has to be obtained from PGCIL. The connectivity with the inter-State transmission system should be taken for the entire installed capacity by KBUNL. In the event of scheduling power from KBUNL by Bihar SLDC, the net drawal schedule of all the beneficiaries other than BSPHCL shall be prepared by ERLDC after deducting estimated transmission loss of Bihar State Transmission System losses, POC injection loss of Bihar and POC withdrawal loss of corresponding drawee entity, as required by Bihar. Based on the above proviso, approved injection from the generating station of the Petitioner has to be computed and corresponding allocations have to be added to the withdrawal quantum of the beneficiaries.

6. West Bengal State Electricity Distribution Company Ltd. (WBSEDCL), vide its reply dated 18.3.2017, has submitted as under:

(a) The Petitioner has failed to supply power from its generating station even five years after execution of the PPA. Since, the consumers of WBSEDCL were affected by delay in commencement of supply of power by the Petitioner, a



notice dated 22/23.12.2015 terminating the PPA was served upon the Petitioner for delay in supply of power.

- (b) The Principal Secretary, Government of West Bengal vide its letter dated 7.6.2016 requested the Secretary, Ministry of Power, Government of India for de-allocation of power from MTPS, stage-II. In a special meeting convened by the Eastern Regional Power Committee on 25.1.2017 regarding scheduling of power from BRBCL, Nabinagar and KBUNL, MTPS Stage-II, it was discussed that since, 67.7% of power from KBUNL Stage-II is already allocated to Bihar, the State of Bihar may like to avail the remaining quantum of power as well.
- (c) GRIDCO has taken up matter with concerned authorities regarding surrendering its share and has not signed the LTA Agreement. The State of West Bengal and DVC have also taken up the matter with competent authority for surrender of their respective shares.
- (d) The Petitioner, vide its letter dated 5.1.2017, requested the beneficiaries to enter into necessary agreement with PGCIL for wheeling of the electricity from bus-bars of the generating station. The reasons for non-signing the LTA Agreement were communicated to the Chief Executive Officer of the Petitioner vide letter dated 7.2.2017. The allocation of power to WBSEDCL by the Ministry of Power as per the allocation letter issued is not absolute but is subject to the PPA and subject to the beneficiaries ensuring compliance with the financial and commercial terms (including coverage for Letter of Credit) of the PPA. Similar conditionality has also been provided in Clause 2.2.2 of the PPA regarding allocation of capacity. Accordingly, the Ministry of Power,



Government of India is required to take a view regarding firm allocation from the generating station on the basis of which extension of LTA could be facilitated.

7. Power Grid Corporation of India Ltd, vide its reply dated 26.4.2017, has submitted as under:

- (a) Once an application for connectivity and/or LTA is made by a generator (the applicant), it is that generator alone on whom the regulatory provisions regarding connectivity/LTA apply, any bilateral contractual arrangement the generator may have entered into with its beneficiary(ies) is of no consequence. There is no provision in the Connectivity Regulations that recognizes or validates an application made on behalf of another person, be it a beneficiary or otherwise.

- (b) The Petitioner cannot be heard to contend that it has applied for LTA on behalf of the beneficiaries based on PPAs entered into with them and the agreements pursuant to the LTA grant are now required to be signed with the beneficiaries without any liability on the Petitioner. Such a contention is not permissible under the Connectivity Regulations and therefore, it is not liable to be accepted. As per clause 23.3 of the amendment dated 17.2.2016 made in the Detailed Procedure to the Connectivity Regulations, after grant of LTA, it shall be responsibility of the concerned Central Generating Company to facilitate signing of LTA Agreement by the allocates with PGCIL within the stipulated period as prescribed in the Detailed Procedure.



(c) The Commission has also clarified that in cases where LTA has been applied for and granted to the generator, the onus of making the beneficiaries sign the necessary agreements with PGCIL lies squarely with the generator. Such a clarification has been notified after the passing of order dated 31.1.2013 in Petition No.133/MP/2012. The regulatory scheme under the Connectivity Regulations read with the Detailed Procedure, makes the Petitioner's plea of "not using the ISTS" and "delivering power at bus bar", inadmissible. Either the Petitioner ensures that its beneficiaries for 121.60 MW sign the necessary agreements with PGCIL so that transmission charges for subject LTA are paid to it, failing which the Petitioner is bound and obliged to discharge these obligations on behalf of the said beneficiaries.

(d) Despite the aforesaid communications, neither the Petitioner nor its beneficiaries came forward to sign the LTA Agreements. Accordingly, PGCIL vide its letter dated 25.1.2017 served notice to the Petitioner to the effect that non-signing of LTA Agreements by the Petitioner/its beneficiaries were to lead to revocation of the subject LTA.

(e) In the Special Meeting convened at ERPC on 25.1.2017, the issue of signing of LTA Agreement by the beneficiaries of the Petitioner's project (Stage-II) was discussed. As per the Minutes, the beneficiaries of the Petitioner's project are surrendering their shares of power. Under such a situation, either the LTA charges for the untied power may be borne by the Petitioner or the Petitioner may have the surrendered power allocated to other beneficiaries on an urgent basis. If the same cannot be achieved, it would be prudent that LTA may be



allowed to be cancelled in order to avoid commercial disputes regarding payment liability for transmission charges. A perusal of the said Minutes clearly show that the notice for cancellation of LTA issued by PGCIL and impugned in the present Petition, has been issued after due deliberation with all stakeholders taking into account all circumstances surrounding the Petitioner's project and the applicable Regulations of the Commission.

(f) With regard to applicability of PoC/State Charges, the following facts regarding Stage I and Stage II are as under:

Stage I (2x110 MW)

- (i) Entire power of 220 MW was allocated to Bihar State.
- (ii) Transmission system for evacuation was constructed by Bihar State Power Transmission Co Ltd.
- (iii) As per Regulation 6.4.1 of the Grid Code, the scheduling of power was carried out by Bihar SLDC.
- (iv) No ISTS PoC was applicable.

Stage II (2x195 MW)

- (i) Out of 2x195 MW (=390 MW), 268.4 MW power is allocated to Bihar State and balance 121.6 MW is allocated to different States in ER.
- (ii) No ISTS addition has been carried out for grant of LTA of 121.6 MW to KBUNL Stage-II.
- (iii) The 220 kV bus where Stage-II is connected is an STU bus constructed by Bihar STU

(g) Regulation 2 of the Sharing Regulations provide that the PoC charges shall be applicable on all the regional entities as defined in the Grid Code and as per Regulation 2(1)(kkk) of the Grid Code, regional entities are "such persons who are in the RLDC control area and whose metering and energy accounting



is done at the regional level. Therefore, the scheduling entity, whether SLDC or RLDC will determine applicability of PoC charges. If it is decided as ISTS bus, i.e. under RLDC control, then, Bihar will have to pay PoC charges for 488.4 MW (i.e. not only for Stage-II-268.4 MW, but also for Stage-I-220 MW), which till now, by virtue of being scheduled by SLDC are not applicable. On the other hand, if it is decided as State bus, then the other State allocatees of 121.60 MW will be required to bear STU charges of Bihar STU.

8. GRIDCO, vide its reply dated 25.4.2017, has submitted as under:

(a) As per the Policy Guidelines for establishment of power plants by CPSUs, State Government would get 10% Home State share from the plant in addition to around 20% share as per Gadgil formula by the Ministry of Power, Government of India. According to the above Policy Decision, 10% Home State share has been allocated from the Central Generating Station inside Odisha to the State. Based on such principle, the State forecasts its long term demand on the basis of such demand forecast. Accordingly, GRIDCO requisitioned power from KBUNL and entered into an agreement with KBUNL. Government of India, Ministry of Power vide its letter dated 10.12.2010 allocated 30 MW (7% share in installed capacity) share of power to Odisha.

(b) In the meantime, Government of India, Ministry of Power revised its Power Allocation Policy vide Notification dated 17.1.2011 allowing provision of 50 per cent power to the Home States where the projects are located, 35 per cent to other constituents of the Region and 15 per cent as unallocated at the disposal of MoP, Gol. Pursuant to such Notification of MoP, State of Odisha



got higher percentage (from 10% to 50%) of Home State share of power from Talcher Expansion Project and NTPC Super Thermal Stations Project at Darlipalli.

- (c) Moreover, future load requirement as forecasted by CEA (year-wise electricity demand projection for each State, Union Territory, Region and all India) in 17th and 18th EPS (18th EPS in detail up to the end of 12th plan period i.e. for 2012-13 to 2017-18), the requirement of power for the State was shown substantially high. Simultaneously, OPTCL also made demand forecast from 2012-13 to 2017-18. In both the forecasts i.e. of CEA and OPTCL, the requirement of power was significantly high on account of elevated anticipation of load growth projections.
- (d) During the year 2014, it was observed that the load growth was not in tandem with that forecast in 18th EPS of CEA as well as OPTCL. The peak demand of the State was 3580 MW and 3600 MW during 2012-13 and 2013-14 respectively which were much less as compared to 4397/4024 MW for 2012-13 and 4686/4669 MW for 2013-14 as projected by 18th EPS/OPTCL. Similarly, in the year ie.2016-17, the peak demand of the State was approx. 4000 MW which is much less as compared to 5672MW/5334MW as forecast by CEA/OPTCL. Therefore, in reality the demand did not pick up as per the projections.
- (e) Due to upward revision in Home State share of the above said Power Stations, large availability of power from the generating stations inside the State by addition of several IPPs, and subdued power market scenario i.e.



load growth not commensurate with that of forecast as mentioned above, Odisha's power supply situation changed from adequate to substantially surplus. Subsequent to such changed scenario, Govt. of Odisha, Dept. of Energy vide its letters dated 28.6.2014, 23.8.2014 and 12.11.2014 communicated to the Government of India, Ministry of Power for de-allocation of allocated power from KBUNL along with from other generating stations in order to avoid the huge financial liability.

(f) In response to request of Govt. of Odisha, Government of India, Ministry of Power vide its Notification dated 31.8.2015 invited expression of interest from willing States/Utilities for such surrendered power. Subsequent to the said Notification of Government of India, Ministry of Power, GRIDCO's share in Nabinagar Power Station (155 MW) has been reallocated to UP vide MoP, Gol Notification dated 6.5.2016. However, such reallocation of surrendered power of Odisha from other generating stations including the Petitioner's generating station is under active consideration of Government of India, Ministry of Power and are likely to be de-allocated.

(g) In the above premises, there is no question of evacuation of Odisha's share from KBUNL. Since, there is not even a remote chance of Odisha availing KBUNL's share of power, the question of signing of LTA Agreement by GRIDCO does not arise.

9. GRIDCO vide its additional reply dated 15.5.2017 has submitted that GRIDCO is not seeking any direction from the Commission to the Central Government for de-allocation of its share. Since, no power is required from the



generating station, GRIDCO has requested Government of India, Ministry of Power for de-allocation of allocated power from KBUNL in order to avoid the huge financial liability and the question of signing of LTA Agreement with the Petitioner does not arise.

10. Damodar Valley Corporation (DVC), vide its reply dated 30.6.2017, has submitted as under:

(a) All the 500 MW series of new Power Plants of DVC were commissioned one after another during the period from 2011-12 to 2015-16. DVC became power surplus entity having surplus power to the tune of 1300 MW from its own generating stations. Under this backdrop, DVC had no other alternative but to surrender the allocated quantum of power from the Petitioner's generating station. Since, the allocation from the generating station was made by MOP, GOI, DVC vide its letter dated 30.12.2014 requested MOP, GOI to reallocate the quantum of power already allocated to DVC to other beneficiaries. DVC continuously pursued the matter with MOP through its subsequent letters dated 10.2.2015, 13.7.2015, 9.2.2016, 30.5.2016 and 19.9.2016 for reallocation of power of DVC to other beneficiaries.

(b) Government of India, Ministry of Power, after considering DVC's request for surrendering 10 MW power wrote a letter dated 6.5.2016 to the Principal Secretary, Energy Department of different States to convey their interest to avail the allocated quantum being surrendered by DVC. DVC vide its letters dated 6.4.2015 and 29.4.2015 informed the Petitioner that DVC had already approached to Government of India, Ministry of Power for reallocation of its



power from the generating station to different power deficit States and the matter is under active consideration of Government of India, Ministry of Power. DVC also requested the Petitioner not to take any action in order to avoid any commercial implication in future.

(c) Before the COD of the generating station, DVC vide its letter dated 20.3.2015 informed PGCIL regarding its limitation to avail power from the generating station due to its surplus power and requested not to grant LTA for evacuation of power from the generating station.

(d) The Petitioner, vide its letter dated 5.1.2017 requested DVC to enter into necessary agreement with PGCIL for wheeling of the electricity from bus bars of the generating station. DVC clarified the reasons as to why it was not in position for signing the LTA Agreement and the same was communicated to the Chief Executive Officer of the Petitioner vide letter dated 24.1.2017.

Rejoinder of the Petitioner to replies of the Respondents

11. The Petitioner, vide its rejoinder dated 7.4.2017 to the reply of ERLDC, has submitted as under:

(a) ERLDC has contended that the Petitioner's 390 MW generating station has connectivity of 126 MW and for the remaining 264 MW, it is neither connected to the CTU or the STU. It is not a special case where the bus of generating station has connectivity to the STU system and also to the ISTS through existing 220kV Kanti-Muzaffarpur D/C line. Number of generating stations of NTPC and its Joint Ventures are having dual connectivity like Jhajjar, Meja, Kudgi, etc.



- (b) ERLDC is misreading the Regulations of the Commission to contend that there is no connectivity of the Petitioner to the extent on 264 MW. The entire 264 MW has been allocated to the State of Bihar and the evacuation is also being done through the STU system.
- (c) This is not an exceptional case as is being contended. A similar arrangement is already available in the Simhadri generating station. Further, majority of the power will be taken by the Distribution Companies in Bihar through STU network. Therefore, the generating station can remain connected to the STU network and scheduling can be done by SLDC, Bihar. This is agreeable by all parties and a fair solution to the concerns of all stakeholders.
- (d) With regard to the 126 MW power, the same has been allocated to other distribution companies in the Eastern Region to whom directions have been sought to sign the LTA. CTU has rightly granted Connectivity of 126 MW, as LTA was also sought for same quantum. Since, capacity of the generating station is more than 250 MW, KBUNL has rightly applied for connectivity of 126 MW to be interchanged with ISTS. The quantum of connectivity which can be applied has not been defined anywhere in the Regulation.
- (e) The contention of ERLDC that the Petitioner is demanding an exemption which will cause revenue loss to the authorities is not correct at all. It is a well settled principle that merely because scheduling is done by an agency is not a reason for levy of losses and charges, if not otherwise applicable.



- (f) CEA itself has opined that the KBUNL Bus is a State Bus. The distribution companies in Bihar have sufficient transmission capacity to evacuate its share of power from the generating units of the Petitioner. Therefore, there is no reason to force them to draw their share of power through the CTU network and in support of its contention, ERLDC has relied upon the Regulation 6.5.7 of the Grid Code. However, the Petitioner is seeking the permission under Regulation 6.4.3 which is an exception to the above regulation.
- (g) Regulation 6 of the Sharing Regulations will not have any application to the present case in so far as the Distribution Companies in Bihar are concerned. The order dated 20.11.2013 in Petition No. 211/MP/2011 has been set aside by the Appellate Tribunal and cannot be relied upon. The scheduling of the generating station can be done by the SLDC and need not be done by the ERLDC. There is no need to obtain connectivity also for the entire quantum/installed capacity of the generating station.
- (h) In the present case, the LTA itself has been granted only to the extent of 126 MW and there is no need to obtain any further LTA. The shares of the distribution companies in Bihar are being evacuated through their own arrangements and have nothing to do with LTA.

12. The Petitioner, vide its rejoinder dated 7.4.2017 to the reply of WBSEDCL, has submitted as under:

- (a) WBSEDCL is trying to convert the present petition into a contractual dispute with the Petitioner under the PPA dated 27.12.2010 instead of answering the petition on the merits. The PPA dated 27.12.2010 is a contract between the



parties and if WBSEDCL has any grievance with regard to its performance by the Petitioner, it should file an appropriate petition for seeking such reliefs. The delay in the execution of the generating station was for the reasons beyond the control of the Petitioner and will be considered by the Commission when the tariff comes up for determination. The appropriate adjustments would be made in the IDC/ IEDC by the Commission upon the submission of all relevant details by the Petitioner with an opportunity to WBSEDCL to respond.

(b) WBSEDCL, vide its letter dated 23.12.2015, has sought unilateral termination of the PPA by giving 14 days' notice which was responded by the Petitioner vide its letter dated 6.1.2016. The Principal Secretary, Government of West Bengal has no jurisdiction to de-allocate the power allocated by the Ministry of Power, Government of India.

(c) The Ministry of Power, Government of India is the competent authority to allocate and de-allocate power from the generating stations of CPSUs/JVs of CPSU and if WBSEDCL is not satisfied with the exercise of this power, it has to question the decision in appropriate legal proceedings. The same cannot be indirectly challenged by unilateral termination of the PPA before the Commission.

(d) With regard to the signing of the LTA, the PPA between the Petitioner and the beneficiaries provides that the beneficiaries of the power at MTPS Stage-II have been clearly identified and the delivery of the power, in so far as the obligation of the Petitioner is concerned, is at the bus-bar of the generating



station. The Petitioner does not use the ISTS but the same is used by the beneficiaries in proportion to the contracted capacity under the PPAs. Therefore, it is the responsibility of WBSEDCL to sign the LTA.

13. The Petitioner, vide its rejoinder dated 6.5.2017 to the reply of PGCIL, has submitted as under:

(a) The main contention of PGCIL is that since the Petitioner has applied for LTA to PGCIL, it becomes the responsibility and obligation of the Petitioner to sign the LTA and assume all the obligations under such an agreement. PGCIL has further contended that the Connectivity Regulations and the Detailed Procedure made thereunder recognizes only the applicant which can be a generating company and once a generating company has applied for LTA, then the generating company needs to sign the LTA Agreement and the beneficiaries of the power may choose to assume the responsibilities of the generating company in a given case. The above contention of PGCIL is an after-thought since in several earlier cases where the LTA Agreements have not been signed, PGCIL itself has filed petitions before the Commission seeking directions against the beneficiaries of the generating station to sign the LTA Agreements.

(b) The sale of power in the case of Central Sector Generating Companies is at the bus bar of the generating station. The title of the power passes to the beneficiaries at the bus bar of the generating station. Thereafter, it is for the beneficiaries to deal with the transmission company to make arrangements for evacuation of power. Generating Companies such as the Petitioner do not



undertake any responsibility qua the transmission, open access, scheduling of power etc. Therefore, it does not stand to any reason that the generating company should sign the LTA Agreement to avail certain services from PGCIL/transmission company.

(c) PGCIL is mixing up its role in the capacity of a Central Transmission Utility and its commercial interests in recoveries of money due to it as a transmission licensee. Therefore, PGCIL is taking inconsistent stands in different proceedings. The contention of PGCIL that the Connectivity Regulations do not recognize a generating company applying for LTA on behalf of third parties is also incorrect and is denied. The Commission in the 'Amendment to the Detailed Procedure under Connectivity Regulations' dated 17.2.2016 has inserted the clause 23.3 (a) making the provisions in this regard. Accordingly, the Petitioner only needs to facilitate signing of the LTA Agreements. If the stand of PGCIL is correct, then the amendment to the Detailed Procedure is meaningless. If the Petitioner itself needs to sign the LTA Agreement, then no question arises regarding the Petitioner having to facilitate signing of the LTA Agreement.

14. The Petitioner, vide its rejoinder dated 6.5.2017 to the reply of GRIDCO, has submitted that GRIDCO has primarily contended that the power availability for the State of Odisha has increased substantially and it has written to the Ministry of Power for de-allocation of its share from the generating station of the Petitioner. This relief cannot be sought before the Commission and needs to be taken up by GRIDCO before the Ministry of Power. The Commission in Paras 26 to 26 of the



order 18.4.2017 in Petition No. 223/MP/2015 (Tata Power Delhi Distribution Ltd vs NTPC Ltd & Ors.) has dealt with the issue of re-allocation of power.

15. The Petitioner, vide its additional affidavit dated 22.5.2017, has submitted as under:

(a) Article 3 exists in all the PPAs entered into between the Petitioner and the beneficiaries (except Bihar). In so far as the Petitioner is concerned, the sale of power is at bus bar of the generating station and it is for the beneficiaries to make all arrangements thereafter to deal with the ISTS licensees/PGCIL and to arrange for transmission of power. The Petitioner has not taken any responsibility for transmission of power. The corollary of the same is that the beneficiaries of the generating station have obligation to sign the LTA Agreement or any other contracts or to deal with the transmission company in any manner to arrange for transmission of power. ISTS is to be used by the beneficiaries in proportion to the contracted capacity under the PPA for taking delivery of power.

(b) In the Central Sector Generating Companies such as the Petitioner, the power stands allocated to the beneficiaries of power by the Ministry of Power. The sale of power is at the bus bar of the generating station. The title of the power passes on to the beneficiaries at the bus bar. Thereafter, it is for the beneficiaries to deal with the transmission company to make arrangements for evacuation of power. Generating companies such as the Petitioner do not undertake any responsibility qua the transmission, open access, scheduling of power, etc. In such a situation, generating company has no use of the



transmission facility. Therefore, it does not stand to any reason that the generating company should sign the LTA Agreement to avail certain service from the CTU/ transmission company.

(c) The definition of the term 'applicant' in the Connectivity Regulations is an enabling definition which details the categories of persons who can apply for open access and a generating company is one of such persons. This, however, does not mean that if the generating company has applied for open access on behalf of the beneficiaries, then it will have to sign the LTA Agreement. Since, Regulation 15 of the Connectivity Regulations uses the word 'applicant', the responsibility to sign the LTA Agreement is of the generating company. If that is the case, several other provisions of the Connectivity Regulations and Detailed Procedure become meaningless.

(d) As per Regulations 2(b), 15 and 27 of the Connectivity Regulations and the Detailed Procedure, the responsibility to sign the LTA where the power has been allocated by the Ministry of Power is of the beneficiaries. In support of its contention, the Petitioner has relied upon the Commission's order dated 31.1.2013 in Petition No. 133/MP/2012 and order dated 9.3.2016 in Petition No. 69/MP/2015.

(e) None of the parties have raised objections to the scheduling being done by the Bihar SLDC. However, PGCIL in its reply has submitted that if the scheduling is done by RLDC, then the POC charges would apply to all including to the State of Bihar. This is not a correct submission. Merely because scheduling is done by a particular agency cannot make the



transaction liable for POC charges. The above argument has also been rejected by the Commission in the order dated 30.3.2017 in Petition No. 291/MP/2015 (Transmission Corporation of Andhra Pradesh Limited-vs-Southern Region Load Dispatch Centre).

16. The Petitioner, vide its rejoinder dated 19.7.2017 to the reply of DVC has submitted that as per the PPA signed between DVC and the Petitioner, it is responsibility of DVC to sign the LTA agreement. LTA has been granted from the margins of existing capacity available in the transmission system which are already part of PoC mechanism and DVC too is paying transmission charges for the same. No additional liability is going to come on DVC due to signing of LTA Agreement. Further, as per the amendment to the Detailed Procedure made under Connectivity Regulations and in terms of the PPA, the application for grant of LTA can be made by the Petitioner but the LTA Agreements have to be signed only by the beneficiaries. Jharkhand has already signed the LTA Agreement on 18.5.2017.

17. In response to Record of Proceeding dated 11.5.2017, the Petitioner vide its affidavit dated 27.6.2017 has submitted that with the addition of two new generating units (2x195 MW), the existing switchyard has been extended to accommodate the two no. GT bays. Therefore, the entire power from the generating station is being evacuated through STU network as well as ISTS network. KBUNL switchyard is not only for the purpose of power evacuation from MTPS, it is also working as grid substation for drawl of ER beneficiaries share from Tata Hydro project through Kanti-Muzaffarpur (Kaffen) 220 KV D/C transmission line of ISTS Network. MTPS Stage-I and MTPS Stage-II have common Bus-Bar (220KV) which is connected to STU network as well as to ISTS network of CTU. Since, the power drawal point of Bihar



and MTPS Ex-Bus injection point are on same Bus-Bar (220KV) and Bihar has its own adequate transmission network to evacuate allocated power from MTPS Stage-I and Stage-II (220 MW+264 MW). Accordingly, the connectivity and LTA application was made to PGCIL required for other ER beneficiaries for whom injection and draw points are different. Accordingly, the Petitioner has applied connectivity and LTA (on behalf of beneficiaries except Bihar) for 126 MW allocated to other ER beneficiaries in line with Connectivity Regulations which was subsequently granted by PGCIL. Regulation 8 (1) of the Connectivity Regulations provides for grant of connectivity. Since, quantum of power to be interchanged through ISTS from MTPS Stage-II was only 126 MW, the Petitioner applied to PGCIL for grant of connectivity of 126 MW out of total installed capacity of 390 MW, which would be injected to ISTS. While applying for connectivity and LTA (on behalf of beneficiaries), the Petitioner has clearly specified in the applications that the Bihar shall make its own arrangement for evacuation of power from the generating station and Bihar has also connectivity at MTPS`s switchyard.

18. ERPC, in response to the RoP dated 11.5.2017, vide its letter dated 27.6.2017 has submitted as under:

(a) The MTPS-II switchyard is connected to the Bihar transmission system of BSPTCL at 220 and 132 kV levels. Further, MTPS-II switchyard is connected at 220 kV level to Power grid Muzaffarpur substation through 220 kV MTPS-Kaffen D/C line of Powerlink (ISTS licensee).

(b) In the meeting held on 25.1.2017 at ERPC, detailed discussions were held regarding the control area jurisdiction as well as the scheduling/accounting



and applicable transmission charges. In the above meeting, it was agreed that KBUNL should operate under the jurisdiction of Bihar SLDC in terms of Regulation 6.4.2 (c) (iii) of the Grid Code. The share of Bihar from MTPS-II being higher than the required 50%, scheduling is to be done by Bihar SLDC in accordance with the provisions of the Grid Code. In such case, ERPC has proposed the following scheduling and accounting/settlement methodology:

- MTPS-II will inform DC to SLDC, Bihar. Bihar SLDC will certify the DC and inform to ERLDC mutually agreed schedules between MTPS-II and its beneficiaries other than Bihar. ERLDC will in turn reflect the schedules separately against the respective beneficiaries. The same will be included for arriving at net drawal schedule of the beneficiaries.
- The beneficiaries will settle the accounts with MTPS-II based on the DC and ex-bus scheduled generation as accepted by SLDC, Bihar.
- For settlement of DSM accounts, the 220 kV MTPS-Kaffen D/C line is being considered as a tie line between Bihar and ISTS and this mechanism will be continued.

(c) The MTPS-II switchyard is connected through ISTS lines (220kV MTPS-Kaffen D/C) to ISTS system and through BSPTCL lines (220 kV MTPS-Begusarai D/C, 220 kV MTPS-Darbhanga D/C, 220 kV MTPS-Gopalgunj D/C and also at 132 kV level to Muzaffarpur (BSPTCL), Motihari, Samastipur) to BSPTCL system.



(d) The ISTS lines are capable of carrying 126 MW independently, i.e. scheduled to flow to other ER beneficiaries and BSPTCL lines are capable of carrying the 264 MW Bihar's share. The classification of the switchyard will decide the transmission charges and losses to be borne by Bihar and other beneficiaries of ER. If the MTPS-II bus is considered as a STU bus, then other beneficiaries may have to bear STU charges and losses for their MW shares and Bihar being insulated from PoC charges for its MW share. On the other hand, if the MTPS-II bus is considered as an ISTS bus, then Bihar may have to bear PoC charges for drawal of its MW share, while other ER beneficiaries will be insulated from Bihar STU charges and losses for drawl of their MW shares.

(e) However, as MTPS's bus eludes rigid classification, there may be an alternative solution. As the ISTS and STU systems are independently capable of carrying the allocated share of other ER beneficiaries and Bihar respectively, the bus at MTPS-II may not be classified rigidly as STU or ISTS. Keeping in view the classification, the Commission may consider the following:

- The 220 kV MTPS-Kaffen D/C lines are sufficient to convey the 126 MW power to Muzaffarpur PG S/s.
- The 220 kV and 132 kV lines of BSPTCL emanating from MTPS-II are sufficient to evacuate Bihar share.



- The tariff of 220 kV MTPS-Kaffen D/C line is already pooled in PoC and will be recovered based on usage.

(f) ERPC has submitted the following to take a view on the matter:

- PoC charges and losses not to be applicable on Bihar for drawing its MW share from MTPS-II.
- STU charges and losses not to be applicable on other beneficiaries of ER for drawal of their MW shares from MTPS-II. Only PoC charges and losses to be applicable for drawal of their MW shares by other ER beneficiaries.

(g) Number of the beneficiaries of the generating station are not willing to avail power from the generating station and they have written to the Ministry of Power in this regard. In the meeting held on 25.1.2017 at ERPC, other ER beneficiaries requested BSPHCL to consider getting 100% power of MTPS-II allocated to Bihar as it was already having 61.7% allocation. In this regard, the Ministry of Power vide its replies in Petition Nos. 301/MP/2015 and 302/MP/2015 has cleared its stand which is extracted in the order dated 14.4.2017 in the said petitions.

19. PGCIL, vide Record of Proceedings for the hearing dated 11.5.2017, was directed to submit its views on grant of part connectivity and LTA in such cases. PGCIL vide its affidavit dated 10.7.2017 has submitted as under:

(a) PGCIL vide its letter dated 21.4.2012 informed the Petitioner about grant of 126 MW connectivity and 121.6 MW LTA without any system strengthening as



the 2x110 MW project was already connected to ISTS through 220 kV Kanti-Muzaffarpur (POWERGRID) D/C line. In the Connectivity Regulations, Regulation 2(1) (b) dealing with grant of connectivity has been incorporated from which the following inferences can be drawn:

(i) Connectivity to an ISTS can be sought by all types and sizes of generations, conventional as well as renewable, captive as well as merchant.

(ii) The entity seeking Connectivity is required to submit quantum of power to be interchanged with ISTS, *inter-alia* meaning that an applicant may choose to specify the quantum for Connectivity which may or may not be same as installed capacity of the generating station. It would be pertinent to mention here that in accordance with the Detailed Procedure, the application for grant of Connectivity to ISTS has to be submitted alongwith above details as per the Format CON-2. The details sought in the application also includes the capacity (MW) for which Connectivity is required and the installed capacity of the generation station. Thus, quantum sought for grant of Connectivity to the ISTS system has not been directly linked with the installed capacity of the generation project.

(iii) The grant of connectivity does not allow any exchange of power with ISTS other than that meant for drawl of start-up power during commissioning.



(iv) The grant of connectivity does not entail any obligation for payment of transmission charges.

(b) Based on the above understanding, CTU has been granting the connectivity for the quantum sought for by the generators who have been applying for connectivity as per their own requirements. In the nine High Capacity Power Transmission Corridors (HCPTC) being implemented by PGCIL for transfer of power to various beneficiaries, only miniscule number of generators had applied for connectivity equal to their installed capacity. There have been cases where generators viz. Jindal India Thermal Ltd. obtained connectivity for lower quantum and subsequently came up with request to increase the connectivity quantum leading to planning of construction of 2 nos. 400 kV D/C lines for a 1200 MW generation project which could have been evacuated through 1 no. 400 kV D/C line with high capacity conductor.

(c) There are two aspects with regard to quantum that should be considered for connectivity vis-a-vis installed capacity of the generation project viz. technical and commercial. The technical consideration suggests that the grant of connectivity does not allow interchange of any power with ISTS except for full load testing of one unit. It has been experienced that generation project during initial stage of development adopt a very narrow view towards the transmission, and applies for connectivity/LTA that renders minimum transmission charge liability on them. As a result, at a later date, the evacuation constraints results into uneconomic transmission development. It is a matter of fact that any developer seeking connectivity to ISTS, upon commissioning, shall like to generate as much power as possible (limited to



installed capacity). Further, for evacuation of power it shall require services of the ISTS grid irrespective of the mode of power transfer (whether Short, Medium or Long term). Therefore, it would be pertinent that its immediate connectivity to the grid should be for the maximum capacity. In this regard, PGCIL has highlighted the para 6.12.1 (b) of the recommendations of the Committee constituted to "Review Transmission Planning, Connectivity, Long Term Access, Medium Term Open Access and other related issues" under the chairmanship of Shri Mata Prasad. Therefore, it should be made mandatory for the generation project to apply for connectivity for installed capacity.

(d) With regard to the commercial aspects, presently availing connectivity to the ISTS does not entail liability towards payment of transmission charges, despite the fact the generator getting connected to the ISTS is enjoying the benefits of reliability. The Commission has appreciated this aspect in the explanatory memorandum for the draft fifth amendment to the Sharing Regulations.

(e) As per the Detailed Procedure made under the Connectivity Regulations, the application for grant of LTA to ISTS has to be submitted alongwith requisite details as per the Format LTA-2. The details sought in the application also includes the quantum (MW) for which LTA is required. Therefore, quantum sought for grant of LTA to the ISTS system has not been directly linked with the installed capacity of the generation project. Accordingly, though the capacity of the Petitioner's generating is 390 MW (2X195 MW), it had applied for LTA of 121.6 MW (excluding 268.4 MW Bihar share of power) and CTU granted the same accordingly.



(f) With regard to grant of part LTA out of the total LTA quantum applied for by the applicant, the Commission vide order dated 16.2.2015 in Petition No. 92/MP/2014 has already settled the issue and directed that part LTA should not be granted as the Connectivity Regulations and Detailed Procedure made thereunder do not envisage the same. Accordingly, the Commission's directions are being followed by PGCIL and no part LTA is being granted.

IA No. 47/2017 filed by PGCIL

20. PGCIL has filed IA No.47/2017 seeking a direction to the Petitioner to enter into LTA Agreement for the quantum falling short of 121.6 MW. PGCIL has submitted in the IA as under:

(a) As per the regulatory scheme notified by the Commission, the Petitioner cannot contend that it has applied for LTA on behalf of the beneficiaries based on PPAs entered into with them and the Agreements pursuant to the LTA grant are now required to be signed with the beneficiaries without any liability on the Petitioner. It is either the Petitioner who ensures that its beneficiaries for the LTA quantum sign the necessary Agreements with PGCIL so that transmission charges for subject LTA are paid to it, failing which the Petitioner is bound and obliged to discharge these obligations "on behalf of" the said beneficiaries.

(b) In accordance with Regulation 15 of the Connectivity Regulations, LTA applicant is required to execute the LTA Agreement. Accordingly, the details and particulars for 'working' the LTA granted to an applicant are contained in the LTA Agreement. LTA Agreement is a necessary precursor to secure the



tying up of commercial liabilities before the LTA can come into operation. The Commission in orders dated 8.3.2017 and 7.9.2016 in Petition Nos. 96/MP/2015 and 106/MP/2015 has held that if the LTA grantee fails to sign the LTA Agreement, then the Respondent is not only entitled but also under a statutory obligation to cancel the LTA.

(c) Therefore, 67.7% of power generated from the project has been allocated to Bihar and the remaining 121.6 MW power has been allocated to other beneficiaries. It is an admitted position on record of the Commission that after the grant of the said LTA to the Petitioner, neither the Petitioner nor its beneficiaries have come forward to sign the necessary LTA Agreements with PGCIL.

(d) The Petitioner has placed on record the Minutes of Meeting of Eastern Regional Power Committee (ERPC) held on 25.1.2017 wherein it has been recorded that certain beneficiaries of the Petitioner's project are surrendering their allocated power. Under such a situation, either the LTA charges for the untied power are to be borne by the Petitioner or the Petitioner should surrender the power allocated to other beneficiaries on an urgent basis. The Commission in the Record of Proceedings dated 14.2.2017, has recorded the submissions of PGCIL to the effect that as per ERPC Meeting held on 25.1.2017, Odisha, West Bengal and DVC have taken up the matter with concerned authorities for surrender of their respective shares and therefore, have not signed the LTA Agreements. Subsequently, the position as regards non-signing of LTA Agreements by various beneficiaries of the Petitioner's



projects has been recorded in Para 4 of the Record of Proceedings dated 11.5.2017.

- (e) Meanwhile, one of the beneficiaries of the Petitioner's project, namely, Jharkhand Bijli Vitran Nigam Ltd. (Respondent No.5 herein) has executed the LTA Agreement with PGCIL on 18.5.2017 for evacuation of 11.58 MW power from the Petitioner's project. JBVNL vide its letter dated 22.6.2017 informed PGCIL that despite execution of the said LTA Agreement, power has not yet been scheduled even though the Petitioner has been regularly raising capacity charges on JBVNL. Accordingly, JBVNL has requested to make arrangement for scheduling of power from the Petitioner's project at the earliest.
- (f) The reason for which the Petitioner has been raising capacity charges on JBVNL are neither clear to PGCIL nor is PGCIL privy to the commercial relationship between the Petitioner and JBVNL. In the event of an impasse owing to the Petitioner's indifference to its regulatory responsibility to execute LTA Agreement, JBVNL may make its own application for grant of LTA, which will then be processed in terms of the Connectivity Regulations by PGCIL. However, in the submission of PGCIL, the Petitioner cannot be allowed to take unfair advantage through its own failings in firstly ensuring compliance to the provisions of Connectivity Regulations/Detailed Procedure regarding execution of LTA Agreement and then benefit from the apparently desperate situation that its beneficiaries (JBVNL in the instant case) may have to face on account of non-compliance of Petitioner's regulatory responsibilities. As it stands, the LTA of 121.6 MW applied by the Petitioner and granted to it by



PGCIL ought to be 'worked' further by signing of the LTA Agreement for a cumulative quantum of 121.6 MW either by the Petitioner itself or by its beneficiaries, failing which the LTA grant in itself is liable for cancellation in terms of the provisions of the Connectivity Regulations/Detailed Procedure and the Commission's orders in Petition Nos. 96/MP/2015 and 106/MP/2015.

(g) PGCIL has sought a direction to the Petitioner to execute LTA Agreement for such quantum falling short of LTA quantum of 121.6 MW as has not already been executed on its behalf by the concerned beneficiaries and to hold that Respondent No.1 is empowered to cancel the Petitioner's LTA grant in case of non-execution of LTA agreement within 15 days of this Hon'ble Commission's directions.

Analysis and Decision:

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

- (a) Issue No.1: Who should sign the Long Term Access Agreement with CTU in the present case?
- (b) Issue No.2: Whether PGCIL is entitled to cancel the LTAs for the failure of the beneficiaries to enter into LTA Agreements?
- (c) Issue No.3: Who should carry out scheduling and dispatch of MTPS Stage II (RLDC or SLDC) as per CERC (Indian Electricity Grid Code) Regulations, 2010?



(d) Issue No. 4: What should be treatment of transmission charges and losses in case Generator is connected to both STU & ISTS system?

The above issues have been dealt with in the succeeding paragraphs.

Issue No.1: Who should sign the Long Term Access Agreement with PGCIL in the present case?

22. The Petitioner has been supplying 100% power to the North Bihar Power Distribution Company Limited (NBPDC) and South Bihar Power Distribution Company Limited (SBPDCL) from Stage-I (2x110 MW) of MTPS. The Petitioner as on the date of filing the petition was under the process of commissioning the MTPS Stage-II (2x195 MW). The Ministry of Power, Government of India, vide its letter dated 10.12.2010, has allocated the power generated from MTPS Stage II amongst the beneficiaries in the Eastern Region. Relevant portion of the said letter dated 10.12.2010 is extracted as under:

“I am directed to state that power generated from the Muzaffarpur Thermal Power station Expansion project (2x195 MW), of Kanti Bijlee Utpadan Nigam Limited (a joint venture of NTPC and BSEB) in Bihar is allocated with effect from the date of commercial operation of the plant as in the following:

Name of State/Union Territory	Share in installed capacity (%)	Equivalent quantum in installed capacity(MW)
Bihar	67.7	264
DVC	2.6	10
Jharkhand	3.1	12
Orissa	7.7	30
West Bengal	8.7	34
Sikkim	0.5	2
Unallocated	9.7	38
Total	100	390



2. The extant guidelines on allocation of power have also been taken into cognizance in the above allocation.

3. The aforesaid allocation will be operative for pro-rata distribution to the quantum of electricity mentioned above alongwith distribution of unallocated power from the declared capacity of the generating station based on auxiliary consumption, planned outage, forced outage, availability of fuel/water etc. and after taking into account transmission losses.

4. The above allocation will further be subject to the Power Purchase agreements (PPAs) entered into by NTPC Limited with state Power utilities/ Union Territory and will further be subject to the beneficiaries ensuring compliance with the financial and commercial terms (including coverage of Letter of credit) of the PPA signed with NTPC Ltd., the tariff notification and any other directives/guidelines issued by the Government of India/Central Electricity Regulatory Commission from time to time.

5. In case of failure of the beneficiaries adhering to the condition mentioned above, NTPC Ltd. may shut off or restrict power supply from the power station and also reallocate the power in case beneficiaries default in payment or where they have not opened LCs of an adequate amount in favour of NTPC Ltd. NTPC Ltd. would inform Member Secretary of the concerned Regional Power Committee of the revised allocation of power in respect of the defaulting beneficiaries. Member Secretary of the concerned Regional Power Committee would reallocate the surplus power to the other beneficiaries based on the grid security and power situation.

6. This issues with the approval of the Minister of Power.”

23. Pursuant to the above allocation, the Petitioner entered into Power Purchase Agreements with the Respondents Nos. 2 to 10 (the beneficiaries). The Petitioner has placed on record the copy of PPA entered with GRIDCO dated 27.12.2010. Clause 3 of the PPA provides that delivery of the power to the beneficiaries is at bus-bar of the generating station and it is the responsibility of beneficiaries to make required arrangement of evacuation of electricity from such delivery point. The relevant portion of Clause 3 of the PPA is extracted as under:

“3.0 Transmission / Wheeling of Electricity

“3.1 Sale of electricity shall be at bus bars of the station and it shall be the obligation and responsibility of GRIDCO to make the required arrangement for evacuation of electricity from such delivery points of the Station.

3.2 For timely and expeditious development of the required transmission system for evacuation of power from the said project to its various beneficiaries, KBUNL shall initially make an application for connectivity and long term access to the CTU/



Powergrid on behalf of the beneficiaries. GRIDCO hereby consents for KBUNL to make the said application on its behalf. GRIDCO also agrees to subsequently sign all necessary agreements, including BPTA with Powergrid/ Other transmission licensees developing the identified transmission system, corresponding to their share of allocated capacity from the project.

3.3.1 Charges for utilization of transmission system(s) owned by Powergrid/ other Transmission licensee for wheeling of the electricity beyond bus bar of the station shall be paid directly by GRIDCO to the Powergrid or the Transmission Licensee as the case may be. KBUNL shall not be responsible for payment of such charges”

PPAs with other beneficiaries of Eastern Region (except Bihar) also contain the similar provisions. As per above provision, sale of power is at bus bar of the generating station and the beneficiaries are required to make the requisite arrangement for evacuation of electricity from delivery point of the generating station and shall be responsible to bear the transmission charges beyond the bus bar of the generating station. The PPAs further provide that for expeditious and timely development of the transmission system for evacuation of power to the beneficiaries, the beneficiaries consent that the Petitioner (KBUNL) shall make an application to CTU for connectivity and long term access on their behalf and the beneficiaries agree to subsequently sign all necessary agreements, including BPTA with Powergrid/other transmission licensees developing the identified transmission system, corresponding to their share of allocated capacities from the MSTs Stage-2. Thus the beneficiaries are under contractual obligations to not only sign the BPTA or LTA Agreement but are liable to bear the transmission charges corresponding to their share of allocated capacities from the generating station.

24. The Petitioner applied to PGCIL for grant of 121.6 MW LTA on 1.6.2011 on behalf of the beneficiaries (other than Bihar allocation/share of power) i.e. Jharkhand, GRIDCO, West Bengal, Sikkim and DVC for supply of power from MTPS Stage-II. According to the Petitioner, such a process had been followed to facilitate



process of LTA and as per consent given by the beneficiaries in the PPAs. PGCIL vide its letter dated 26.4.2012 communicated to the Petitioner about grant of 121.6 MW LTA subject to signing of the LTA Agreement. However, due to non-signing of LTA by the beneficiaries, PGCIL vide its letter 25.1.2017 gave a notice to the Petitioner to sign/facilitate signing of LTA Agreements by the beneficiaries within 15 days failing which LTA granted to it shall be liable for revocation.

25. The main reason for non-signing of the LTA Agreements by the beneficiaries particularly GRIDCO, WBSEDCL and DVC is that they are surplus in power after the re-allocation of power from the Central Generating Stations Ministry of Power, Government of India by increasing the share of the home State and accordingly, they have taken up the case with MoP, Gol to de-allocate their share of power in MSTs State II to other States. Learned counsel for GRIDCO argued that the Govt. of Odisha communicated to the Ministry of Power for de-allocation of power from the Petitioner along with from other generating stations in order to avoid huge financial liability. Thereafter, GRIDCO's share of 155 MW in Nabinagar Power Station has been reallocated to UP vide MoP Notification dated 6.5.2016. However, such reallocation of surrendered power of Odisha from other generating stations including the Petitioner is under active consideration of MoP and likely to be de-allocated. In the absence of remote chances of Odisha availing the petitioner's share of power, GRIDCO cannot sign the LTA Agreement. Learned counsel for WBSEDCL submitted that the State of West Bengal and DVC have also separately taken up the matter MoP, Gol for surrender of their respective shares in MSTs Stage II. Learned counsel further submitted that the allocation of power to WBSEDCL by the MoP as per the allocation letter issued is not absolute but is subjected to the PPA which is also



further subject to the beneficiaries ensuring compliance with the financial and commercial terms of the PPA. Learned counsel submitted that similar conditionality has also been provided in Clause 2.2.2 of the PPA regarding allocation of capacity. Accordingly, the MoP is required to take a view regarding firm allocation from the generating station on the basis of which execution of LTA Agreement could be facilitated.

26. Regulation 15 of the Connectivity Regulations provides for the signing of LTA Agreement which is extracted as under:

“15. The applicant shall sign an agreement for long-term access with the Central Transmission Utility in case of long term access is granted by the Central Transmission Utility, in accordance with the provisions as may be made in the detailed procedure. While seeking long-term access to an inter-State transmission licensee, other than the Central Transmission Utility, the applicant shall sign a tripartite long term access agreement with the Central Transmission Utility and the inter-State transmission licensee.”

Thus, as per the above provisions, the applicant who has been granted LTA shall have to sign the LTA Agreement with CTU in accordance with the provisions made in the Detailed Procedure.

Para 23.3(a) of the Detailed Procedure notified under the Connectivity Regulations provides as under:

"23.3 (a) In case of generating station of a Central Generating Company from which capacities have been allocated by the Ministry of Power, Government of India in favour of the distribution licensees/State Governments (hereinafter allocatees), the concerned generating company may make application to CTU for LTA on behalf of the allocatees on the basis of their written authority for making the application. After grant of LTA, it shall be the responsibility of the concerned Central Generating Company to facilitate signing of Long Term Access Agreement by the allocatees with CTU within the stipulated period as prescribed in the Detailed Procedure. If any application is pending with CTU as on the date of this amendment, the same shall be processed in accordance with the above Procedure."



Further, Para 24.1.2(b) (ii) (vi) of the Detailed Procedure provides as under:

“In case of applicants who have already firmed up the entity or entities to whom electricity is proposed to be supplied or from whom electricity is proposed to be procured for the entire quantum of power for which LTA has been sought through signing of PPA or, in the case of inter-State generating station is owned by the Central Government or Ultra Mega Power projects coming up through the initiative of the Central Government, allocation of power to various beneficiaries as notified by it, then the applicant shall not be required to submit bank guarantee (BG) with the application form or the Construction BG. In such cases, however, the augmentation of the transmission system as identified for grant of LTA shall be undertaken only after agreement of the beneficiaries in Standing Committee on Power System Planning/Regional Power Committee for bearing its transmission charges. The applicant shall submit a copy of PPA or notification made by Govt. of India, whichever is applicable. The long term access agreement may, in such cases be directly signed by the beneficiaries with the CTU or tripartite agreement with the CTU and ISTS, as the case may be.”

As per the above provision of the Detailed Procedure, the Central Generating Company is required to apply for LTA on behalf of the beneficiaries where the power from the generating station is allocated by the Government of India to the beneficiaries. After grant of LTA, the Long Term Access Agreement shall be directly signed by the beneficiaries with the CTU or the Tripartite Agreement with CTU and inter-State transmission licensee as the case may be. It shall be the responsibility of the concerned Central Generating Company to facilitate signing of LTA Agreement with the beneficiaries. Therefore, the Connectivity Regulations and the Detailed Procedure enjoin upon the beneficiaries to sign the LTA Agreement with CTU and the role of the Central Generating Company is confined to facilitating the signing of the LTA Agreements.

27. The Petitioner is a central generating company as NTPC Ltd which is a company owned and controlled by the Central Government is holding 65% equity in KBUNL. The tariff of the generating station is also being determined by the Commission under section 79(1)(a) read with section 62 of the Electricity Act, 2003.



Government of India, Ministry of Power allocated power from the MSTS Stage II vide letter dated 10.12.2010 to the beneficiaries of the Eastern Region. Based on the allocation, Respondent Nos. 5 to 10 have entered into PPAs with the Petitioner. The PPAs contain clear provision about the consent of the beneficiaries to authorize the Petitioner to apply for LTA to CTU on their behalf, to sign the LTA Agreements with CTU and to pay the transmission charges in proportion to their allocated share in MSTS Stage II. On the basis of the authority vested in the Petitioner through the provisions in the PPAs, the Petitioner applied for and was granted the LTA for 121.6 MW to ISTS. The Petitioner has performed its part of the contractual obligations under the PPAs and therefore, it is incumbent upon the beneficiaries to perform their part of the contractual obligations to enter into LTA Agreement and pay the transmission charges in proportion to their shares. Jharkhand has already entered into LTA with CTU. However, GRIDCO, WBSEDCL and DVC have not signed the LTA Agreements as they have approached Ministry of Power, Government of India for de-allocation of their shares from MSTS Stage II. The basis for the application and grant of LTA is the PPAs signed by the beneficiaries with the Petitioner and the basis of the PPAs is the allocation by Government of India, Ministry of Power. Unless and until the allocation of power in favour of particular beneficiaries is rescinded by Ministry of Power, the PPAs shall subsist and the concerned beneficiaries shall be liable to comply with the provisions of the PPAs including their obligations to sign the LTA Agreement and liability to pay the transmission charges. The beneficiaries do not have any option to unilaterally abandon the PPAs and their obligations thereunder.



28. The Commission in order dated 31.1.2013 in Petition No. 133/MP/2012 (Power Transmission Corporation of Uttarakhand V/S NTPC and others) dealt with similar issue. Relevant portion of the said order is extracted as under:

“25. We have considered the submissions of the petitioner and Respondent No. 1. It is noted that the transmission system from the generation bus-bar till the pooling point is being developed by the petitioner and beyond pooling point for evacuation power outside the State is being developed by CTU. Since, both the systems are part of the inter-state transmission system, necessary agreements are required to be signed as per the Regulations 15 of the Connectivity Regulations...

** * * * *

Since the power from the Tapovan Vishnugad and Lata Tapovan generating stations of the NTPC has been allocated by the Central Government in December, 2010, the long-term access agreements shall be signed by the beneficiaries of the generating stations and not by NTPC.”

29. Further, the Commission in order dated 9.3.2016 in Petition No. 69/MP/2015 also reiterated that the beneficiaries of the central generating station shall be required to sign the LTA Agreement with the CTU. The relevant portion of the said order is extracted as under:

“20. In the present case, the Government of India, Ministry of Power vide its letter dated 7.9.2015 has allocated the power from the generating station to the beneficiaries of Eastern Region. Accordingly, as per the provisions of Regulation 15 of the Connectivity Regulations and Clause 27.3 of the Detailed Procedure approved thereunder, and in our finding in order dated 31.1.2013 in Petition No. 133/MP/2012, the beneficiaries of the generating station are directed to sign the LTA Agreement with CTU within one month from the issue of the order.”

30. In the present case, Government of India, Ministry of Power vide its letter dated 10.12.2010 has allocated the power from the generating station to the beneficiaries of Eastern Region. The beneficiaries have entered into the PPAs with the Petitioner which authorize the Petitioner to seek LTA on behalf of the beneficiaries and after grant of LTA, the beneficiaries are under contractual obligations to sign the LTA Agreement directly with CTU. Accordingly, as per the provisions of Regulation 15 of the Connectivity Regulations and clause 23.3 of the



Detailed Procedure made thereunder, the provisions of the PPAs and in the light of our decision in order dated 31.1.2013 in Petition No. 133/MP/2012 and order dated 9.3.2016 in Petition No. 69/MP/2015, the beneficiaries of the MSTS Stage II are directed to sign the LTA Agreements with PGCIL within one week from the date of issue of this order. If the beneficiaries fail to sign the LTA Agreements, PGCIL is directed to operationalize the LTA qua the said beneficiary who shall be liable to bear the transmission charges in terms of its contractual obligations in the PPA with the Petitioner. In case, the share of any beneficiary has been re-allocated by Government of India, Ministry of Power, then the concerned beneficiary shall be relieved from its obligations under the LTA Agreement from the date of re-allocation coming into effect. The new beneficiaries shall have to enter into LTA Agreement within a reasonable time not later than the date of coming into effect of the re-allocation of power. If the said beneficiary fails to enter into LTA Agreement by the stipulated date, PGCIL shall operationalize the LTA and the said beneficiary shall be required bear the transmission charges proportionate to its share in the capacity of the generating station.

Issue No.2: Whether PGCIL is entitled to cancel the LTAs for the failure of the beneficiaries to enter into LTA Agreements?

31. PGCIL in IA No.47/2017 has submitted that LTA Agreement is a necessary precursor to secure the tying up of commercial liabilities before the LTA can come into operation. PGCIL has further submitted that it is either the Petitioner who should ensure that its beneficiaries for the LTA quantum sign the necessary Agreements with PGCIL so that transmission charges for subject LTA are paid to it, failing which the Petitioner is bound and obliged to discharge these obligations “on behalf of” the said beneficiaries. PGCIL has further submitted that the Commission in orders dated



8.3.2017 and 7.9.2016 in Petition Nos. 96/MP/2015 and 106/MP/2015 has held that if the LTA grantee fails to sign the LTA Agreement, then the Respondent is not only entitled but also under a statutory obligation to cancel the LTA. PGCIL has sought a declaration that it is empowered to cancel the Petitioner's LTA grant in case of non-execution of LTA agreement within 15 days of the directions of the Commission in the present petition.

32. As per the provisions of the Connectivity Regulations and Detailed Procedure, failure to enter into LTA Agreements shall result in cancellation of the LTAs. The Commission in orders dated 8.3.2017 and 7.9.2016 in Petition Nos. 96/MP/2015 and 106/MP/2015 respectively has dealt with the issue of cancellation of LTA in case of failure to enter into LTA Agreements. In the said petitions, the generators had sought LTA as they did not have identified beneficiaries and were granted LTA by CTU. However, the generators did not sign the LTA Agreements citing various reasons and sought indefinite time signing the LTA Agreements. The Commission in order dated 7.9.2016 in Petition No. 106/MP/2015 has held as under:

“23.....We are of the view that the Connectivity Regulations prescribes a time period of 30 days for signing the LTA Agreement failing which LTA should have been cancelled and bank guarantee should have been encashed. However, CTU, by taking into account the difficulties faced by the petitioner, has granted extension after discussion of the proposal in the Standing Committee of the Southern Region constituents on Connectivity and LTA. If extension of time for signing of the LTA Agreement for indefinite period is granted, it will defeat the purpose LTA which is the primary basis for transmission planning as per the Connectivity Regulations. CTU can at any time after the mandatory period of 30 days cancel the LTA and encash the bank guarantee if it is satisfied on the basis of materials before it that extension of time is not in the interest of planning, development and execution of the inter-State transmission system.”

In order dated 8.3.2017 in Petition No. 96/MP/2015, the Commission observed as under:



“19.....Thus, not signing the LTA Agreement and not furnishing the bank guarantee for construction phase is a valid ground for cancellation of the grant of LTA and encashment of bank guarantee. The Connectivity Regulations do not provide that if the applicant is able to prove that if it is affected by circumstances beyond its control or is prevented by force majeure event which prevents it from signing the LTA Agreement, its bank guarantee should not be encashed. In other words, the applicant being affected by force majeure or reasons beyond its control cannot be a ground for non-signing of the LTA and if the applicant fails to sign the LTA within the period intimated in the LTA intimation letter, then the bank guarantee shall be encashed by the nodal agency.”

33. As per the above decisions, the consequence of failure to sign the LTA Agreement will result in cancellation of LTA. However, the said principle cannot be ipso facto applied in a case where the central generating station is statutorily permitted to seek LTA on behalf of the beneficiaries who carry the responsibility to enter into LTA with the CTU, but due to surrender of power by the beneficiaries, the LTA Agreements cannot be executed. It is pertinent to note that allocation of power and de-allocation of power among the beneficiaries from the Central Generating Stations is vested with MoP, Gol and is not within the control of the Petitioner. Cancellation of the LTA on account of failure of the beneficiaries to sign the LTA Agreements pending decision on their request for de-allocation of power will virtually amount to cancellation of PPAs with concerned beneficiaries even before decision of Ministry of Power, Gol. Considering the fact that signing of the LTA Agreements by the beneficiaries is linked to the decision of MoP, Gol for de-allocation of shares of the existing beneficiaries and re-allocation of shares to new beneficiaries, it will not be appropriate to cancel the LTA. In order to ensure that PGCIL does not suffer in recovery of its transmission charges, we have permitted PGCIL to operationalize the LTA and recover the transmission charges in terms of the provision of the PPAs till the LTA Agreements are signed after re-allocation of power.



34. The Commission in order dated 18.4.2017 in Petition No. 223/MP/2015 (Tata Power Delhi Distribution Ltd-vs- NTPC Ltd & Ors). has, inter-alia, held as under :

"24. The Petitioner has sought directions to Central Government to re-allocate the power allocated to the Petitioners to other States. MoP has made its position clear about the policy of allocation and re-allocation of power from the Central Generating Stations including NTPC, NHPC and THDC It is entirely within the purview of the Central Government to allocate or reallocate power from the Central Generating Stations to the beneficiaries and the same being not covered under regulation of tariff under Section 79(1)(a) of the Act cannot be subject to adjudication under Section 79(1)(f) of the Act by this Commission. Therefore, the prayer of the Petitioner for issue of directions to the Central Government to allocate the Petitioners entire share of power from the generating stations of NTPC, NHPC and THDC to power deficit States/Utilities cannot be entertained as the same is beyond the scope of the power vested in the Commission under Section 79 (1) (a) and (f) of the Act. However, the Petitioner may approach the Central Government with its grievance for redressal.

25. The Petitioner has also submitted that in terms of Regulation 42 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (2014 Tariff Regulations), the Petitioner can seek a direction from this Commission to Central Government to allocate the shares of Petitioner in the generating stations of NTPC, NHPC and THDC to others. As per Note 2 under Regulation 42 of the 2014 Tariff Regulations, the beneficiaries intending to surrender part of their share of power to other States inside or outside the regions shall have to approach the Central Government for re-allocation of power and only after re-allocation by Central Government, the liability for payment of fixed charges during the period of re-allocation will be governed by the said provision. This provision does not enable the Commission to issue directions to the Central Government for re-allocation of power of the Petitioner to other State (s).

26. The Petitioner has sought directions/advice of the Central Commission under Section 79 (2) of the Act to allocate the Petitioner" s entire firm share of the powers to other deficit States/Utilities. The Commission is of the view that no such advice can be issued in the proceedings initiated by a contracting party (in this case, the Petitioner) against the other contracting parties (in this case NTPC, NHPC and THDC). Under subsection (2) of Section 79 of the Act, the Commission is required to advise the Central Government on formulation of National Electricity Policy and Tariff Policy and matters of common importance namely, promotion of competition, investment, efficiency and economy in activities of the electricity industry. The Petitioner is seeking a statutory advice to the Central Government for reallocation of power allocated to the Petitioner from the Central Generating Station of NTPC to any other party. In our view, statutory advice can be rendered by the Commission to the Government in the matters concerning overall interest of the electricity industry and cannot be invoked to address the individual grievances of a particular entity. In our view, the Commission cannot render any statutory advice on the subject to the Central Government. "

35. The Commission in the above order has clarified that as per Note 2 under Regulation 42 of the 2014 Tariff Regulations, the beneficiaries intending to surrender



part of their share of power to other States inside or outside the regions shall have to approach the Central Government for re-allocation of power and only after re-allocation by Central Government, the liability for payment of fixed charges for the period of re-allocation will be shifted to beneficiaries to whom power has been re-allocated. Accordingly, we direct that till the time new allocatees are allocated the surrendered power generated from MTPS Stage-II by the respective beneficiaries, it will be the liability of concerned beneficiaries to make payment to the capacity contracted in terms of their respective PPAs. The liability of transmission charges of the beneficiaries shall arise once LTA is operationalised by CTU.

36. PGCIL has submitted that one of the beneficiaries, namely, Jharkhand Bijli Vitran Nigam Ltd. (Respondent No.5 herein) has executed the LTA Agreement with PGCIL on 18.5.2017 for evacuation of 11.58 MW power from the Petitioner's project. JBVNL vide its letter dated 22.6.2017 informed PGCIL that despite execution of the said LTA Agreement, power has not yet been scheduled even though the Petitioner has been regularly raising capacity charges on JBVNL. Accordingly, JBVNL has requested to make arrangement for scheduling of power from the Petitioner's project at the earliest. PGCIL has submitted that the reason for which the Petitioner has been raising capacity charges on JBVNL are neither clear to PGCIL nor is PGCIL privy to the commercial relationship between the Petitioner and JBVNL. In the event of an impasse owing to the Petitioner's indifference to its regulatory responsibility to execute LTA Agreement, JBVNL may make its own application for grant of LTA, which will then be processed in terms of the Connectivity Regulations by PGCIL.

37. We notice that as per the PPA between the Petitioner and JVN, the Petitioner is required to deliver the power at the delivery point which is the bus bar of



the generating station and it is the responsibility of JVNL to off-take power from the bus bar. JVNL has already signed the LTA Agreement based on the LTA granted by the CTU to the Petitioner. Therefore, in so far as the JVNL is concerned, the interest of PGCIL is secured. It is the responsibility of PGCIL to operationalize the LTA for JVNL since the LTA Agreement is already in place. Since sale of power to the beneficiaries is taking place at the bus bar of the generating station, the generating station is within its right to give Declared Capacity on daily basis which shall be taken into account in deciding the fixed charge liability of the generating station in accordance with the Commission`s Tariff Regulations. On account of non-operationalisation of LTA by PGCIL, JBVNL is receiving the bills for capacity charges without scheduling of power. We therefore direct PGCIL to immediately operationalize the LTA of JVNL to enable it to draw its allocated power from MTPS-II.

Issue No.3: Who should carry out scheduling and dispatch of MTPS Stage II (RLDC or SLDC) as per the Grid Code?

38. The Petitioner has submitted that generating station consists of Stage-I of 2x110 MW which is 100% dedicated to Bihar and Stage-II of 2x195 MW which is dedicated to the extent of 67.7% (264 MW) to Bihar and remaining 126 MW allocated to other ER States. The Petitioner has submitted that it is a peculiar case where the bus has connectivity to the STU system and also to the ISTS. The Petitioner has further submitted that the issue has arisen with respect to scheduling of power from the generating station due to denial of ERLDC for allowing trial operation for the unit and limiting the injection to 126 MW quantum of connectivity. In consideration of the divergent views as recorded in minutes of meeting dated 25.1.2017, it was unanimously decided in the meeting that SLDC Bihar may be



allowed to do the scheduling for MTPS Stage-II keeping in mind operational expediency and uniqueness of switchyard in terms of generating switchyard as well as a grid sub-station for Bihar Intra-State network subject to the Commission`s approval. Accordingly, the Petitioner has sought approval for control area jurisdiction in terms of Regulation 6.4.3 of the Grid Code.

39. ERLDC has submitted that the installed capacity of Stage-II of the generating station is 390 MW (2x195 MW) and CTU vide its letter dated 26.4.2012 has granted of 126 MW connectivity with the ISTS. However, for the remaining 264 MW, the Petitioner has no connectivity either with CTU or STU. ERLDC has submitted that in the light of the date of commercial operation of the stage-II, Regulations 6.3A.1 (viii) and 6.3A.1 (ix) of the Grid Code, clearance for COD of 100% of installed capacity after trial run could not be granted since the Petitioner has connectivity with inter-State Transmission System of only 32.3 % (126 MW) of installed capacity (390 MW). Therefore, the Petitioner was requested to restrict its infirm injection upto its connectivity limit of 126 MW.

40. Per Contra, the Petitioner has submitted that ERLDC is misreading the Regulations of the Commission to contend that there is no connectivity of the Petitioner to the extent on 264 MW. The entire 264 MW has been allocated to the State of Bihar and the evacuation is also being done through the STU system. The Petitioner has submitted that this is not an exceptional case as similar arrangement is already available in the Simhadri generating station. Further, majority portion of the generated power will be scheduled by the Distribution Companies of Bihar through STU network. Therefore, the generating station can remain connected to the



STU network and scheduling should be done by the SLDC, Bihar. The Petitioner has submitted that this arrangement was agreeable by all parties.

41. ERPC has submitted that in the meeting held on 25.1.2017 at ERPC, a detailed discussion was held regarding the control area jurisdiction as well as the scheduling/accounting and applicable transmission charges. In the said meeting, it was agreed that the Petitioner should operate under the jurisdiction of Bihar SLDC in terms of Regulation 6.4.2(c) (iii) of the Grid Code. Since, the share of Bihar from Stage-II of the generating station is higher than the required 50%, the scheduling is required to be done by Bihar SLDC in accordance the provisions of the Grid Code.

42. We have perused the Minutes of Special Meeting held on 25.1.2017 at ERPC Kolkata. In the said meeting, the issues regarding scheduling of power from BRBCL, Nabinagar and KBUNL, MTPS Stage-II was discussed as under:

- Representative from KBUNL informed that their generating station consists of Stage –I of 2x110 MW (100% dedicated to Bihar state) and Stage-II of 2x195 MW (67.7% (264 MW) allocated to Bihar and remaining 126 MW allocated to other ER states)
- The KBUNL bus has connectivity to the STU system and also to the ISTS through 220kV Kanti-Muzaffarpur D/c line.
- The present issue concerns ERLDC approval for injection of full load capacity for trial operation of the Stage-II of the station scheduled for February'17. ERLDC has informed that KBUNL must limit its generation to 126 MW which is the quantum of connectivity approved by CTU.
- LTA not signed with any constituent.

-
- KBUNL representative provisionally agreed for the scheduling of KBUNL Stage-II units by SLDC, Bihar pending CERC approval. KBUNL informed that it will file a petition with CERC for its approval of scheduling of Kanti Stage-II by SLDC, Bihar. Till that time Bihar SLDC will continue to schedule Kanti Stage-II.

In view of the consent of KBUNL for scheduling of KBUNL Stage-II by Bihar SLDC, it was decided that the jurisdiction of KBUNL Stage-II be shifted from ERLDC to SLDC Bihar immediately w.e.f 06.02.2017 to



enable full load trial operation. KBUNL may approach CERC for ratification of the Central Commission.

It is noted from the above that the Petitioner had agreed for scheduling of MTPS stage-II by Bihar SLDC and accordingly, it was decided to shift the jurisdiction of KBUNL Stage-II from ERLDC to Bihar SLDC. In the said meeting, the Petitioner was granted liberty to approach the Commission for approval of the decision taken in ERPC meeting. Accordingly, the Petitioner has sought approval of control area jurisdiction as per Regulation 6.4 (3) of the Grid Code.

43. Regulation 6.4 (3) of the Grid Code provides as under:

"3. There may be exceptions with respect to above provisions, for reasons of operational expediency, subject to approval of CERC. Irrespective of the control area jurisdiction, if a generating station is connected both to the ISTS and the STU, the load dispatch center of the control area under whose jurisdiction the generating station falls, shall take into account grid security implication in the control area of the other load dispatch center."

44. We have considered the submissions of the Petitioner and ERLDC. In the present case, the generating station of the Petitioner is a Central Generating Station where host State (Bihar) does not have full share allocation. The share of Bihar from MTPS-II Stage-II (2x195 MW) is 67.7% (264 MW). As per Regulation 6.4.2 (a) of the Grid Code, Central Generating Stations (excluding stations where full share is allocated to host State), shall come under the respective Regional ISTS control area and therefore, the respective RLDC shall coordinate the scheduling of the generating station. However, Regulations 6.4.3 of the Grid Code provide that there may be exceptions with respect to above provisions, for reasons of operational expediency, subject to approval of the Commission. Though it was agreed in the Minutes of Meeting dated 25.1.2017 by all parties including the Petitioner that scheduling of KBUNL Stage-II units shall done by Bihar SLDC for reasons of operational



expediency subject to approval of the Commission, we are of the view that the case of MTPS-II squarely falls under Regulation 6.4.3 (a) of the Grid Code. Moreover, we do not find any operational expediency which necessitates scheduling of power from the generating station by Bihar SLDC. Since a number of stations apart from Bihar are scheduling power from MTPS-II which is a Central Generating Station, the control area jurisdiction should vest in the ERLDC. Accordingly, we direct the control area jurisdiction of MTPS-II shall be transferred to ERLDC with effect from 1.4.2018.

Issue No. 4: What should be treatment of transmission charges and losses in the instant case when the generator is connected to both STU and ISTS system? How should transmission charges and losses should be billed?

45. The Petitioner has submitted that Bihar has expressed its apprehension about imposition of PoC charges as per prevailing principle adopted by POSOCO and PGCIL inspite of the fact that there are sufficient no. of 220 kV Ckts available if scheduling is done by ERLDC. According to the Petitioner, no separate LTA has been applied and granted to Bihar to avail 67.7% power allocated from MTPS-II. As per the same principle which is adopted by POSOCO and PGCIL with regard to scheduling, other beneficiaries of ER have raised the issue of additional STU charges for wheeling of power through ISTS to draw their shares from ISTS lines directly connected at State bus thus imposing STU as well as CTU PoC Charges in the event scheduling is done by SLDC Bihar. The Petitioner has submitted that the application of transmission charges and losses in a generating station should not be changed merely on account of entity engaged in scheduling of the generating station. The charges and losses should be applied as per the actual usage. The Petitioner has submitted that there should not be any PoC charges and losses applicable for the power scheduled to Bihar even if scheduling is done by ERLDC



and similarly, no STU charges and losses should be applicable to other beneficiaries in case scheduling is done by Bihar SLDC as in either case, drawee entities are drawing power directly from generating bus and not through any pooling sub-station.

46. ERLDC has submitted that the physical loss in the system remains fixed irrespective of whether loss is applied on a particular transaction or not. Exempting certain types of transactions from loss would only increase the burden on other entities. Therefore, in the event of scheduling power from the Petitioner's generating station by ERLDC, POC injection and POC withdrawal losses would be applied to all the beneficiaries of MTPS Stage II. ERLDC has submitted that for preparing the net drawal schedule of BSPHCL, estimated transmission losses shall be deducted and LTA from KBUNL to BSPHCL be obtained from PGCIL and connectivity with the inter-State transmission system should be taken for the entire installed capacity by KBUNL. ERDLDC has submitted that in the event of scheduling power from KBUNL by Bihar SLDC, the net drawal schedule of all beneficiaries other than BSPHCL shall be prepared by ERLDC after deducting estimated transmission losses of Bihar State Transmission System, POC injection loss of Bihar and POC withdrawal loss of corresponding drawee entity, as required by Bihar. Accordingly, approved injection from the generating station of KBUNL has to be computed and corresponding allocations have to be added to the withdrawal quantum of beneficiaries.

47. Per Contra, the Petitioner has submitted that it is a well settled principle that merely because scheduling is done by an agency is not a reason for levy of losses and charges, if otherwise not applicable. The Petitioner has submitted that CEA itself has opined that the KBUNL bus is a State Bus. The distribution companies in Bihar have sufficient transmission capacity to evacuate their share of power from the



generating units of the Petitioner. Therefore, there is no reason to force them to draw their shares of power through the CTU network. In support of its contention, ERLDC has relied upon the Regulation 6.5.7 of the Grid Code. ERLDC has submitted that the Petitioner is seeking the permission of the Commission under Regulation 6.4 (3) which is an exception to the above. Regulation 6 of the Sharing Regulations will not have any application to the present case in so far as the Distribution Companies in Bihar are concerned.

48. PGCIL has submitted that the Regulation 3 of the Sharing Regulations stipulates that the PoC charges shall be applicable upon all the regional entities as defined in the Grid Code and regional entities have been defined in the Grid Code as 'such persons who are in the RLDC control area and whose metering and energy accounting is done at the regional level'. Therefore, the scheduling entity, whether SLDC or RLDC will determine applicability of PoC charges. If it is decided as ISTS bus, i.e. under RLDC control, then Bihar will have to pay PoC charges for 488.4 MW (i.e. not only for Stage-II-268.4 MW, but also for Stage-I-220 MW), which till now, by virtue of being scheduled by SLDC are not applicable. On the other hand, if it is decided as State bus, then the other State allocatees of 121.6 MW will be required to bear STU charges of Bihar.

49. ERPC has submitted that PoC charges and losses should not be applicable on Bihar for drawing its MW share from MTPS-II and STU charges and losses should not be applicable on other ER beneficiaries for drawal of their MW shares from MTPS-II. According to ERPC, only PoC charges and losses should be applicable for drawal of their MW shares by other ER beneficiaries.



50. The Commission in order dated 30.3.2017 in Petition No. 291/MP/2015 (Andhra Pradesh Limited V/S Southern Region Load Dispatch Centers) considered the case where the bus bar of the generating station has been connected to both CTU and STU networks and observed as under:

"11. As per the Regulation 6.4.2(a) of the 2010 Grid Code, Central Generating Stations (except where full share is allocated to the host State) shall come under the jurisdiction of the respective RLDC. After bifurcation of the erstwhile State of Andhra Pradesh into Andhra Pradesh and Telangana, Simhadri STPS Stage-I is supplying power to two States and hence its control area, falls within the jurisdiction of SRLDC. Accordingly, we direct that the scheduling of Simhadri STPS Stage-I shall be carried out by SRLDC. Both Telangana and Andhra Pradesh have now agreed that the scheduling of Simhadri STPS Stage-I should be done by SRLDC. The only caveat put forth by the petitioners is that on scheduling of power by SRLDC, the transmission charges and losses of ISTS from Simhadri STPS Stage-I should not be fastened on Andhra Pradesh as the State is connected to Simhadri STPS Stage-I though the transmission system owned by Andhra Pradesh. The concern of the petitioner with regard to allocation of transmission charges and losses of ISTS has been dealt with in later part of the order.

Issue No (ii): Whether PoC charges & losses shall be applicable on Andhra Pradesh to the extent of share of Andhra Pradesh from Simhadri STPS Stage-I STPS generating station?

12. The petitioner has submitted that Simhadri STPS Stage-I STPS station is within Andhra Pradesh and is electrically connected to State of Andhra Pradesh by a transmission system built, owned and operated by APTRANSCO. Transmission of power from Simhadri STPS Stage-I STPS to the sub-station of Andhra Pradesh is not through ISTS lines and power is transferred through state owned dedicated lines. After bifurcation, Andhra Pradesh is availing its share of allocated power through 400 kV feeders of the transmission system of Andhra Pradesh from Simhadri STPS Stage-I STPS to Kalpaka Sub-station switchyard which is also owned and operated by Andhra Pradesh and no part of the regional transmission system is used by the Andhra Pradesh for transfer of power from Simhadri STPS Stage-I STPS. The power flow of 1000 MW from Simhadri STPS Stage-I STPS generation before and after bifurcation of erstwhile Andhra Pradesh is through the transmission system of Andhra Pradesh. There is no change inflow of power i.e. the power flow path is same before and after the reorganization. Accordingly, Andhra Pradesh is not liable to pay the transmission charges. Further, no transmission losses are incurred in the regional transmission system on account of drawal of power from Simhadri STPS Stage-I. Therefore, there is no pooled regional transmission loss and no such loss could be appropriated to Andhra Pradesh. If the methodology of calculation is changed as PoC model, the PoC charges & losses on Simhadri STPS Stage-I power will be imposed on State of Andhra Pradesh for 461.10 MW of power irrespective of the fact that the power is evacuated from the CGS using transmission system of the State of Andhra Pradesh. In the instant case, point of injection and point of withdrawal is same and both are within Andhra Pradesh and hence, there is no loss in the system and further there is no loss along the Deemed ISTS."



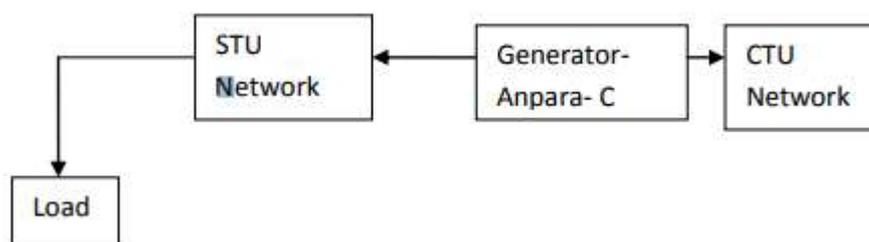
51. In the case of the Petitioner, it is evident from Single Line Diagram annexed with this order as Annexure that the MTPS-II switchyard is connected to the Bihar transmission system of BSPTCL at 220 and 132 kV levels. Further, the MTPS-II switchyard is connected at 220 kV level to Power grid Muzaffarpur substation through 220 kV MTPS- Kaffen D/C line of Powerlink (ISTS licensee). The MTPS-II switchyard is connected through ISTS lines (220 kV MTPS-Kaffen D/C) to ISTS system and through BSPTCL lines (220 kV MTPS-Begusarai D/C, 220 kV MTPS-Darbhanga D/C, 220 kV MTPS-Gopalgunj D/C and also at 132 kV level to Muzaffarpur (BSPTCL), Motihari, samastipur) to BSPTCL system. Therefore, the entire power from the Muzaffarpur Thermal Power Station is being evacuated through STU network as well as ISTS network.

52. It is noted that the Petitioner while making an application to PGCIL for grant of LTA for its project has indicated that BSEB has its own arrangement for evacuation of power from the generating station. We are of the view that PGCIL while granting LTA to the Petitioner should have considered this aspect as the Petitioner specifically indicated this information in its applications for grant of connectivity and LTA. It is also noted that the installed capacity of the Petitioner was also included in Minutes of meeting for grant of LTA held on 8.2.2012.

53. It is noticed that Bihar has its own State transmission network to evacuate allocated power from MTPS Stage-II. The Commission in order dated 8.6.2013 in Petition No. 189/MP/2012 with IA No. 47 of 2012 (Lanco Anpara Power Limited, Hyderabad Vs Uttar Pradesh Power Transmission Corporation Limited, Lucknow & others) had observed and directed as under:



“16. We have considered the submissions of the petitioner, respondent UPPTCL and CTU. As per Regulation 8(3) of the Connectivity Regulations, while granting connectivity, the nodal agency is required to specify the name of the sub-station or pooling station or switchyard where connectivity is to be granted. Connectivity Regulations clearly provides that a switchyard may be connected to the other switchyard. Thus, Anpara-C switchyard is connected to Anpara A & B Switchyard through contiguous bus. It is noted that the generating station of the petitioner viz Anpara-C is an embedded entity of UP. Anpara-C is connected to the common bus of Anpara A & B which is further connected to 400 kV Anpara-Singrauli ISTS line. Further, Anpara C is directly connected to 765 kV STU network and majority of the power flow is through STU network. So on one side the petitioner's generating station is connected to STU and on the other side to CTU as depicted below:



22. In the present case, it is also evident from the study conducted by CTU that majority of power of Anpara-C is consumed in the State of Uttar Pradesh itself . The transmission system of STU does not act as intervening system in the present case as State transmission network is not used in the access as a part of inter-State transmission system for the conveyance of electricity, i.e. power is not conveyed to ISTS through STU network and a contract path cannot be identified. Therefore, in terms of provisions of Central Electricity Regulatory Commission (Rates, Charges and Terms and Conditions for use of Intervening Transmission Facilities) Regulations, 2010 as per Intervening Transmission Facilities Regulations, 2010, the charges are not applicable in the present case.

23. The petitioner in its submission dated 22.3.2013 has stated that if the contentions of respondent are taken correct then in that event all the Central Generating Stations connected to ISTS will have to pay STU charges as the power from the above generating station can flow into intra-state system more than what has been allocated to the state. It is noted that transmission charges and losses are applicable on schedule of energy and not on actual energy flow. In PoC mechanism as well, for computing the rates only actual flows are considered. Once rates are determined, they are applied on scheduled energy. The actual energy flows are different from scheduled flow and sometimes power from State generating stations flows on ISTS and sometimes ISGS power flows on state transmission network. However, such phenomenon cannot be the basis for claim of the STU charges. Also, for same energy, two charges cannot be applied, when the entity is connected to both STU/CTU network. The transmission charges and losses are applied on the basis of Scheduled power not on actual flow of power which depends on system condition. Therefore, the intra-State transmission charges or losses as per Central Electricity Regulatory Commission (Open Access In Interstate transmission) Regulation.2008 are not applicable.

24. For embedded entity, i.e. entity committed to STU only the STU charges are applicable on the premise that State transmission system is being used for flow of



power upto ISTS and therefore, it flows further in ISTS. Further, UPPTCL is benefitted due to the fact that by consuming 100 MW power, its drawal from ISTS decreases, which is reflected in the PoC.

25. In view of the above, the petitioner is not liable to pay the transmission charges of STU network. The payment of transmission charges and losses for 100 MW from Anpara-C shall be governed by Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010.”

As per the above finding of the Commission, State charges are not payable on the conveyance of power through ISTS network.

54. ERPC, vide its letter dated 27.6.2017, has confirmed that Bihar system is sufficient to evacuate its share of power from MTPS-II. ERPC has further suggested that PoC charges and losses shall be applicable on Bihar for drawing its MW share from MTPS-II and STU charges and losses shall not be applicable on other beneficiaries of the Eastern Region for drawal of their MW shares from MTPS-II.

55. Considering the suggestions of ERPC, we are of the view that while computing schedules of Bihar from MTPS Stage-II, ISTS Charge and losses shall not be applicable on schedules of Bihar.

Treatment of generic issue where generator is connected to both STU System and ISTS system:

56. Grid Code recognizes that a generator may be connected to both State network and ISTS. Further, Regulation 6.4 of the Grid Code deals with the framework for scheduling jurisdiction of RLDCs and SLDCs in so far as Central Generating Stations and inter-State generating stations are concerned.

57. Regulation 8 (1) of the Connectivity Regulations provides as under:

“8. Grant of Connectivity

(1) The application for connectivity shall contain details such as, proposed geographical location of the applicant, quantum of power to be



interchanged that is the quantum of power to be injected in the case of a generating station including a captive generating plant and quantum of power to be drawn in the case of a bulk consumer, with the inter-State transmission system and such other details as may be laid down by the Central Transmission Utility in the detailed procedure.”

58. It would be pertinent to mention that in accordance with the Detailed Procedure, the application for grant of connectivity to ISTS is required to be submitted alongwith above details as per the Format CON-2. The details sought in the application also include the capacity (MW) for which connectivity is required and the installed capacity of the generation station. Therefore, CTU has the information about installed capacity of the generating station and capacity (MW) for which connectivity is sought from ISTS. In case, a generator plans to get connected to both ISTS and State network, while granting connectivity CTU should ensure that adequate State system is available or shall be made available. In such cases, scheduling may be either with RLDC or SLDC as per applicable provisions of the Grid Code. In case, SLDC carries out scheduling, STU charges and losses shall not be applicable to schedules on ISTS. In case, RLDC carries out scheduling, ISTS charges and losses shall not be applicable to schedules on State network. It is also pertinent to mention that an associated issue may arise regarding treatment of UI/deviation charges. We are of the view that Deviation charges shall be considered pro-rata on the schedules on the State network and ISTS network.

59. The Petition along with IA is disposed of in terms of the above.

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

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member



