

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 261/MP/2017**

**Coram:**

**Shri P.K. Pujari, Chairperson**

**Dr. M.K.Iyer, Member**

**Date of Order: 6.11.2018**

**In the matter of**

**Petition seeking set aside the bill dated 06.11.2017 of the Central Transmission Utility (PGCIL) towards LTA Charges for the Kudgi Transmission System.**

**And**

**In the matter of**

**NTPC Ltd.,**

**NTPC Bhawan, Core-7, Scope Complex**

**7, Institutional Area, Lodhi Road**

**New Delhi-110 003**

**...Petitioner**

**Vs**

**1. Power Grid Corporation of India Ltd,**

**Central Transmission Utility**

**B-9, Qutab Institutional Area, KatwaraiSarai New Delhi-110016**

**2. National Load Despatch centre**

**Power System Operation Corporation Limited**

**B-9, Qutab Institutional Area, KatwariaSarai**



**New Delhi-110016**

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

**4. Kudgi Transmission Corporation Ltd.  
Building No. 3, Second Floor Sudeep Plaza,  
MLU Sector 11 Pocket-4, Dwarka New Delhi-110075**

**5. Bangalore Electricity Supply Company Ltd.  
K.R. Circle, Bengaluru – 560001**

**6. Mangalore Electricity Supply Company Ltd.  
MESCOM Bhavana, Corporate Office  
BejaiKevai Cross Road, Mangalore-575004**

**7. Gulbarga Electricity Supply Company Ltd.  
Station Main Road, Gulbarga-585102**

**8. Hubli Electricity Supply Company Ltd.  
Corporate Office, Navanayar, PB Road,  
Hubli-580 025**

**9. Chamundeshwari Electricity Supply Company Ltd  
Corporate Office, No 29,  
Ground Floor, KaveriGrameena Bank Road,  
Vijaynagar 2nd Stage, MYSORE - 570017.**

**10. Power Company of Karnataka Ltd.  
KPTCL Building, KaveriBhavan,  
K.G.Road, Bengaluru – 560009**

**11. Kerala State Electricity Board Limited**



**VydyuthiBhavanam**  
**Thiruvananthapuram-695004**

**12. Tamil Nadu Generation and Distribution Corporation Ltd**  
**7th Floor NPKRR Maaligai,**  
**144, Anna Salai, Chennai-600002**

**13.Southern Power Distribution Company Ltd. of Andhra Pradesh Ltd.**  
**(APSPDCL) H. No. 19-13-65/A, Srinivasapuram, Tiruchanoor Road, Tirupati-**  
**517 503**

**14. Eastern Power Distribution Company of Andhra Pradesh Ltd. P&T**  
**Colony, Seethammadhara, Visakhapatnam-530 013**

**15. Southern Power Distribution Company of Telangana Ltd 6-1-50, Mint**  
**Compound Hyderabad-500 063**

**16. Northern Power Distribution Company of Telangana Ltd H. No. 2-5-31/2,**  
**Corporate Office Vidyut Bhavan, NakkalguttaHanamkonda Warangal-**  
**506001**

**...Respondents**

**Parties Present:**

Ms. Sheela M. Daniel, Resident Engineer, KSEB  
Ms. Sreeja R.S. Senior Assistant, KSEB  
Shri P.V.Dinesh, Advocate, KSEB  
Shri Mukund, KSEB  
Ms. Swarna Seshadri, Advocate, NTPC Limited  
Ms. Parichita Chowdhury, Advocate, NTPC Limited  
Shri G. Chakraborty, NLDC, POSOCO  
Shri A. Rajan, NLDC POSOCO  
Shri Vinay Garg, NTPC Limited  
Shri Rohit Chhabra, NTPC Limited



## ORDER

The Petitioner, NTPC Ltd is developing a 2400 MW (3 X 800) coal based power station (hereinafter referred to as Kudgi Generating Station) at Kudgi supplying power to various beneficiaries in the Southern Region. The Ministry of Power has allocated the electricity from the Kudgi generating station as under –

- (i) Karnataka Discoms – 1196.24 MW
- (ii) KSEBL – 119.18 MW
- (iii) TANGEDCO – 300.10 MW
- (iv) AP Discoms – 192.79 MW
- (v) Telangana Discoms – 225.31 MW

The Petitioner has entered into Power Purchase Agreement with the beneficiaries on various dates. The Petitioner on behalf of these beneficiaries has applied for LTA for Kudgi generating station.

2. The following transmission system was identified for evacuating power from Kudgi generating station
  - (i) 2 nos. 400kV D/C transmission line Kudgi TPS – Narendra (New)
  - (ii) 765 kV D/C transmission line Narendra (New) – Madhugiri
  - (iii) 765 kV D/C transmission line Madhugiri – Bangalore
  
3. L&T Infrastructure Development Projects Limited (LTIDPL) was selected based on the international tariff based competitive bidding to execute the transmission system on build, own, operate and maintain basis and to provide transmission service to the Long term Transmission Customers of the project. LTIDPL accomplished all the milestones required in terms of the Request for Proposal (RfP) and Letter of Intent and acquired the Kudgi Transmission Limited (KTL) as its fully owned subsidiary.

### **Case of the petitioner:**

4. The petitioner has submitted that the following facts have led to filing of this petition:



- a. The petitioner has stated that, in case of Central Sector Generating Companies such as NTPC, the power stands allocated to the beneficiaries by the Ministry of Power. The sale of power is at the bus bar of the generating station. The title of the power passes 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. NTPC does not undertake any responsibility qua the transmission, open access, scheduling of power etc. In such a situation, the generating company has no use of the transmission facility.
- b. On 15.04.2011, NTPC in accordance with Article 3 of the PPA, applied for LTA for Kudgi generating station stating as under:-  
*“NTPC is making this application on behalf of the beneficiaries. The beneficiaries have agreed for subsequent signing of all necessary agreements including BPTA etc. with Powergrid / other transmission licensee developing the identified transmission system, corresponding to their final share of allocated capacity from the project. It is requested that the enclosed application may be processed at your end.”*
- c. The matter came up for discussion in the 33<sup>rd</sup> Meeting of Standing Committee on Power System Planning of Southern Region on 20.10.2011 and the following was agreed to –  
***“10.0 Transmission System for evacuation of power from Kudgi TPS (3x800 MW in Phase-I) of NTPC Limited.***  
10.1 *Director (SP & PA), CEA informed that the transmission system for Kudgi TPS was agreed in the 32nd Meeting of Standing Committee on Power System Planning in SR held on 8 June, 2011 which inter-alia included stepping up of generation at 765 kV and 765 kV D/C lines from Kudgi to Narendra and Narendra to Madhugiri. Subsequently, KPTCL requested that the proposed Narendra (new) substation may be constructed nearer to Kudgi site as they can help in identification and procurement*



of land for the substation close to the Kudgi generation project. Further, they suggested 400 kV D/c quad lines from Kudgi to Narendra (existing) and Raichur (new) alongwith Narendra(New) to Madhugiri 765 kV D/c (charged at 400 kV) as a part of evacuation system for Kudgi TPS.

10.2 In this regard, POWERGRID informed that the Narendra (new) substation is covered under the inter-regional scheme viz. Narendra – Kolhapur 765 kV D/c (initially charged at 400 kV). This link is required in the timeframe of Raichur-Sholapur 765 lines for smooth synchronisation of two large grids. Therefore, it is utmost important that this inter-regional scheme and transmission system for Kudgi should not be clubbed. Prima-facie in line with the proposal of KPTCL the Narendra (new) substation can be constructed near Kudgi TPS site which can later be integrated with Kudgi transmission system matching with the Kudgi generation project.

10.3 Construction of 765/400kV substation at Narendra (new) near Kudgi was discussed with respect to adoption of AIS/GIS. ED (POWERGRID) explained that they have gone ahead with 400kV Narendra (new) substation as a GIS substation under the SR-WR inter-regional scheme. After deliberations it was decided that the 400kV Narendra (new) substation near Kudgi site may be constructed as GIS. **Accordingly, the same system as already approved scheme in Standing Committee and RPC and under implementation by POWERGRID with following configuration was agreed as the inter-regional link:**

- (i) **Establishment of 400kV GIS substations at Narendra (New, near Kudgi) and Kolhapur(New) (with provision to upgrade to 765kV at a later date)**



- (ii) **Narendra (New) – Kolhapur (New) 765 kV D/C line (initially charged at 400 kV)**
- (iii) **Narendra (New) – Narendra (Existing) 400 kV D/C quad line**
- (iv) **LILO of both circuits of Kolhapur – Mapusa 400 kV D/C line at Kolhapur (New)**

**10.4 As regard Kudgi Transmission System following system was agreed:**

**Transmission system for Kudgi Phase-I Generation project of NTPC (3x800 MW)**

**To be provided by NTPC:**

- (i) **Stepping up of power at the generation project to 400 kV**
- (ii) **Provision of Bus reactor of 2x125 MVAR at generation switchyard.**
- (iii) **Provision of 2x500 MVA, 400/220kV transformers at generation switchyard and 6 nos. 220 kV bays**

**To be implemented as ISTS (as evacuation system for Kudgi TPS Phase-I):**

- (i) **Kudgi TPS – Narendra (New) 400 kV 2xD/C quad lines**
- (ii) **Narendra (New) – Madhugiri 765 kV D/C line (initially charged at 400 kV)**
- (iii) **Madhugiri – Bangalore 400 kV D/c (quad) line. (The terminal point at Bangalore is yet to be decided, for which POWERGRID would take action and inform CEA/SCPSR)**

10.5 In addition to above, a 400 kV D/c quad line from Narendra (New) to Raichur(New) would be considered while planning the transmission system when NTPC applies for LTA for Phase-II (1600 MW) of the Kudgi TPS.”



- d.** PGCIL vide letter dated 23.12.2011 intimated to NTPC, the grant of LTA for Kudgi TPS generation and requested NTPC to sign the LTA agreement and furnish the bank guarantee.
- e.** On 22.12.2014, NTPC wrote to PGCIL bringing on record the allocation after the formation of the State of Telangana and requesting PGCIL to make necessary revisions in the LTA granted dated 23.12.2011. On 23.01.2015, PGCIL wrote to NTPC revising the LTA based on the re-allocation to AP & Telangana and also calling upon NTPC to sign the LTA Agreement. Vide letter dated 18.2.2015, NTPC stated to PGCIL that signing of the LTA Agreement or any changes thereto need to be made directly between the PGCIL and the beneficiaries of the system and NTPC has nothing to do in the matter.
- f.** PGCIL accepted this position and signed the LTA Agreements with the beneficiaries directly on various dates as under:-
- (i) Karnataka Distribution Companies (1196.24 MW) - LTA Agreement dated 04.03.2015
  - (ii) Kerala State Electricity Board Limited (119.18) – LTA Agreement dated 30.03.2015
  - (iii) Tamil Nadu Generation & Distribution Co Ltd (300.10 MW) - LTA Agreement dated 04.02.2015
  - (iv) Andhra Pradesh Discoms (192.79 MW) - LTA Agreement dated 10.03.2015
  - (v) TelanganaDiscoms (225.31 MW) - LTA Agreement dated 27.02.2015
- g.** Thereafter, PGCIL has been dealing with the beneficiaries of power directly including for signing of TSA, opening of Letter of Payment security mechanism etc. When the matters stood thus, another issue arose with respect to payment of charges for the Element I of the Kudgi Transmission System viz. Kudgi TPS – Narendra (New) 400 kV 2xD/C quad lines which was





awarded under the TBCB route to L&T Infrastructure Development Projects Limited (SPV - 'Kudgi Transmission Limited' / 'KTL').

- h.** In so far as Elements II and III viz. Narendra (New) – Madhugiri 765 kV D/C line and Madhugiri-Bangalore 400 kV D/c (quad) line, respectively, are concerned, the transmission charges are being recovered through the POC Mechanism from the date of respective CODs. There has been no dispute raised by any party on the same. However, with regard to Element I, a dispute was raised by KTL by filing Petition No. 236 / MP / 2015 before this Commission seeking that its COD should be deemed as 04.08.2015 and also seeking the payment of its charges from the said date.
- i.** This Commission vide order dated 27.06.2016 in Petition No. 236/MP/2015, inter-alia, directed the sharing of transmission charges to be as under:-

*“41. The petitioner and NTPC have placed on record the CEA inspection certificate dated 28.7.2015, 23.9.2015 and RLDC’s charging certificates dated 20.11.2015 and 20.01.2016. Accordingly, the date of commercial operation of the transmission assets has been considered as under:*

<i>S.No</i>	<i>Utility Name</i>	<i>Assets details</i>	<i>COD considered</i>
<i>1</i>	<i>KTL</i>	<i>KTL lines</i>	<i>4.8.2015</i>
<i>2</i>	<i>NTPC</i>	<i>NTPC Kudgi STPP switchyard</i>	<i>24.8.2015</i>
<i>3</i>	<i>PGCIL</i>	<i>Powergrid sub-station at New-Narendra</i>	<i>15.11.2015</i>

*42. It is noted that 400 kV D/C Kudgi TPS-Narendra (New) transmission line is connectivity line for NTPC Kudgi STPP and obtained clearance from CEA on 28.7.2015. However, NTPC Kudgi STPP switchyard obtained clearance from CEA on 24.8.2015 and charged the switchyard on 16.11.2015, after PGCIL’s sub-station was*



made ready. 400 kV Narendra (new) sub-station pertaining to PGCIL was charged on 15.11.2015. In view of the above, the transmission charges shall be payable by NTPC and PGCIL in the following manner:

(a) It is noted that the petitioner completed its entire scope of the work on 27.3.2015. However, due to non-availability of inter-connection facility required to be developed by NTPC and PGCIL at each end, it could not commission the transmission line. Therefore, the transmission charges for the period from 4.8.2015 to 23.8.2015 shall be shared by both NTPC and PGCIL in the ratio of 50:50.

(b) CEA vide its letter dated 24.8.2015 accorded the approval for energisation of 11 no. bays of 220 kV and 4 No. bays of 400 kV and 60-60 MVA, 400 kV station transformer and associated equipment at Kudgi STPP of NTPC. From the letter of CEA, it is observed that the bays pertaining to NTPC was ready in the month of August, 2015. However, PGCIL Narendra (New) sub-station was charged through PGCIL Kolhapur-New Narendra line from 15.11.2015. Subsequently, 400 kV Kudgi Switchyard was charged on 16.11.2015. Therefore, the petitioner's transmission line could not be utilized due to non-completion of elements under the scope of PGCIL. Accordingly, PGCIL shall pay the transmission charges to the petitioner for the period from 24.8.2015 to 15.11.2015.

(c) As per Regulation 8(5) of the Sharing Regulations, the charges for connectivity line of NTPC are required to be paid by NTPC till date of COD of first unit of Kudgi or date of start of LTA, whichever is earlier. Accordingly, from the period 16.11.2015, NTPC shall pay the transmission charges to the petitioner in terms of the Regulation 8 (5) of the Sharing Regulations.



*(d) As per Regulation 11 of the Sharing Regulations, CTU is responsible for raising the bills of transmission charges to ISTS transmission licensees. Accordingly, CTU is directed to raise the bills to PGCIL and NTPC for the period from 4.8.2015 to 23.8.2015 in the ratio of 50:50 and to PGCIL for the period from 24.8.2015 to 15.11.2015 and to NTPC from 16.11.2015. After collecting the transmission charges, CTU shall disburse the same to the petitioner immediately.”*

- j.** Aggrieved by the decision of the Commission dated 27.6.2016, NTPC filed a Review Petition No.44/RP/2016 in Petition No.236/MP/2015. The Commission in its order dated 17.10.2017 partly allowed the review and held as under:-

*“28. We have considered the submissions of the Petitioner. The impugned order was passed on 27.6.2016, in which the date of COD for PGCIL system was considered as 15.11.2015. However Review Petitioner has submitted that COD for PGCIL system occurred only on 11.12.2015. A Review Petition No. 42/RP/2016 has also been filed by PGCIL against the same impugned order in Petition No. 236/MP/2015. By order dated 11.10.2017 in the aforesaid Review Petition No. 42/RP/2016, the Commission has already held that PGCIL shall bear transmission charges for the period from 16.11.2015 to 10.12.2015 also. In view of this, NTPC shall bear the charges from 11.12.2015 till the commercial operation of first unit of Kudgi STPP as decided in impugned order in 236/MP/2015. Therefore, review of the impugned order is allowed to this extent.”*

- k.** In accordance with the above, NTPC has made payment of the transmission charges of Element I of KTL for the various periods as decided by the Commission till the COD of its first unit on 31.7.2017. The Commission orders dated 27.6.2016 and 17.10.2017 has not been challenged and have attained finality. The charges for all three Elements of the Kudgi Transmission System are thus being fully recovered.



- I.** The Unit I of the generating station of NTPC was declared under Commercial Operation on 31.07.2017. The LTA has been operationalized with effect from 01.08.2017. Consequently, on 07.08.2017, KSEBL wrote to SRPC asking clarifications on the invoice of PGCIL and the requirement to open LC for certain quantum of LTA. The issue was also discussed on 08.08.2017 at the 35th Commercial Sub Committee Meeting of SRPC wherein PGCIL stated that it would clarify the issues raised by KSEBL. Subsequently, PGCIL, vide its letter dated 23.10.2017 clarifying the issue has stated as under –

*.....It may be mentioned that the above regulation puts the responsibility of payment of transmission charges on the concerned DIC, which in this case is beneficiaries of the Kudgi TPS who have signed the LTA Agreement.....*

- m.** Later, when the RTA for August 2017 was published on the website of SRPC on 01.09.2017, PGCIL wrote to SRPC on 05.09.2017 stating that the RTAs need to be revised since the LTA quantum for Kudgi should be 2392.49 MW instead of 754 MW.
- n.** As a result, on 11.09.2017, SRPC wrote to NLDC, POSOCO stating that the LTA quantum of 2392.49 MW needs to be operationalized from 01.08.2017. In the letter, SRPC clearly recognized that NTPC was to pay charges for the Element I of KTL till its COD of Unit I on 01.08.2017 and subsequently, the liability to pay transmission charges is on the beneficiaries. SRPC raised several other issues regarding billing and asked NLDC to review the RTA billing.
- o.** SRPC also wrote to NTPC on 15.09.2017 seeking some clarifications as to how the LTA was applied for Kudgi, since an additional quantity of 130.49 MW appears to have been considered for the said application. On 22.09.2017, NTPC clarified to SRPC that the LTA application was as per the then prevailing CERC Regulations, namely the second amendment dated



28.03.2012 wherein generators were permitted to consider the overload capacity of the power allocated to a DIC for the purposes of LTA.

- p. On 25.09.2017, KSEBL wrote to SRPC to revise the RTA for August 2017 relying on Regulation 8 (5) of the Sharing Regulations. On 27.09.2017, SRPC also wrote to NLDC, POSOCO to examine the issues.
- q. NLDC, POSOCO on 06.10.2017 wrote a letter to SRPC without any clarification whatsoever. While in one part of Para 3, NLDC, POSOCO has stated that the beneficiaries of LTA need to pay the transmission charges, further in the same para, NLDC has purportedly referred to First Proviso to Regulation 8 (5) (though wrongly mentioned in the matter as clause (6) of the Third Amendment to the Sharing Regulations) and concluded '*In line with the above provision, transmission charges may be regulated*'.
- r. On 27.10.2017 and 02.11.2017, suddenly, SRPC unilaterally revised the RTA in respect of Units 2 and 3 of Kudgi generating station for August 2017 onwards based on which PGCIL has raised a bill of Rs. 121 crore on NTPC on 06.11.2017.
- s. It has neither been stated in the POSOCO letter dated 06.10.2017 nor in any communications of SRPC, the revision of REAs / RTAs, billing, etc. has been sought to be made on the basis of Regulation 8 (5) of the Sharing Regulations which reads as under –

*“(5) Where the Approved Withdrawal or Approved Injection in case of a DIC is not materializing either partly or fully for any reason whatsoever, the concerned DIC shall be obliged to pay the transmission charges allocated under these regulations:*

*Provided that in case the commissioning of a generating station or unit thereof is delayed, the generator shall be liable to pay Withdrawal Charges **corresponding to its Long term Access from the date the***



**Long Term Access granted by CTU becomes effective.** The Withdrawal Charges shall be at the average withdrawal rate of the target region:

*Provided further that where the operationalization of LTA is contingent upon commissioning of several transmission lines or elements and only some of the transmission lines or elements have been declared commercial, the generator shall pay the transmission charges for LTA operationalised corresponding to the transmission system commissioned:*

*Provided also that where the construction of dedicated transmission line has been taken up by the CTU or the transmission licensee, the transmission charges for such dedicated transmission line shall be payable by the generator as provided in the Regulation 8 (8) of the Connectivity Regulations:*

*Provided also that during the period when a generating station draws start-up power or injects infirm power before commencement of LTA, withdrawal or injection charges corresponding to the actual injection or withdrawal shall be payable by the generating station and such amount shall be adjusted in the next quarter, from the ISTS transmission charges to be recovered through PoC mechanism from all DICs:*

*Provided also that CTU shall maintain a separate account for the above amount received in a quarter and deduct the same from the transmission charges of ISTS considered in PoC calculation for the next application period.”*

- t. As per Regulation 8[5], of the Sharing Regulations the obligation to pay transmission charges is on the concerned DIC, which in this case are the beneficiaries. Further, the First Proviso to Regulation 8 (5) uses the term ‘corresponding to its Long term Access from the date the Long Term Access



granted by PGCIL becomes effective'. It is not clear as to how the First Proviso to Regulation 8 (5) can be applied to NTPC. In fact, the plain language of the provision shows that this would be applicable only to those generators who have applied for and have been granted LTA in their own name without identification of any beneficiaries (mostly private generators). In the case of NTPC, the allocation of power is by the Ministry of Power and once the beneficiaries are identified, it is for them to deal with the transmission company including entering into necessary agreements for LTA, etc.

- u.** The above interpretation is also fortified by the fact that while Regulation 8 (5) uses the term 'transmission charges', the first proviso uses the term 'withdrawal charges'. This itself indicates that the proviso carves out an exception for such generators to whom actually LTA has been granted i.e. mostly private generators and for some reason the commissioning of their units gets delayed. It is not that the transmission system will not be serviced for the period of this delay. Also, the proviso speaks about 'withdrawal charges' since in the case of delay of generator, the beneficiary will not be able to draw the power.
- v.** The LTA cannot be granted to Central Generating Stations since there is no freedom to the Central Generating Stations to sell their power to a distribution licensee of their choice. The power is allocated by the Ministry of Power to the identified beneficiaries. The Central Generating Stations assume no responsibility qua transmission of power which has to be dealt with independently between the beneficiaries and the transmission licensee. NTPC does not undertake any responsibility qua the transmission, open access, scheduling of power, etc. In such a situation, NTPC has no use of the transmission facility.
- w.** The Kudgi Transmission System consists of three elements and these three elements have been utilized to operationalize the LTA. With regard to Elements II and III, the charges are being included in the POC Pools since the



date of commissioning. With regard to Element I, the transmission charges are to be paid by NTPC and PGCIL in a particular ratio as decided by this Commission in its orders dated 27.6.2016 in Petition No. 236/MP/2016 and Order dated 17.10.2017 in Petition No. 44/RP/2016. These orders have attained finality and stand complied with and therefore, methodology of recovery of transmission charges for all three elements stands decided. It is not clear as to how the very same charges can be recovered from NTPC by terming it as 'operationalization of LTA'.

- x. In fact, this Commission has held that in cases where the beneficiaries of Central Generating Stations are identified, even the responsibility to sign the LTA Agreement is of the beneficiaries and not that of the generating companies. The petitioner has relied upon the Commission's order in Petition No. 69/MP/2015 and 133/MP/2012 and has submitted that NTPC is not a signatory to LTA Agreement. Thus, there is no question of 'corresponding to its Long Term Access' in the First Proviso to Regulation 8 (5) being applied to NTPC.
  
- y. SRPC, POSOCO have disregarded that the Elements II & III of the Kudgi ATS from the conception were for system strengthening and increasing the reliability of the Southern Regional Grid. Therefore, if the beneficiaries of the southern region are availing the benefits of the Elements II and III, it is obvious that the charges for the same have to be recovered through the POC mechanism as is being correctly done. Keeping in view of the above, Validation Committee had included transmission charges of Element II and III to PoC pool on the respective CoDs of elements, before operationalization of LTA for Kudgi. Further, Elements-II and III were planned for many generators including Kudgi TPS and the beneficiaries were already availing the benefits of these elements and paying for the same before COD of Unit #1 of Kudgi. Element I is necessarily required to transfer power from Unit # 1 of Kudgi. Therefore, no transmission capacity is idle due to delay in commissioning of the Kudgi TPS.



- z.** The entire transmission charges of Element I stand paid by NTPC, till CoD of unit -I. After CoD of Unit I, transmission charges of Element I should also be recovered through PoC pool only since Element-1 is required for evacuating the power of Unit 1 under N-1 contingency.
- aa.** If it is assumed for the sake of argument (but not admitted) that the First Proviso to Regulation 8 (5) is to be applied in the present case, the result would lead to absurdity. While the proviso uses the term 'withdrawal charges', PGCIL has levied the POC Charges for the LTA quantum which works out to Rs. 62 crore per month i.e Rs. 744 crore every year. As opposed to this, the Annual Transmission Charges of the Kudgi ATS itself works out to Rs. 196.29 crores. This can by no means be the intent of the First Proviso to Regulation 8 (5) of the Sharing Regulations.
- bb.** However, SRPC based on its understanding of the letter dated 06.10.2017 has unilaterally revised the RTA and PGCIL has issued the bill dated 06.11.2017 for Rs. 121.54 crore to NTPC.
- 5.** Against the above background, the petitioner has made the following prayers:  
(a) To direct PGCIL not to enforce the bill dated 06.11.2017 till the matter is heard and decided by the Hon'ble Commission;  
(b) to stay the revision of RTAs conducted by SRPC;  
(c) To set aside the bill dated 06.11.2017 of PGCIL and the revision of RTAs conducted by SRPC;
- 6.** The matter was heard on 16.1.2018 and notices were issued to the respondents to file their replies. Further, learned counsel for the petitioner submitted that the petitioner had filed an IA requesting to pass ad-interim ex-parte order staying the bill dated 6.11.2017. Considering the submission of learned counsel for the petitioner, the Commission directed PGCIL not to take



any coercive measures against the petitioner till the next date of hearing. And accordingly, IA No. 92/2017 was disposed of.

Replies to the petition has been filed by KSEB, BESCO, SRPC.

7. The matter was again heard on 6.3.2018 and learned counsel for the CTU submitted that it is bound to raise the bills in accordance with the RTA's published by the SRPC and requested to vacate the interim order dated 16.1.2018. The Commission did not accept the request of CTU and directed that interim order shall be continued till the next date of hearing..
8. KSEB vide its reply affidavit dated 8.3.2018 has submitted that the petitioner is trying to misinterpret regulation of the Commission by giving a different meaning for 'withdrawal charges' making it distinct from 'transmission charges'. KSEB has submitted that prior to third amendment to CERC Sharing Regulation, 2015, POC charges towards LTA/MTOA were determined as 'POC injection charges' and 'POC withdrawal charges' separately and both these charges were being paid by (i) Withdrawal DICs and (ii) the generators with LTA to target region without identified beneficiaries. Post Third Amendment, the PoC injection charges have been merged into PoC withdrawal charges in respect of withdrawal DICs and in respect of the generator with LTA to target region without identified beneficiaries, withdrawal charges have been merged with injection charges. Thus, there is no difference in the meaning and content by introduction of the word 'withdrawal charges' vide the third amendment and it will not relieve the petitioner from the liability to pay the transmission charges.
9. NTPC vide its rejoinder dated 22.03.2018 raised the following points :
  - i. KSEB has mixed up the provisions of the 2014 Tariff Regulations, Connectivity Regulations and Sharing Regulations
  - ii. KSEB has mixed up the two concepts of 'transmission charges' & 'LTA Charges/PoC charges'
  - iii. The challenged bill dated 6-11-2017 is much higher than the transmission charges of element I of Kudgi ATS.



- iv. Regulation 8(5) and 8(6) cannot apply to the very same case.
- v. Only 3rd proviso to Regulation 8(5) is applicable for NTPC. First proviso to Regulation 8(5) is not applicable for NTPC.
- vi. No transmission elements have been created for NTPC. The sale of power is at the bus bar. NTPC does not require LTA and the LTA agreements have been signed by the beneficiaries. Hence, LTA/PoC charges are to be paid by the beneficiaries.
- vii. KSEB has raised the discrepancy in the billing of elements-2 and -3 of Kudgi ATS which are beyond the scope of the present petition.
- viii. The Commission vide order dated 27-6-2016 in Petition No.236/MP/2015 has held that only element- I is in the nature of dedicated transmission element and its charges only need to be paid by NTPC by applying the third proviso to Regulation 8(5).

- 10.** NTPC has submitted that the Commission in its order dated 09.03.2018 in Petition No. 20/MP/2017 (Kanti Bijlee Utpadan Nigam Limited v CTU &Ors) has appreciated these aspects and held that:-

*" 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 there under."*

- 11.** NTPC has further submitted that, the Commission in its 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.



12. NTPC has submitted that, the Commission in its 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.
13. NTPC has submitted that, drawing analogy from the above, when the power from the Kudgi generating station has been allocated by the Ministry of Power to the beneficiaries, it is the responsibility of the beneficiaries to sign the LTA Agreement and bear the charges thereunder. Since, there is no LTA to NTPC, the 'corresponding to its LTA' in Proviso 1 to Regulation 8 (5) have no application to NTPC.
14. SRPC vide its affidavit dated 14.04.2018 has submitted as under:-
- (a) SRPC had issued Regional Transmission Account for the month of August, 2017 by inclusion of transmission charges for NTPC, Kudgi for LTA quantum of 2392.49 MW. LTA of 2392.49 MW was operationalised and made effective from 1<sup>st</sup> August 2017, which happens to be in the midst of the quarter July to September (Q2 2017-18). Out of 2392.49 MW operationalised for 3 x 800 units of NTPC, Kudgi, only Unit-I (800 MW) was under commercial operation. As per the RTA issued, transmission charges pertaining to Unit-II & III have been billed to NTPC, Kudgi as per 3<sup>rd</sup> Amendment of Sharing Regulations, 2010.
- (b) LTA corresponding to Unit-I has been billed to its beneficiaries. However, LTA corresponding to Unit-I had not been considered while arriving at the slab rates for the above quarter. In the existing Regulation, there is a provision for inclusion of Medium Term Open Access in RTA without considering in slab rates, since this would have been operationalised after the LTA/MTOA data was submitted to Implementing Agency. Such inclusion of MTOA termed as "Additional Medium Term Withdrawal" is to be billed under "Bill-2" by CTU and

reimbursed back to LTA customers in the ratio of Bill-I, being over recovery. Apparently, in the Regulations, there is no similar provision for "Additional LTA". This too would amount to over-recovery (like additional MTOA). Transmission charges being billed for LTA of NTPC, Kudgi Unit-I lead to over recovery on account of non-consideration of Kudgi LTA while arriving at slab rate of July to September (Q2 2017-18). LTA/MTOA is required to arrive at slab rates in Rupees/MW/month. Charges are to be paid as per usage and not as per LTA/MTOA. In case of over-recovery, reimbursement would be to all DICs as per Bill-I which is presently envisaged only for additional MTOA. This would amount to socialization of refund of excess transmission charges paid by the beneficiaries of Southern Region. CTU has mentioned that on account of any delay in generating station or unit, as regards transmission charges, the Regulation enables the concerned DIC to claim such charges from Generation Developer. However, responsibility for payment of transmission charges to CTU lies with the concerned DIC who have signed the LTA agreement for payment of transmission charges towards its allocation. However, SRPC has indicated the transmission charges payable (due to delay in generating station or unit) against the generating company.

- (c) Prior to COD of Unit-I of Kudgi, NTPC was directly making the payment to CTU for the transmission asset used by it, without involving the DICs. The following is required to be clarified while passing such orders as deemed fit by the Commission:
  - (i) Difference arising out of consideration of LTA for arriving slab rates and for billing based on the above referred slab rates.
  - (ii) Methodology of billing under RTA for units, whose COD is yet to be declared, but LTA has been operationalised.

**15.** KSEB has filed counter-affidavit dated 23.4.2018 on NTPC's rejoinder and has made additional submissions.



16. TANGEDCO vide its reply affidavit dated 26.4.2018 has submitted as under:-

(a) Primarily, the contention of the petitioner with regard to the associated transmission system for evacuation of power from the Kudgi TPS owned by NTPC is totally wrong and misleading. It is evident from the deliberations of the 33<sup>rd</sup> meeting of the Standing Committee on Power System Planning that the subject transmission assets were necessitated to meet the requirement of NTPC. In fact, the request of KPTCL to link the establishment of Narendra 765/400 kV substation with the Kudgi scheme was not accepted by the Committee. The Inter regional transmission scheme and the Kudgi TPS evacuation scheme were clearly defined and approved by the Standing Committee. There is no ambiguity with regard to the status of the three elements of the ATS for Kudgi TPS. Hence, the issue of the line being used as system strengthening is absurd.

(b) Signing of LTA and TSA by the beneficiaries is a customary practice. No beneficiary is disputing its obligation. The moot question here is that who has to bear the transmission charges in the event of delay in commissioning of the generating station or unit thereof. There is no ambiguity / uncertainty in the provisions of the Regulations. As per the Tariff Regulations, DIC includes the generators also. In the instant case, since commissioning of the units I and II of the Kudgi TPS is delayed, the generator, namely NTPC is liable to pay the transmission charges. A plain reading of the above provisions gives a clear mandate. There is no question regarding signatory of the LTA, TSA and beneficiary. This provision cannot be misinterpreted by any agency including CTU, SRPC and POSOCO. Hence, the claim of the petitioner is illogical and liable to be rejected.

(c) The petitioner has failed to accomplish its task with regard to Scheduled COD of the project. The commissioning of the generating units was delayed unduly, causing irreversible financial loss to the



beneficiaries on account of resorting to high cost power purchase. The generation-demand planning of the Discoms is totally distorted due to the failure on the part of the generator. Hence, the generator is liable to make good the losses incurred by the beneficiaries apart from payment of the transmission charges for the period of delay. Further, the term "injection charges", "withdrawal charges", "transmission charges" and "PoC" charges are amply explained in the Sharing Regulations and no further clarification is required.

**17. BESCO vide its reply/affidavit dated 30.4.2018 submitted as under:-**

(a) The bill dated 6.11.2017 was raised strictly in terms of Sharing Regulation and applicable laws. The petitioner was required to construct 3 unit(each 800MW) of coal based Power plant at Kudgi, Karnataka. The power from the said units is to be evacuated to the beneficiaries from the following dedicated transmission lines/ transmission lines;

- i. Kudgi TPS- Narendra (New) 400 kV 2XDC quad lines.
- ii. Narendra (New)-Madhugiri 765 kV DIC line (initially charged at 400 kV).
- iii. Madhugiri-Bangalore 400 kV D/c (quad) line.

(b) The above transmission facility is constructed by the Kudgi Transmission Ltd and has been commissioned. The Petitioner had commissioned only one of its units and other two units were yet to be commissioned. Therefore, the question of the beneficiaries being liable to pay for the either Quantum applied i.e. 2392.49 MW would not arise. The situation has been created solely because of the inability of the Petitioner to commission its units. In view of the delayed commissioning of the generating units of the Petitioner, it is liable to pay transmission charges as per the clause 8(5) of the Sharing Regulation. Accordingly, bill dated 6.11.2017 was issued and revision of RTA's was conducted by the SRPC in terms of Regulation 8(5).



(c) The Appellate Tribunal in Appeal No. 212 OF 2016 & IA NOs. 459 &525 of 2016 (Maruti Clean Coal And Power Limited V. Power Grid Corporation Of India Limited And Others) has held as under:-

"10. A reading of the above provisions make it clear that a generator is required to pay transmission charges irrespective of whether its plant is operational or whether LTA is used or not. Thus the Appellant is liable to pay transmission charges notwithstanding the fact that its generating station was not operating from February, 2016 to May, 2016. If LTA capacity is blocked for the Appellant on the transmission grid, Regulation 8(5) stipulates that the Appellant will be liable to pay for the same irrespective of whether it actually utilised LTA or not. The Appellant's inability to utilise LTA is not a ground to excuse its liability to pay transmission charges. Therefore, the submission that PGCIL went on to operationalise LTA despite knowing that there was accident at the generation plant of the Appellant and that PGCIL showed undue haste is liable to be rejected ."

(d) BESCO has referred to clause F and L of the Agreement for LTA dated 30.03.2015 signed between PGCIL and KSEB Ltd (one of the beneficiary) has submitted that the contention of the Petitioner that transmission charges are levied on the Petitioner without considering the fact that elements II and III are constructed to strengthen and increase the reliability of the southern grid is untenable and has no relevance to the questions for consideration in the present case. Element I, element II and element III are a transmission system established for evacuation of power from the Petitioner's generating unit and it is in the nature of dedicated transmission line or connectivity line. The same has been noted in the 33<sup>rd</sup> Standing Committee on Power System Planning of Southern Region, dated 15.11.2011. Further, the nature of the elements I, II and III is also clear from Schedule-2 of the TSA dated 14<sup>th</sup> May 2013, executed for procurement of Transmission Service for evacuation of power from





Kudgi TPS (3X800 MW in Phase-I) of NTPC Limited and application granting LTA by CTU to the Petitioner.

(e) The delay in commissioning of generating units 2 and 3 has led to non-utilization of transmission facility. The role of the BESCO is limited to use of the available transmission capacity of the Project and to pay to the Petitioner the transmission charges determined in accordance with the terms of the TSA. However, in the instant case, there was no electricity generated by the Petitioner and transmitted which was used by BESCO as Long Term Transmission Customer under the TSA. Therefore, the Petitioner is liable to pay transmission charges as per the provisions of the Sharing Regulations. The contention to the contrary have no bearing either in law or in the provisions of the contract.

**18.** SRPC vide its affidavit dated 7.5.2018 has submitted as under:-

(a) in an integrated meshed transmission system, nodal load generation plays an important role in optimal power transmission. Non-availability of generation at a certain place may have impact on import capability of a control area or group of control area. Delay in anticipated generation may also lead to a situation where the beneficiary of such generator needs to procure alternative power, may be, at higher cost.

(b) Similarly, transmission asset is built anticipating the generation in various complex in the meshed network. The transmission capacity remaining un-utilized (stranded capacity) due to non-commissioning of certain generation in the meshed network does not only depend on certain elements embarked as associated transmission system with a generating system, but also many other elements which run across the meshed network. Non-availability of expected generation could have a negative impact on optimal utilization of the network.



(c) Transmission charges of entire ISTS are recovered based on usage of the system by various beneficiaries. Recovery of such charges is based on usage of ISTS to draw available power. Recovery of transmission charges may not change in case more power is available. Hence, lesser availability of power from one station may not reduce transmission charges paying liability for its beneficiaries since the system is already built.

(d) Clause (5) of Regulation 8 of the Sharing Regulations provides that

(5)...Provided that in case commissioning of the generating station is delayed due to any reason not attributable to transmission licensee, generator shall be liable to pay injection and withdrawal charges from the date on which access granted by CTU and communicated to Implementing Agency, became effective, at the average rates of injection and withdrawal for the plant capacity. ...."

(e) Many IPPs and generators had requested that relaxation from payment of transmission charges should be given to the generator when the commissioning is delayed due to reasons beyond its control.

(f) The petitioner has stated that while the Commission sought suggestion "as per existing arrangement, LTA charges should be charged from the procurer of transmission services as per Sale Purchase Agreement and any other provision shall be against the agreement and the system in vogue. Further, any mismatch is covered by the Indemnification Agreement between NTPC and POWERGRID and therefore the claims in case of delay of generators should be dealt in accordance with IA. In case the transmission system comes up and generation is delayed, the same may be used by some other entity in the intervening period. Even otherwise, the charges will have to be borne by the transmission system users (beneficiaries) as a generator's obligation is sale at its bus bar. Further

there is no provision in the Regulations in case of stranding of Generation capacity due to delay in transmission. NTPC has proposed that in case commissioning of generating station is delayed due to reasons not attributable to transmission licensee, the generator shall be liable to pay IDC for stranded capacity out of its ATS as per the agreements"

(g) With regard to the suggestions of many IPPs and generators on paying transmission charges due to delay in commissioning of projects, the Commission had observed that "we are of the view that transmission asset having been created for the generator, in the event of delay in commissioning of generator, transmission charges need to be paid by the generator. Further, generating company and transmission licensee should periodically coordinate progress of construction work so that the transmission line gets commissioned matching with the commissioning of generation."

(h) With regard to suggestions of NTPC made to the Commission on CERC (Sharing of transmission charges and losses) (Third Amendment), 2015, the Commission observed that "we are of the view that the generator and transmission licensee need to coordinate to ensure matching of commissioning of generation and evacuation system. They should enter into IA and may accordingly take care of matching the schedule of commissioning. Further, we are of the view that transmission system is planned considering the future requirement of generation and load. It is necessary for both generation and transmission to come up simultaneously by phasing the implementation of transmission system as far as possible to match the commissioning schedules of generation project with the transmission systems. The burden due to delay cannot be passed on to existing users. There should be an IA between the generator and the transmission licensee. Beyond the period covered in IA, the generator is liable to pay transmission charges. "



- (i) The issues raised by the petitioner have already dealt with the Commission in the Third amendment of Sharing Regulations where it was observed by the Commission that burden of transmission charges cannot be passed to the existing users in case the generator is delayed.

**19.** NTPC vide its rejoinder/affidavit dated 18.5.2018 to the reply of SRPC has submitted as under:-

“That the Commission in the Statement of Reasons ("SOR") to the Third Amendment of the Sharing Regulations this Commission has clearly stated that if any transmission asset has been created for a generator and there is a delay in the commissioning of the generator, then the transmission charges need to be paid by the generator. Therefore, the petitioner submitted that the Statement of Reasons completely support the alternative case of NTPC i.e. NTPC's liability, if any, and at the maximum can only be with respect to the transmission charges of Element 1, and that too in proportion of the number of generating units that have not been commissioned”.

**20.** NTPC vide its rejoinder/affidavit dated 18.5.2018 to the reply KSEB has submitted that the Sharing Regulations have clearly and distinctively defined POC Charges and Transmission Charges. These are different from each other and cannot be construed as interchangeable. NTPC does not dispute the fact that it is a DIC. The issue is with respect to the levy of LTA Charges / POC Charges on NTPC. In the case of Central Sector Generating Companies, the sale of power is at the Bus-Bar of the generating station. NTPC is not even required to sign the LTA Agreement for which responsibility lies with the beneficiaries since, the power from the generating company is allocated by the Ministry of Power. Even if NTPC is liable to pay due to the delay caused in commissioning of its generating units, it would only have the liability to pay for the transmission charges with respect to Element 1 of the evacuation system, proportionate to the capacity of Units 2 and 3 where there



was a delay in commissioning. In this backdrop, 'transmission charges' are not the same as the 'POC Charges' for which PGCIL has raised bill dated 6.11.2017.

21. The petitioner submitted that what is sought to be recovered from the generator is the 'burden of delay'. This is to be regulated by way of an IA and beyond the period of the IA by payment of transmission charges by the generator. In the instant case, the transmission elements have been developed under TBCB route wherein there is no provision in the Regulations to sign an IA between Generator and the Transmission Licensee. Therefore, the bill dated 06.11.2017 by way of which PGCIL seeks to levy POC Charges from NTPC does not hold any validity.
22. As per clause 3 of the PPA dated 3.11.2010 entered into between NTPC and KSEBL, sale of electricity shall be at the bus-bars of the generating station, and it would be KSEBL's obligation to make arrangements for the evacuation of electricity.
23. The matter was heard on 23.10.2018 and the Order was reserved.

#### **Analysis and Decision:**

24. We have considered the submissions made by the petitioner and the respondents. The following questions arise before us for consideration.
  - (i) **Whether the operationalization of LTA is linked to CoD of generator or its units?**
  - (ii) **Who shall pay the POC charges from operationalization of LTA? What shall be the liability of NTPC w.r.t payment of transmission charges?**
  - (iii) **Whether all the elements of Kudgi Transmission System form part of the Kudgi evacuation system or some elements form part of the strengthening system?**
25. The issues are dealt with in subsequent paragraphs.



**(i) Whether the operationalization of LTA is linked to CoD of generator or its units?**

26. The Commission in its order dated 8.3.2018 in Petition No.229/RC/2015 has deliberated the issue of operationalization of LTA as under:

***“Issue No.5:How the cases of the LTA Customers shall be dealt with where the associated transmission system required for LTA operationalization as identified in BPTA have been commissioned but LC has not been opened and billing has not been started by CTU from the effective date of LTA?***

.....

*55. Where entire Associated Transmission System has been commissioned but the generator has not established payment security mechanism and/or the generating stations have not been commissioned, the CTU shall operationalize the LTA from the date of commissioning of the entire transmission system retrospectively and shall raise the bills as per Regulations in vogue. In case, a particular generator has done certain transactions under STOA / MTOA post the date of commencement of LTA, the charges already paid towards such transactions shall be offset from the bills to be raised for the LTA”.*

27. In the light of the above, we are of the view that the operationalization of LTA is not linked with the CoD of the generating unit/stations. The LTA needs to be operationalized from the date of commissioning of the transmission system irrespective of the CoD of the generator.

**(ii) Who shall pay the POC charges from operationalization of LTA? What shall be the liability of NTPC w.r.t payment of transmission charges?**

28. The petitioner has submitted that it has entered into Power Purchase Agreement with the beneficiaries of the Southern Region on various dates



and had applied for LTA on their behalf. As per clause 3 of the TSA, which extracted as under:-

*“sale of power shall be at the bus-bar of the generating station and it is for the beneficiaries to make all arrangements thereafter, to deal with the ISTS licensees / Powergrid and arrange for transmission of power”.*

### **"3.0 Transmission/ Wheeling of Electricity**

*3.1 Sale of electricity shall be at the busbars of the Station and it shall be the obligation and responsibility of KSEB to make the required arrangement for evacuation of electricity from such delivery points of the Station.*

.....

*3.3 Charges for utilisation of transmission system (s) owned Powergrid/ other Transmission Licensee for wheeling of the electricity beyond bus-bar of the Station, shall be paid directly by KSEB to the Powergrid or the Transmission Licensee as the case may be. NTPC shall not be responsible for any of such charges."*

- 29.** Thereafter, on 15.04.2011, the petitioner in accordance with Article 3 of the PPA applied to CTU for grant of LTA for Kudgi generating station stating as under :-

*“NTPC is making this application on behalf of the beneficiaries. The beneficiaries have agreed for subsequent signing of all necessary agreements including BPTA etc. with Powergrid / other transmission licensee developing the identified transmission system, corresponding to their final share of allocated capacity from the project. It is requested that the enclosed application may be processed at your end.”*

- 30.** Subsequently, on 23.12.2011, PGCIL granted LTA. Thereafter, PGCIL signed the LTA Agreements with the beneficiaries directly on various dates as under:



- (i) Karnataka Distribution Companies (1196.24 MW) - LTA Agreement dated 04.03.2015
- (ii) Kerala State Electricity Board Limited (119.18) – LTA Agreement dated 30.03.2015
- (iii) Tamil Nadu Generation & Distribution Co Ltd (300.10 MW) - LTA Agreement dated 04.02.2015
- (iv) Andhra Pradesh Discoms (192.79 MW) - LTA Agreement dated 10.03.2015
- (v) TelanganaDiscoms (225.31 MW) - LTA Agreement dated 27.02.2015

**31.** The petitioner has relied upon the, Commission's order to show that LTA of a CSGS belongs to the LTC:

- (a) The Commission in its order dated 9.3.2018 in Petition No. 20/MP/2017 (Kanti Bijlee Utpadan Nigam Limited vs CTU &Ors) has held as under:-

*"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 there under.”*

- (b) Further, the Commission in its order dated 31.1.2013 in Petition No. 133/MP/2012 (Power Transmission Corporation of Uttarakhand vs NTPC and others) held 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 TapovanVishnugad and LataTapovan 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."*

- (c) The Commission in its 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 dated 9.3.2016 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 there under, 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 there under, 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 reallocation 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."*

**32.** The petitioner has submitted that when the power from the Kudgi Generating Station has been allocated by the Ministry of Power to the beneficiaries, it is the responsibility of the beneficiaries to sign the LTA and bear the transmission charges thereunder. Since, there is no LTA with NTPC, the 'corresponding to its LTA' in First Proviso to Regulation 8 (5) has no application to NTPC.

**33.** The petitioner has submitted that as per clause 1.0 of LTA grant extracted as under, LTC to open LC and is required to share and pay applicable transmission charges:

*"Clause 1.0*

*b) The 'LTC' shall sign the Transmission Service Agreement (TSA) with CTU (if not already signed), as per CERC, (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010.*

*c) The 'LTC' shall furnish Letter of Credit for requisite amount in favour of CTU toward Payment Security Mechanism in accordance with the CERC Regulations before the commencement of LTA.*

*d) The 'LTC' shall share and pay all the applicable transmission charges of the total transmission system indicated at Attachment-1 and brought out above from the date of Commencement of Long Terms*



*Access in accordance with the sharing mechanism, as decided/ notified/ determined/ adopted by Central Electricity Regulatory Commission from time to time.”*

- 34.** KSEB has submitted that the petitioner is trying to give a different meaning for 'withdrawal charges' making it distinct from 'transmission charges'. KSEB has submitted that prior to third amendment to Sharing Regulations, the POC charges towards LTA/MTOA were determined as 'POC injection charges' and 'POC withdrawal charges' separately and both these charges were being paid by (i) Withdrawal DICs, and (ii) the generators with LTA to target region without identified beneficiaries. Post this Amendment, the PoC injection charges have been merged into PoC withdrawal charges in respect of withdrawal DICs and in respect of the generator with LTA to target region without identified beneficiaries, withdrawal charges have been merged with injection charges. Thus, there is no difference in the meaning and content by introduction of the word 'withdrawal charges' vide third amendment to the Sharing Regulations and it will not relieve the petitioner from the liability to pay the transmission charges.
- 35.** TANGEDCO has contended that signing of LTA and TSA by the beneficiaries is a customary practice and no beneficiary is disputing their obligations. The issue is that who has to bear the transmission charges in the event of delay in commissioning of the generating station or unit thereof. TANGEDCO has submitted that there is no ambiguity/uncertainty in the provisions of the Sharing Regulations. As per the Tariff Regulations, DIC includes the generators also. In the instant case, since commissioning of the units I and II of the Kudgi TPS is delayed, the generator i.e. NTPC is liable to pay the transmission charges. Since, there is no question regarding the signatory of the LTA or TSA and beneficiary, the claim of the petitioner is illogical and liable to be rejected.
- 36.** BESCOM has submitted that the delay in commissioning of units 2 and 3 of Kudgi TPS has led to non-utilization of transmission facility. The role of the

BESCOM is limited to use of the available transmission capacity of the Project and to pay to the Petitioner the transmission charges determined in accordance with the terms of the TSA. However, in the instant case, there was no electricity generated by the Petitioner and transmitted which was used by the BESCOM as Long Term Transmission Customer under the TSA. Therefore, the Petitioner is liable to pay transmission charges as per the provisions of the Sharing Regulations. BESCOM has submitted that the contentions to the contrary have no bearing either in law or in the provisions of the contract.

37. SRPC has submitted that the transmission charges of entire ISTS are recovered based on usage of the system by various beneficiaries. Recovery of transmission charges may not change in case more power is available. Similarly, lesser availability of power from one generating station may not reduce transmission charges paying liability for its beneficiaries since the system is already built. Further, the Commission with regard to delay in commissioning of projects had observed that "we are of the view that transmission asset having been created for the generator, in the event of delay in commissioning of generator, transmission charges need to be paid by the generator. Further, generating company and transmission licensee should periodically coordinate progress of construction work so that the transmission line gets commissioned matching with the commissioning of generation."
38. The respondents have argued that they are not disputing the signing of LTA by the beneficiaries rather they are disputing the responsibility to bear transmission charges in the event of delay in commissioning of the generating station or unit thereof.
39. We have considered submissions of Petitioner and respondents. After perusing all the documents and information placed on record and after hearing the parties, we direct as follows:

**Who shall pay the POC charges from operationalization of LTA?**



- (i) It is evident that the beneficiaries have entered into LTA as per the provisions of the PPA. They have also agreed as per the signed PPA to bear the charges for utilisation of transmission system(s) owned by Powergrid/ other transmission licensee for wheeling of the electricity beyond bus-bar of the generating station. PPA provides that NTPC shall apply LTA “on behalf of beneficiaries” with all consequential liabilities with that of beneficiaries.
- (ii) The Commission vide its orders in in Petitions 20/MP/2017, 133/MP/2012, 69/MP/2015 has directed that beneficiaries shall have to enter into LTA Agreement and bear the transmission charges in terms of their contractual obligations. The directions amply make it clear that LTA shall be signed by the beneficiaries and not NTPC. In the present case, LTA Agreements have been signed by the beneficiaries of Kudgi generating station. In terms of the LTAs signed, the beneficiaries have accepted the liability for payment of LTA charges proportionate to their share in the generating station. Therefore, we hold that the LTAs establish the contractual relationship between PGCIL and the beneficiaries for use of the transmission lines for evacuation of power from the Kudgi generating station and the beneficiaries are liable to pay the PoC charges after operationalisation of LTA in the instant case corresponding to LTA.

**What shall be the liability of NTPC w.r.t payment of transmission charges?**

- (iii) Proviso 8(5) and 8(6) of the Sharing Regulations provides as under:

***8. Determination of specific transmission charges applicable for a Designated ISTS Customer***

*(5) Where the Approved Withdrawal or Approved Injection in case of a DIC is not materializing either partly or fully for any reason whatsoever, the concerned DIC shall be obliged to pay the transmission charges allocated under these regulations:*



*Provided that in case the commissioning of a generating station or unit thereof is delayed, the generator shall be liable to pay Withdrawal Charges corresponding to its Long term Access from the date the Long Term Access granted by CTU becomes effective. The Withdrawal Charges shall be at the average withdrawal rate of the target region:*

*Provided further that where the operationalization of LTA is contingent upon commissioning of several transmission lines or elements and only some of the transmission lines or elements have been declared commercial, the generator shall pay the transmission charges for LTA operationalised corresponding to the transmission system commissioned:*

*Provided also that where the construction of dedicated transmission line has been taken up by the CTU or the transmission licensee, the transmission charges for such dedicated transmission line shall be payable by the generator as provided in the Regulation 8 (8) of the Connectivity Regulations:*

*Provided also that during the period when a generating station draws startup power or injects infirm power before commencement of LTA, withdrawal or injection charges corresponding to the actual injection or withdrawal shall be payable by the generating station and such amount shall be adjusted in the next quarter, from the ISTS transmission charges to be recovered through PoC mechanism from all DICs:*

*Provided also that CTU shall maintain a separate account for the above amount received in a quarter and deduct the same from the transmission charges of ISTS considered in PoC calculation for the next application period.*

*(6) For Long Term Transmission Customers availing power supply from inter-State generating stations, the charges attributable to such generation*



*for long term supply shall be calculated directly at drawal nodes as per methodology given in the Annexure-I. Such mechanism shall be effective only after commercial operation of the generator. Till then it shall be the responsibility of the generator to pay transmission charges.”*

- (iv) We observe that Regulation 8 (5) of the Sharing Regulations provides that *“in case the commissioning of a generating station or unit thereof is delayed, the generator shall be liable to pay Withdrawal Charges corresponding to its Long term Access from the date the Long Term Access granted by CTU becomes effective.”*

In the instant case, LTA for Kudgi STPP was effective from 1.8.2017. Kudgi STPP is 3x800 MW capacity out of which one unit was declared under commercial operation on 31.7.2017 and other two units are delayed. As per Regulation 8(5), a generator is liable to pay withdrawal charges corresponding to its LTA. We also note that such average withdrawal rate of a region is presently calculated as per POC mechanism. As per regulations 8(5), the liability for withdrawal charges for the generator shall arise in case it has “its LTA”. However, keeping in view that LTA is of the beneficiaries as concluded above, and that NTPC is not a LTA customer, its liability under 8(5) does not arise.

- (v) However, Regulation 8(6) of the Sharing Regulations provides that for Long Term Transmission Customers availing power supply from inter-State generating stations, the charges attributable to such generation for long term supply shall be calculated directly at drawal nodes and such mechanism shall be effective only after commercial operation of the generator till which date it shall be the responsibility of the generator to pay transmission charges. This provision is specifically for cases of Long Term Transmission Customers availing power supply from inter-State generating stations under long term supply. We observe that NTPC Kudgi has long term supply Agreement with Southern Region beneficiaries. Its





one unit was declared commercial operation as on date of start of LTA. Therefore, the issue for our consideration is bearing transmission charges liability for remaining 2 units till they are declared under commercial operation.

- (vi) In the light of the above, as per Regulation 8(6) of the Sharing Regulations, the petitioner is liable to pay the transmission charges till COD of its delayed units. Hence, we direct that the annual transmission charges of the associated transmission system (i.e. Kudgi-Narendra, Narendra-Madhugiri and Madhugiri Bidadi and associated bays) as determined or adopted by the Commission shall be considered in PoC mechanism corresponding only to the unit declared under commercial operation i.e. Unit-I (as per records available in this petition) and the balance transmission charges shall be recovered from NTPC till the remaining units are declared under commercial operation. On COD of Unit-II & Unit-III, proportionate transmission charges corresponding to Unit-II & Unit-III, shall be considered in PoC from their respective CODs.

**The illustrative example is given below for clarity:**

- i. "The planned Installed capacity for the station is 2400 MW. The station has 3 units. If capacity is broken up unit wise it comes out to 800 MW corresponding to each unit. Suppose the Annual transmission charges are Rs. 300 Crore. Once first unit is declared COD Rs. 100 Crore shall be considered in PoC mechanism and Rs. 200 Crore shall be billed to NTPC. Once 2<sup>nd</sup> unit is declared COD, Rs. 200 Crore will be included in PoC and Rs. 100 Crore shall be billed to NTPC and so on. "
- ii. We also direct that billing to NTPC shall be as per modalities decided by the Commission in its order dated 4.1.2017 read with Corrigendum dated 6.3.2017 in 155/MP/2016 . Reference portion of the said order is extracted as under;-



“17. The petitioner is directed to provide YTC details of its assets to NLDC and CTU. NLDC shall provide the same to RPC for inclusion in RTAs. The assets shall be billed along with bill 1 under the provisions of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission charges and losses), Regulations, 2010 as amended from time to time. ISTS licensees shall forward the details of YTC to be recovered as per formats provided under the Sharing Regulations to NLDC. ISTS licensees shall forward the details of entity along with YTC details from whom it needs to be recovered as per applicable order`s of the Commission to NLDC (only in cases of bilateral billing due to non-availability of upstream/downstream system). Based on the input received from respective licensees and the Commission`s order, NLDC shall provide details of billing pertaining to non-availability of upstream/downstream system to respective RPCs for incorporation in RTAs for all cases of bilateral billing. On this basis, CTU shall issue the bills. The process given in this para shall be applicable to all cases of similar nature and all concerned shall duly comply with the same.”

40. As a generator shall be liable to pay either the Withdrawal charges under Regulation 8(5) or transmission charges for Associated Transmission System under Regulation 8(6) as decided above, the petitioner shall be liable to pay only transmission charges under Regulation 8(6).

**(iii) Whether all the elements of Kudgi Transmission System form part of the Kudgi evacuation system or some elements form part of the strengthening system?**

41. TANGEDCO has submitted that, the primary contention of the petitioner with regard to the associated transmission system for evacuation of power from the Kudgi TPS owned by NTPC is totally wrong and misleading. It is evident from the deliberations of the 33<sup>rd</sup> meeting of the Standing Committee on Power System Planning that the subject transmission assets were necessitated to meet the requirement of NTPC. The Inter regional transmission scheme and the Kudgi TPS evacuation scheme *were clearly defined and approved by the Standing Committee. There is no ambiguity with*



*regard to the status of the three elements of the ATS for Kudgi TPS. Hence, the issue of the line being used as system strengthening is absurd.*

42. BESCO has submitted that the contention of the Petitioner that transmission charges are levied on it without considering the fact that elements II and III are constructed to strengthen and increase the reliability of the southern grid is untenable and at any rate, it has no relevance to the questions for consideration in the present case. BESCO has further submitted that elements I, II and III are a transmission system established for evacuation of power from the Petitioner's generating unit and it is in the nature of dedicated transmission line or connectivity line as noted in the 33<sup>rd</sup> Standing Committee on Power System Planning of Southern Region, dated 15.11.2011. Further, the nature of the elements I, II and III is also clear from Schedule-2 of the Transmission Service Agreement (TSA) dated 14th May 2013, executed for procurement of Transmission Service for evacuation of power from Kudgi TPS (3X800 MW in Phase-I) of NTPC Limited and application granting Long Term Access (LTA) by PGCIL to the Petitioner.
43. The respondents have raised the issue before the Commission with respect to the nature of the elements in Kudgi ATS. They have contended that all elements i.e. I, II and III are part of evacuation system as per SCM meetings. We have considered the submissions of the respondent and are in agreement that elements I, II and III are part of evacuation system of Kudgi STPs as per the 33<sup>rd</sup> SCM meeting and accordingly we have decided the sharing of transmission charges for such elements at Issue No. (ii) above.
44. **Summary of decisions:**
- a. The liability to pay charges towards Long term Access under Central Electricity Regulatory Commission (Sharing of inter-State Transmission charges and losses), Regulations, 2010 as amended from time to time shall be that of beneficiaries in view of Agreements entered into by them.
  - b. The LTA needs to be operationalized from the date of declaration of COD of the transmission system irrespective of the CoD of the generator.



c. Annual transmission charges of the associated transmission system (i.e in this case -Kudgi-Narendra, Narendra-Madhugiri and Madhugiri Bidadi and associated bays/ substation) as determined or adopted by the Commission shall be considered in PoC mechanism corresponding only to the units declared under commercial operation and the balance transmission charges shall be recovered from NTPC till the respective COD of remaining units.

45. SRPC shall revise the RTA accordingly and CTU shall raise the bills as based on revised RTA.

46. The Petition No.261/MP/2017 is disposed of in term of the above.

**-Sd-**

(Dr. M.K. Iyer)  
Member

**-Sd-**

(P.K. Pujari)  
Chairperson

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