

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 128/MP/2019

Coram:

**Shri P.K. Pujari, Chairperson
Dr. M. K. Iyer, Member
Shri I.S Jha, Member**

Date of Order: 26 .12.2019

In the matter of

Petition under Sections 79(1)(c) and 79(1)(f) of the Electricity Act, 2003 read with Regulation 32 of Connectivity Regulations, 2009 challenging the legality of Bill Nos. OGPTL-OPGC-01 dated 15.10.2018 and OPGTL-OPGC-02 dated 08.03.2019 raised by Respondent No. 1, Central Transmission Utility.

And in the matter of

Odisha Power Generation Corporation Limited
Zone-A, 7th Floor, Fortune Towers,
Chandrashekharapur, Bhubaneswar,
Odisha – 751023

....Petitioner

Vs

1. Central Transmission Utility
Power Grid Corporation of India Limited
SAUDAMINI, Plot No. 2, Sector-29, Gurgaon
Haryana – 122001
2. Odisha Generation Phase II Transmission Limited
F1 Mira Corporate Suites
1&2, Ishwar Nagar, Mathura Road
New Delhi – 110065

....Respondents

Parties present: Shri Sitesh Mukherjee, Advocate, OPGCL
Shri Arjun Agarwal, Advocate, OPGCL
Shri Aryaman Saxena, Advocate, OPGCL
Ms. Suparna Srivastav, Advocate, PGCIL
Shri Sajjan Poovayya, Sr. Advocate, OGPTL
Shri Hemant Singh, Advocate, OGPTL



Shri Ambuj Dixit, Advocate, OGPTL
Shri Haresh Kumar Satapathy, OPGCL
Shri K. K. Jain, PGCIL
Shri J. Majumdar, PGCIL
Ms. Jyoti Prasad, PGCIL
Dr. V. N. Paranjape, PGCIL
Shri T.A.N. Reddy, Sterlite, OGPTL
Shri Agam Kumar, Sterlite, OGPTL
Shri Anisha Chopra, Sterlite OGPTL

ORDER

The Petitioner, Odisha Power Generation Corporation Limited (OPGCL) is a generating company in terms of Section 2(28) of the Electricity Act, 2003. The Petitioner has established a Thermal Power Plant in the Jharsuguda District of Odisha. Unit # 1 and 2 of the Plant, with a capacity of 210 MW each, have been in operation since the year 1994. Presently, the Petitioner is in the process of setting up Units #3 and 4 of the Plant with a capacity of 660MW each (Expansion Project). The present Petition pertains to transmission charges levied on the Petitioner for the Inter-State Long Term Open Access from Unit #4 of the Petitioner's Plant.

2. The LTA Agreement and the Transmission Agreement(TA) provide that the transmission system to facilitate immediate evacuation of power from Petitioner's power plant would include the 400kV OPGC-Jharsuguda (Sundargarh) D/C line (Triple Snowbird Conductor), connecting Unit #4 of the Petitioner's Expansion Project to the ISTS at PGCIL's Sundargarh Substation. The said line was to be constructed by a transmission licensee selected on Tariff Based Competitive Bidding (TBCB) basis. Sterlite Grid-3 Limited (Sterlite) was selected as the successful bidder for setting up the transmission line through its subsidiary, Odisha Generation Phase-II Transmission Limited (OGPTL). Thereafter, the Petitioner signed a Tripartite Connection Agreement with Respondent Nos. 1(CTU) and 2(OGPTL) on 04.12.2017.



3. CTU has raised two bills on the Petitioner on behalf of OGPTL, as transmission charges for OGPTL's transmission elements. The bills, i.e., Bill Nos. OGPTL-OPGC-01 dated 15.10.2018 and Bill No. OPGTL-OPGC-02 dated 08.03.2019 are for transmission charges pertaining to the entire period between 30.08.2017 and 28.02.2019.

4. By way of the present Petition, the Petitioner seeks the setting aside of the aforesaid bills and a declaration that the Petitioner is not liable to pay any transmission charges to the Respondents.

5. Against the above background, the petitioner has made the following prayers to:

“a) Set aside Bill Nos. OGPTL-OPGC-01 dated 15.10.2018 and OPGTL-OPGC-02 dated 08.03.2019 issued by the CTU to the Petitioner;

b) Set aside the Minutes of the Validation Committee Meeting dated 20.06.2018, to the extent that Respondent No. 2 was permitted to bill OGPTL's annual transmission charges on the Petitioner and Respondent No. 1 in 50:50 proportion for the period between 30.08.2017 to 05.12.2017, despite the energisation of the subject 400kV line only on 05.12.2017;

c) Hold that the Petitioner is not liable to pay any transmission charges to Respondent No. 1 or Respondent No. 2.”

Submissions made by the Petitioner

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

(a) The entire quantum of electricity generated at the presently operational Units #1 and 2 of the Plant is sold to GRIDCO Limited (GRIDCO).

(b) As regards to Units #3 and 4 (Expansion Project), it was originally envisaged that 50% of the power to be generated at the Expansion Project was to be tied up for sale to GRIDCO and the remaining 50% power was to be sold Inter-State



outside the State of Odisha. It was in this context that the Petitioner had applied to CTU for the grant of LTA to ISTS for Inter-State sale of power in the Northern, Western and Southern Region. The said LTA was granted by CTU. The Petitioner's LTA is for a capacity of 600MW. Consequently, the Petitioner executed an LTA Agreement dated 11.09.2013 and a Transmission Agreement(TA) dated 11.09.2013 with CTU. The LTA Agreement and the TA stipulate that the Petitioner's LTA to the ISTS would be effective from July, 2017 or the date, on which the transmission elements specified in Annexure-2 & 3 of the LTA Agreement are commissioned, whichever is later. Thus, the contract expressly stipulated that LTA would only be operationalized once all the pre-requisite transmission elements necessary for operationalizing such LTA are commissioned. It is stated that the pre-required transmission elements delineated in the LTA Agreement have not been commissioned and the Petitioner's LTA has not been operationalized either in full or in part by CTU. Despite this, bills have been raised on the Petitioner.

- (c) The LTA Agreement and the TA provide that the transmission system to facilitate Petitioner's evacuation of power would include the 400kV OPGC-Jharsuguda (Sundargarh) D/C line, connecting to 400kV switchyard of the Petitioner's Expansion Project to the ISTS at the Sundargarh Substation. The said transmission line was to be constructed by a transmission licensee selected on TBCB basis with a completion time of July, 2017. Sterlite was selected as the successful bidder for setting up the transmission line through its subsidiary company, i.e., OGPTL.



- (d) On 21.11.2017, CTU vide its letter to the Petitioner and OGPTL intimated the Connection Details (CON-5) for the connectivity of the Expansion Project and OGPTL's 400kV OPGC-Jharsuguda (Sundargarh) D/C line to ISTS. Thereafter, the Petitioner signed a Tripartite Connection Agreement with CTU and OGPTL on 04.12.2017.
- (e) On 18.09.2017, the Petitioner got the clearance approval from the Central Electricity Authority (CEA) for commissioning of its switchyard (along with the line bays). However, OGPTL's 400kV Line's Circuit – 2 was charged only on 23.11.2017 and the said line's circuit – 1 was charged only on 05.12.2017. As a result, the Petitioner commissioned "2 nos. 400kV line bays at generation switchyard" on 19.12.2017 due to delay in commissioning of the upstream 400kV Line (within Respondent No. 2's scope of work) and associated bays at Jharsuguda Substation. It is stated that the Petitioner's scope of work was limited to commissioning of the aforesaid 2 nos. 400kV line bays at generation switchyard under the LTA Agreement and was approved by CEA on 18.09.2017. Therefore, there was no delay on the Petitioner's part.
- (f) As per Validation Committee Meeting dated 20.06.2018, OGPTL was allowed to bill annual transmission charges on the Petitioner and Respondent No. 1 in 50:50 proportion for the period between 30.08.2017 to 05.12.2017. The Petitioner was not a part of the said Validation Committee Meeting.
- (g) On 28.09.2018, the 18th Joint Co-ordination Committee Meeting for High Capacity Corridor for IPPs in Eastern Region notes, as excerpted hereunder for convenient perusal:

**Status of other Associated Transmission System →
Phase-II IPPs in Odisha & associated Transmission System**

Transmission System under the Scope of POWERGRID:

| Sl. No. | Scope of Transmission System | Status (as per 17 th JCC) | Status (as per 18 th JCC) | Remarks |
|---------|---------------------------------------------------------------------------------------------------------------|--------------------------------------|--------------------------------------|---------|
| 1 | Angul-Jharsuguda (Sundargarh)-Dharamjaygarh 765 kV D/c (2 nd) line | Sep'18 | Dec'18 | |
| 2 | Addition of 2x1500MVA, 765/400 kV ICTs at Jharsuguda (Sundargarh) | Apr'19 | Apr'19 | |
| 3 | Split bus arrangement at 400 kV and 765 kV bus at Jharsuguda (Sundargarh) substations. | Apr'19 | Apr'19 | |
| 4 | LILO of both circuits of Rourkela-Raigarh 400 kV D/c (2 nd) at Jharsuguda (Sundargarh) substation | Commissioned in Jan'18 | Commissioned in Jan'18 | |

Transmission System under the Scope of TBCB (Sterlite):

| Sl. No. | Scope of Transmission System | Status (as per 17 th JCC) | Status (as per 18 th JCC) | Remarks |
|---------|--------------------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------------------------|
| 1 | Jharsuguda (Sundargarh) – Raipur Pool 765 kV D/c | Aug'19 (As per SPV transfer) | Aug'19 (As per SPV transfer) | Completion of associated bays: Aug'19 (CMG may verify) |

- (h) As on 28.09.2018, critical inter-connection elements under the respective scope of work of both Respondents were in no position to be commissioned.
- (i) On 15.10.2018, CTU raised Bill No. OGPTL-OPGC-01 for transmission charges of OGPTL pertaining to the period between 30.08.2017 and 30.09.2018 for an amount of INR 9,16,50,715/-. This Impugned Bill was raised despite the 18th Joint Co-ordination Committee Meeting for High Capacity Corridor for IPPs in Eastern Region dated 28.09.2018 clearly noting that the commissioning of elements under the respective scope of both the Respondents were nowhere close to commissioning.
- (j) On the same day, i.e., 15.10.2018 the Petitioner wrote to CTU stating, “Please send the details of breakup of the bill and also the basis of calculation which are very much required for processing the bill from our end.” There has been no response to this email to date.

- (k) Subsequent to the execution of the LTA Agreement and the TA, the Ministry of Power, Government of India issued revised model bidding documents on 05.05.2015. Under the revised Model Bidding Documents, no 'Concessional Fuel', i.e., coal allocated under the government allotment route may be utilised for selling power thereunder. Since Petitioner was allocated 'Concessional Fuel' for specified end-use at the Expansion Project along with the Plant's Units #5 and 6, the Petitioner was statutorily barred from bidding for competitively bid out Inter-State sale of power, which ought to be in compliance with the aforesaid revised Model Bidding Documents.
- (l) The Petitioner was constrained to relinquish its LTA capacity vide letter dated 13.12.2018. The said relinquishment by the Petitioner was accepted by the CTU vide letter dated 17.01.2019, w.e.f. 01.01.2019.
- (m) Meanwhile, the 19th Joint Co-ordination Committee Meeting for High Capacity Corridor for IPPs in Eastern Region dated 20.12.2018 noted, as excerpted hereunder for convenient perusal:

**Status of other Associated Transmission System →
Phase-II IPPs in Odisha & associated Transmission System**

Transmission System under the Scope of POWERGRID:

| Sl. No. | Scope of Transmission System | Status (as per 18 th JCC) | Status (as per 19 th JCC) | Remarks |
|---------|---------------------------------------------------------------------------------------------------------------|--------------------------------------|--------------------------------------|---------|
| 1 | Angul-Jharsuguda (Sundargarh)-Dharamjaygarh 765 kV D/c (2 nd) line | Dec'18 | Charged on 01.12.2018 | |
| 2 | Addition of 2x1500MVA, 765/400 kV ICTs at Jharsuguda (Sundargarh) | Apr'19 | Apr'19 | |
| 3 | Split bus arrangement at 400 kV and 765 kV bus at Jharsuguda (Sundargarh) substations. | Apr'19 | Apr'19 | |
| 4 | LILO of both circuits of Rourkela-Raigarh 400 kV D/c (2 nd) at Jharsuguda (Sundergarh) substation | Commissioned in Jan'18 | Commissioned in Jan'18 | |

Transmission System under the Scope of TBCB (Sterlite):

| Sl. No. | Scope of Transmission System | Status (as per 18 th JCC) | Status (as per 19 th JCC) | Remarks |
|---------|--------------------------------------------------|--------------------------------------|--------------------------------------|---------|
| 1 | Jharsuguda (Sundargarh) – Raipur Pool 765 kV D/c | Aug'19 (As per SPV transfer) | Aug'19 (As per SPV transfer) | |

- (n) As on 20.12.2018, critical inter-connection elements under the respective scope of work of both Respondents were in no position to be commissioned. On 08.03.2019, CTU raised Bill No. OPGTL-OPGC-02 for transmission charges of OGPTL pertaining to the entire period between 30.08.2017 and 28.02.2019 for a cumulative amount of INR 13,44,06,393/- including late payment surcharge. Responding to the aforesaid Impugned Bills, the Petitioner wrote to CTU, vide letter dated 16.04.2019, disputing the Impugned Bills on the ground of non-operationalisation of LTA. No response has been received to this letter by the CTU.
- (o) The Petitioner is challenging the Impugned Bills as well as the decision of the Validation Committee to saddle the Petitioner with any transmission charges. The actual commissioning schedule of the various elements envisaged contractually between the Petitioner and Respondent No. 1 under Annexure-2 and Annexure-3 of the LTA Agreement is tabulated hereunder:

| Element(s) | Actual Date of Commissioning | Entity under whose Scope of Work the Element falls | Reference to document(s) establishing commissioning |
|----------------------------------------------------------------------------------------------|------------------------------|----------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Annexure-2 (Immediate Evacuation) | | | |
| OPGC-Jharsuguda (Sundargarh) 400 kV D/C Line (Triple Snow Conductor) | December, 2017 | Respondent No. 2 | Page No. 53 of the Central Electricity Authority's (CEA) Monthly Progress Report of Transmission Projects awarded through Tariff Based Competitive Bidding (TBCB) Route(As on 28.02.2019); and Respondent No. 1's emails dated 24.11.2017 and 05.12.2017. |
| 02 nos. of 400 kV line bays at generation switchyard | December, 2017 | Petitioner | Energization approval given by the CEA vide letter dated 18.09.2017. The Eastern Regional Load Despatch Centre approved the first-time charging vide email dated 19.12.2017. |
| 02 nos. of 400 kV line bays at Jharsuguda (Sundargarh) | 23.11.2017 | Respondent No. 1 | This Hon'ble Commission's Order dated 14.02.2019 in Petition No. 59/TT/2018. |
| Annexure-3 (Transmission System for Phase-II Generation Projects in Odisha) | | | |
| Angul - Jharsuguda (Sundargarh) - Dharamjaygarh 765 kV D/C line | November, 2018 | Respondent No. 1 | Page No. 9 of 105 of the CEA Report indicating status of construction of Transmission Lines (220 kV& above) during-2018-19 (as on 28.02.2019). |
| Jharsuguda (Sundargarh) - Raipur Pool 765 kV D/C line | December, 2018 | Respondent No. 2 | Page No. 52 of CEA's Monthly Progress Report of Transmission Projects awarded through Tariff Based Competitive Bidding (TBCB) Route(as on 28.02.2019). |
| LILO of both circuits of Rourkela - Raigarh 400 kV D/C (2nd line) at Jharsuguda (Sundargarh) | January, 2018 | Respondent No. 2 | Page No. 29 of 31 of the Minutes of Meeting of the 19th Joint Co-ordination Committee Meeting for High Capacity Corridor for IPPs in Eastern Region dated 20.12.2018. |
| Addition of 2x1500MVA, 765/400kV ICT at Jharsuguda (Sundargarh); Addition | April, 2019 (Anticipated) | Respondent No. 1 | Page No. 29 of 31 of the Minutes of Meeting of the 19th Joint Co-ordination Committee Meeting for High Capacity Corridor for IPPs in Eastern Region dated 20.12.2018. |



| Element(s) | Actual Date of Commissioning | Entity under whose Scope of Work the Element falls | Reference to document(s) establishing commissioning |
|----------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|----------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| of 2x1500MVA, 765/400kV ICT at Angul; and Split bus arrangement at 400kV and 765kV bus in both Angul and Jharsuguda (Sundargarh) substations | | | |
| Jharsuguda (Sundargarh) – Raipur Pool 765 kV D/C | August, 2019 (Anticipated) | Respondent No. 1 | Page No. 29 of 31 of the Minutes of Meeting of the 19th Joint Co-ordination Committee Meeting for High Capacity Corridor for IPPs in Eastern Region dated 20.12.2018. |

(p) The Impugned Bills are in clear contravention of the provisions of the LTA Agreement. Impugned Bills for transmission charges of Respondent No. 2 could not have been raised by CTU without the operationalisation of the LTA. CTU has never intimated the Petitioner of the operationalisation of the LTA since the LTA has not been operationalized yet, even in part.

(q) The following provisions of the LTA Agreement, as excerpted hereunder, are relevant:

“C) AND WHEREAS Long Term Access is also to be availed by OPGC. The dates, period and other conditions related to grant and Commencement of Long Term Access are contained in Annexure-1.

D) AND WHEREAS the transmission system required for immediate evacuation (direct injection/drawl) of power from premises of LTC to the suitable points of ISTS has been finalized in accordance with the provisions of the Electricity Act, 2003 and is to be built, owned, operated & maintained by the agencies as indicated at Annexure-2.

E) AND WHEREAS the common transmission system for transmission of power as indicated at Annexure-3 has been finalized in accordance with the provisions in the Electricity Act, 2003 & guidelines thereof and is being built, owned, operated and maintained by ISTS licensee(s), which shall be finalized through Tariff Based Competitive Bidding process.”

- (r) The terms and conditions for the operationalisation of the Petitioner's LTA are encapsulated in Annexure-1 to the LTA Agreement. In turn, Annexure-1 of the LTA Agreement prescribes the following terms, as excerpted hereunder, in the column specifying the date for Commencement of LTA:

“From the date of actual commissioning schedule of the ISTS transmission system given at Annexure – 2 & 3 and respective commissioning schedule mentioned at Annexure – 1 whichever is later.”

- (s) Respondent No. 1 is yet to commission their elements as per Annexure-2 and 3. Despite the non-commissioning of the full ISTS system, CTU has gone ahead and raised the Impugned Bills, which is patently illegal.
- (t) On the completion of part transmission system, no liability accrues to a generating company who is an LTA grantee if part-LTA has not been operationalized by the CTU. Under Regulation 8 of the Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010, transmission charges are payable only after operationalisation of any part of the LTA granted to an applicant.
- (u) In any case and without prejudice to the foregoing, while the Impugned Bills seek to levy purported transmission charges on the Petitioner from 30.08.2017, suggests that the OGPTL's 400kV Line was energised only on 05.12.2017. As established earlier, there was no delay on part of the Petitioner in commissioning the 2 nos. 400kV line bays at generation switchyard. It is reiterated that the Petitioner's scope of work was limited to commissioning of the aforesaid 2 nos. 400kV line bays at generation switchyard under the LTA Agreement (Annexure-2) and was approved by CEA on 18.09.2017. The

remaining administrative and construction functions are squarely outside the Petitioner's scope of work. Therefore, to the extent that the Impugned Bills seek to illegally levy transmission charges between 30.08.2017 and 05.12.2017, they ought to be set aside. In any case, only the Long Term Transmission Customers of OGPTL are liable to pay transmission charges

- (v) The Petitioner has not entered into any Transmission Services Agreement (TSA) with either of the Respondents. On the other hand, the LTTCs of OGPTL presumably have entered into a TSA with its LTTCs. Therefore, only OGPTL's LTTCs (and not the Petitioner) can be made liable to pay the Respondent No. 2's transmission charges.

- (w) Post relinquishment of LTA by the Petitioner with effect from 01.01.2019, no transmission charges can be levied on the Petitioner. The Petitioner's relinquishment of its LTA was accepted by CTU vide letter dated 17.01.2019, w.e.f. 01.01.2019. Without prejudice to the Petitioner's case on why 01.01.2019 was considered as the date of relinquishment instead of 13.12.2018, there is absolutely no question of levy of any transmission charges post relinquishment. The only charges that can be levied on the Petitioner post relinquishment are relinquishment charges in terms of this Commission's Order in Petition No. 92/MP/2015 dated 08.03.2019. However, the Impugned Bills are not bills for relinquishment charges. Instead, the Impugned Bills seek to levy INR 81, 78, 445/- for the month of January 2019 and INR 73, 87, 123/- for the month of February 2019, as purported transmission charges. Without prejudice to the foregoing arguments, such levy is patently illegal post relinquishment. Without

prejudice to the above, the Petitioner reserves its right to challenge this Commission's Order in Petition No. 92/MP/2015 dated 08.03.2019. Nothing in this Petition or otherwise may be construed as waiver of the Petitioner's right to challenge this Commission's Order in Petition No. 92/MP/2015 dated 08.03.2019. Further, the aforesaid submission is without prejudice to the Petitioner's right to claim 13.12.2018 as the effective date of relinquishment and nothing stated herein ought to be a waiver in this regard.

- (x) CTU has no right to en-cash the Bank Guarantee No. 002GM03133030001 dated 30.10.2013, as amended on 24.10.2018, furnished by the Petitioner in terms of Clause 1(a) of the LTA Agreement. Invocation of the Bank Guarantee furnished by the Petitioner is reproduced hereunder for convenient perusal:

“(d) The Bank Guarantee shall be encashed by CTU in case of adverse progress of work under the scope of LTC, assessed during Joint Co-ordination Meeting. However, the validity of Bank Guarantee shall be extended by concerned LTC as per the requirement to be indicated during Joint Co-ordination Meeting.”

- (y) It is only when the Joint Co-ordination Meeting assesses the progress of work under scope of the Petitioner to be adverse, can the Bank Guarantee be invoked by CTU. Petitioner's scope of work under the LTA Agreement was completed by December 2017. Further, no adverse progress report of such nature has been prepared by the Joint Co-ordination Meeting either. Therefore, CTU cannot invoke the Bank Guarantee furnished by the Petitioner.

7. The matter was heard on 16.5.2019. The Petition was admitted and notices were issued to the respondents to file their replies.

8. In hearing dated 16.5.2019 the Petitioner submitted that it has filed IA No.42/2019 for restraining the Respondents from taking any coercive steps including the encashment of bank guarantee against the Petitioner till the final disposal of the Petition. In response, PGCIL submitted that it would not take any coercive measure subject to the condition that bank guarantee shall be kept alive by the Petitioner. Considering the submissions of the Petitioner and PGCIL, the Commission vide RoPin hearing dated 16.5.2019 directed the Respondents not to take any coercive measure against the Petitioner till the next date of hearing and keep the Bank Guarantee alive till the next date of hearing. Accordingly, the Commission disposed of the IA No. 42/2019.

Submission by OGPTL (Respondent No.2) vide affidavit dated 6.6.2019

9. The Petitioner has not made any payments towards the invoice raised by CTU for Rs. 13,44,06,393/-, based upon illegal and wrongful grounds as raised in the petition.

10. The Petitioner was granted LTA by the CTU by executing an agreement (LTAA) dated 11.09.2013. OPGCL was to be provided evacuation facilities by the CTU in terms of the said agreement. For the purpose of the above LTAA, OGPTL is a company engaged in developing and implementing an inter-State transmission Project on a build, own, operate and maintain (BOOM) basis. The said Project was awarded to the OGPTL pursuant to a transparent bidding process under Section 63 of the Electricity Act, 2003. Pursuant to the grant of the said project, OGPTL commissioned an Inter-State Transmission System at Odisha and Chhattisgarh comprising of 400kV OPGC-Jharsuguda D/C and 765kV Jharsuguda-Raipur Pool Transmission Lines. The above transmission system is in the nature of a dedicated transmission system built for evacuation of power from the said

Petitioner. The OGPTL executed a tripartite transmission agreement dated 04.12.2017 with CTU and the Petitioner.

11. The 400kV OPGC-Jharsuguda D/C transmission line was commissioned on 30.08.2017 and SCOD for the line is 31.07.2017 which was required for immediate evacuation by the Petitioner. However, due to non-availability of 400kV GIS bays to be provided by PGCIL at 400kV Jharsuguda (Sundargarh) Sub-station and 2 nos. of 400kV Line Bays to be provided by OPGCL at OPGCL generation switchyard, which were both commissioned on 05.12.2017 and 15.12.2017 respectively, the 400kV OPGC-Jharsuguda D/C line could be charged only on 20.12.2017.

12. The award of the transmission project to the OGPTL, and the consequent commissioning of the same, the said Respondent become entitled for recovery of transmission charges from the CTU, which charges are in turn collected by the CTU from the Transmission System Users (TSU). In the present case, the TSU is the Petitioner, and the above transmission system is in the nature of a dedicated transmission system built for evacuation of power from the said Petitioner.

13. OGPTL vide letter dated 05.04.2018 submitted the details of transmission charges of 400kV OPGC-Jharsuguda D/C line to the NLDC, in line with the directions of this Commission vide order dated 04.01.2017 passed in Petition No. 155/MP/2016. In the said order, this Commission observed as under:

“In respect of ISTS Licensees bilateral billing due to non-availability of upstream/downstream system, ISTS licensees are required to forward the details of entity along with YTC details from whom it needs to be recovered from NLDC, who shall then provide the details of billing pertaining to non-availability of upstream/downstream system to respective RPCs for incorporation in RTAs in all cases of bilateral billing based on which CTU shall issue the bills.”



However, in response to OGPTL's aforesaid letter, NLDC vide its letter dated 16.04.2018 requested that the matter be taken up with CTU with regard to recovery of transmission charges for the period 30.08.2017 to 05.12.2017. Further, NLDC stated that for the period after 06.12.2017, transmission charges may be recovered in accordance with the Commission's order in Petition Nos. 236/MP/2015 and 201/TT/2015. In the said orders, CERC has observed as follows:

"If the transmission line is ready but terminal bays belonging to other licensees are not ready, the owners of upstream and downstream terminal bays shall be liable to pay the charges to the owner of the transmission line in ratio of 50:50 till the bays are commissioned, the owner of other end bays shall be liable to pay the entire transmission charges of the transmission line till its bays are commissioned. The above principle shall be followed by CTU in all cases of similar nature in future."

14. Accordingly, the OGPTL for recovery of transmission charges, approached the CTU vide letter dated 17.04.2018 and also submitted the details of transmission charges of 400kV OPGC-Jharsuguda D/C line to CTU and requested CTU to raise the bills upon OPGCL and PGCIL.

15. The above payment protocol has also been clarified in several Validation Committee meetings held on 29.08.2017, 29.11.2017 and 20.06.2018. In the Validation Committee meeting dated 20.06.2018, it was clarified that PGCIL and OPGCL shall make payments of transmission charges due to the OGPTL from 30.08.2017 to 05.12.2017. It was further mandated that thereafter, the transmission charges shall be borne by OPGCL. Further, the invoices for payment of transmission charges were advised to be raised by the CTU on behalf of OGPTL as per CERC order in Petition No. 43/MP/2016, 236/MP/2015, 55/MP/2016 and 201/TT/2015.

16. Accordingly, OGPTL submitted the bills to CTU for the period from 30.08.2017 to

30.04.2019 as detailed below:

| S. No. | Date on which bill submitted by OGPTL | Amount (Rs.) | Period of Transmission Charges | Due date of payment |
|--------|---------------------------------------|-----------------|--------------------------------|---------------------|
| 1. | 17.4.2018 | 4,49,28,117.88 | 30.8.2017 to 31.3.2018 | 17.6.2018 |
| 2. | 11.10.2018 | 9,16,50,715 | 30.8.2017 to 30.9.2018 | 11.12.2018 |
| 3. | 29.1.2019 | 11,93,58,208.56 | 30.8.2017 to 31.12.2018 | 31.3.2019 |
| 4. | 8.2.2019 | 12,89,85,670 | 30.8.2017 to 31.1.2019 | 8.4.2019 |
| 5. | 2.3.2019 | 4,27,55,679 | 1.10.2018 to 28.2.2019 | 2.5.2019 |
| 6. | 1.4.2019 | 14,37,30,783 | 30.8.2017 to 31.3.2019 | 1.6.2019 |
| 7. | 3.5.2019 | 15,27,91,946 | 30.8.2017 to 30.4.2019 | 3.7.2019 |

17. Thereafter, upon insistence from the OGPTL, and in line with the clarifications issued by the Validation Committee, the CTU raised invoices dated 15.10.2018, 08.03.2019 and 03.05.2019 on OPGCL. The aforementioned bills being raised by the CTU upon OPGCL for payment of transmission charges, and despite continuous follow ups, the Petitioner failed to meet its payment obligations amounting to Rs. 15,27,91,946/- as on 13.05.2019. The Petitioner is thus, a wilful and consistent defaulter in making payment of outstanding transmission charges to CTU, and in turn to the OGPTL.

18. The nature of the 400kV OPGC-Jharsuguda D/C line is that of a dedicated transmission line and hence, the Petitioner herein is liable to pay transmission charges for the same. OPGCL stated that it relinquished the aforementioned LTA in December, 2018. Even if the said relinquishment is considered at face value, the Petitioner is still liable to make payment of transmission charges to CTU, and in turn to the OGPTL, till the above relinquishment.



19. Even in the event of relinquishment of LTA, CTU is entitled to collect relinquishment charges which may be determined as per Regulations 18 of the Connectivity Regulations, 2009 read with the order dated 08.03.2019 passed by this Commission in Petition No. 92/MP/2015. CTU has to make payment of transmission charges to the OGPTL, either through OPGCL or through transmission charges recovered from other beneficiaries as per the Sharing Regulations. In other words, the transmission charges due to the OGPTL cannot at all in any manner be withheld by the CTU. It is further submitted that the Petitioner has been drawing start up power using the said line. This makes the Petitioner all the more liable to make payment of transmission charges.

20. As already mentioned in the above paragraphs, that the OGPTL vide letter dated 17.04.2018 submitted the details of transmission charges of 400kV OPGC-Jharsuguda D/C line to CTU and requested the CTU to raise the bills upon OPGCL and PGCIL, whereas the Joint Committee MoM extracted by the Petitioner in the instant petition talks only about some elements of the 765kV Jharsuguda-Raipur Pool Transmission Line. It is submitted that the Joint Committee meeting MoM are not relevant at this point in time as the bills raised by the OGPTL pertain only to 400kV OPGC-Jharsuguda D/C line, and not the 765kV Jharsuguda-Raipur Pool Transmission Line.

21. From the tripartite agreement entered into between the parties herein and further evidenced from the fact that the sole purpose of 400kV OPGC-Jharsuguda D/C line was to connect the expansion project of the Petitioner with the ISTS, it becomes quite clear that the 400kV OPGC-Jharsuguda D/C line was a dedicated transmission line. Therefore, as per Regulation 8(8) of the Connectivity Regulations, even in case the Petitioner has abandoned its project or relinquished the LTA, it shall be liable for payment of transmission charges.

Hence, the question of payment by other LTTC's does not even arise. The non-payment of transmission charges by OPGCL has severely affected OGPTL's cash flows and is causing adverse impact to carry out business enterprise and meeting its loan obligations towards creation of transmission assets, thus making the transmission project commercial unviable.

Rejoinder filed by OPGCL (Petitioner) vide affidavit dated 20.6.2019

22. Even though the LTA is yet to be operationalized in terms of the LTA Agreement and the TA, Respondent No. 1 has raised bills on the Petitioner on behalf of Respondent No. 2, as purported transmission charges for Respondent No. 2's transmission elements. Despite the non-commissioning of the full ISTS system, CTU has gone ahead and raised the Impugned Bills, which is patently illegal. The later event of the commissioning of the entire ISTS system (all elements) envisaged under the said Annexure - 2 & 3 is yet to be achieved. Therefore, CTU has not operationalized any LTA for the Petitioner. Thus, no transmission charges whatsoever can be levied.

23. The Petitioner is drawing start up power from CTU network since January 2018. PGCIL has raised an invoice (POC Bill-4 as RTDA) for the period April-17 to March-18 for an amount of Rs. 14,737/- against the drawal of start-up power and the same has been duly paid by the Petitioner. Whereas, bills towards the drawl of start- up power for the period of April-2018 to December-2018 were received by the Petitioner from PGCIL on 18.06.2019, which are being processed and shall be paid in due course.

24. OGPTL has erroneously relied on the Regulation 8(8) of the CERC (Grant of Connectivity, Long-Term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009. The Third Proviso to Regulation 8(8) of Connectivity Regulations, as cited by OGPTL, only relates to situations where



“generation project gets delayed or is abandoned’. In the instant case, the Petitioner relies on non-operationalisation of LTA as the ground for non-payment of purported transmission charges. Delay or abandonment of its Plant or Extension Units is not the ground taken by the Petitioner for such non- payment of purported transmission charges. Therefore, OGPTL’s reliance on Regulation 8(8) of the Connectivity Regulations is misconceived and irrelevant to the dispute at hand.

25. 400kV OPGC-Jharsuguda (Sundargarh) D/C line built by OGPTL was not a dedicated transmission line since it was not a part of the Petitioner’s Plant and the said line was also not conceived as a separate identifiable project. Instead, the said line was identified and planned by CTU for immediate evacuation of power from Petitioner’s Plant upto Respondent No. 1’s Jharsuguda (Sundargarh) Pooling Station. For evacuation beyond Jharsuguda Substation, the common transmission system comprised of several pre-required elements to be constructed by Respondent No. 1 through the TBCB route. The said transmission line was a part of such overall transmission system, as mentioned at Annexure-2 &3 of the LTA Agreement, for grant of LTA to Petitioner’s Plant. Therefore, the planning (by the Respondents) had to be done in such a way so as to match commissioning schedule of different transmission elements required for evacuation of power from Petitioner’s Plant to target regions/ drawl points, without which the commissioning of the transmission line for immediate evacuation to the nearest pooling point would be redundant.

Reply filed by CTU(Respondent No.1) vide affidavit dated 29.6.2019

26. The Petitioner applied to Respondent No.1 for grant of connectivity for 618MW and for grant of LTA for 600MW for inter-State sale of power to beneficiaries in the Northern, Western and Southern Regions. The said LTA application was discussed in the Meeting in



regard to Connectivity/MTOA/LTA with constituents of Eastern Region held on 05.01.2013 as under:

“• OPGC (Connectivity: 618 MW, LTA: 600 MW)

The generation developer informed that the proposed plant will be constructed within the existing boundary of its Thermal Power Station and 100% Land is already in possession with OPGC. For fuel, OPGC has already been allocated two captive coal mines by MoC at Manoharpur & Dip-side Manoharpur, Sundergarh, Odisha. MoEF has already given in principle clearance on 4th-Feb-2010. Forest clearance is already obtained. Loan has been sanctioned from PFC & REC and financial closure is expected in Q2-2013. PPA has been signed with GRIDCO for sale of 50% power. Balance power is to be sold through combination of long term (Case-I bidding) and short term contracts. The expected commissioning schedule is Q2-2016.

It was decided to approve the proposal for grant of connectivity & LTA to OPGC. POWERGRID informed OPGC that the transmission line from the generation project to Jharsuguda sub-station would be implemented through Tariff Based Competitive Bidding (TBCB).”

27. Power from Petitioner’s project was approved to be pooled at Jharsuguda sub-station of Respondent No.1 and immediate evacuation system proposed for power from Petitioner’s plant was planned as under:

“OPGC – Jharsuguda 400 kV D/C (triple snowbird)”

The aforesaid line connecting the Petitioner’s power plant to the sub-station of Respondent No.1 was approved for being implemented through TBCB route.

28. The connectivity as applied for by the Petitioner was granted to it vide intimation dated 8.4.2013 as revised vide intimation dated 11.9.2013 at the Jharsuguda (Sundargarh) 765kV sub-station of Respondent No.1; the transmission system required for connectivity consisted of IB TPS-Jharsuguda (Sundargarh) 400kV D/C line, which was decided to be implemented through the TBCB route. Accordingly, the Petitioner entered into a Transmission Agreement dated 11.9.2013 with CTU laying down the terms and conditions for utilization of connectivity, wherein the following was recorded:

“D) AND WHEREAS the dedicated transmission line required for direct injection/drawl of power from premises of “OPGC” to the suitable points of ISTS has been finalized in accordance with the provisions of the Electricity Act, 2003 and is to be built, owned, operated and maintained by ISTS licensee as indicated at Annexure 2.

E) AND WHEREAS the implementation of the transmission system to be built, owned, operated and maintained by the ISTS licensee(s) who would be finalized through tariff based competitive bidding shall be in accordance with the directives of Empowered Committee constituted for identification of transmission projects.”

29. As regards the applicable transmission charges for the above dedicated system to be built by TBCB licensee, it was recorded in the Transmission Agreement as under:

“I) AND WHEREAS “OPGC” has to share and pay all the applicable transmission charges of the total transmission system as indicated at Annexure 2 from the date of connectivity as mentioned at Annexure-1 or actual commissioning of the system, whichever is later, in accordance with the sharing mechanism as decided/notified/determined/adopted by CERC from time to time.

.....
Now, therefore, in consideration of the above premises, it is hereby agreed by and between the parties as follows:

1.0 (a) “OPGC” shall furnish a bank guarantee from a nationalized bank for an amount as specified by CERC as security mechanism for the transmission system to be built, owned and operated by ISTS licensee.....

(b) The bank Guarantee shall be furnished in favour of POWERGRID within 3 (three) months of signing of this Agreement failing which the connectivity granted shall be treated as cancelled and fresh application would be required in case the applicant wants to apply for connectivity again.

.....

3.0 In case, “OPGC” delays to utilize the connectivity provided and the assets covered under the transmission system, as indicated at Annexure-2 have been declared under commercial operation, either in part or in full; the “OPGC” shall bear the charges so as to ensure full recovery of the transmission tariff corresponding to the commissioned portion of the transmission system indicated at Annexure-2.

.....

7.0 This Agreement shall be valid from the date of signing of this agreement till the validity of Connectivity subject to its revision made by the parties to this Agreement provided that this Agreement may be mutually renewed or replaced by another Agreement on such terms as the parties may mutually agree.”

30. Under contractual arrangements, the Petitioner undertook and agreed with CTU to pay the transmission charges of the connectivity system built by the TBCB licensee, as



contained in Annexure-2 of the Agreement, from the date of commissioning of the system. Further, in an eventuality where delay was made by the Petitioner to utilize the connectivity, the transmission charges were to be paid in full, so as to ensure recovery of transmission tariff corresponding to the commissioned portion of the transmission system. This liability of the Petitioner to pay transmission charges for the connectivity granted to it was to continue till the validity of the connectivity.

31. In the bidding process undertaken for implementation of the connectivity line through the TBCB route, Sterlite Grid-3 Limited emerged as the successful bidder who subscribed to 100% share in the OGPTL company and also entered into a Transmission Service Agreement (TSA) dated 17.11.2015 with its long-term transmission customers (LTTCs). Vide its Order dated 31.5.2016 passed in Petition No.66/ADP/2016, this Commission adopted the tariff discovered under the bidding process. Thereafter, acting in line with the timelines as stipulated in the aforementioned Agreements, construction of the dedicated line commenced wherein the scheduled date of commercial operation as contained in the TSA was July, 2017. Vide letter 22.8.2017, OGPTL informed the CTU regarding completion of the works awarded to it as under:

“We are pleased to inform that based on your approval for various lines and crossings and with your kind support, we have completed all the crossing work successfully, we have checked the electrical clearance between both OGPTL &PGCIL lines which are found satisfactory. We are submitting same for your kind certification.

The clearances of the crossings may be checked once at your end and we request you to accord your certification which will enable us to charge the line.”

32. Subsequently, in view of the completion of construction of line and alleged non-availability of bays at sub-station built by Respondent No.1, OGPTL vide its letter dated 23.8.2017 addressed to the Eastern Region Power Committee (ERPC), declared deemed

commercial operationalisation of 400kV OPGC-Jharsuguda D/C line w.e.f 30.8.2017 as under:

“This is to inform you that our element 400kV D/C OPGC- Jharsuguda Transmission Line for energization from 23.8.2017 as per CEA vide its letter No. CEI/I/EI/RIO(E/NE)/Insp./2017 dated 23.8.2017 but due to non-availability of Bays at PGCIL Sub-Station at Sundargarh (Jharsuguda) S/s. The same is declared under deemed commissioned w.e.f 30.8.2017 as per subject provision of Article 6 of TSA.”

33. The Certificate for energization of the line was granted by the CEA on 18.9.2017. On 24.10.2017, OGPTL applied for the first time charging clearance from Eastern Region Load Despatch Center (ERLDC) which was accorded on 24.11.2017. The inter-se issues between CTU and OGPTL as regards the deemed commissioning of the connectivity line do not relate to the present subject matter in question and as such, are not being referred to here.

34. The issue as regards billing of transmission charges pertaining to the 400kV OPGC-Jharsuguda Transmission Line was discussed in the 3rd Meeting of Validation Committee (Application Period for 1st October, 2017 to 31st December,2017) for implementation of the CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 held on 29.8.2017, wherein the following amongst others was recorded:

“(iv) New lines to be included for this quarter as proposed by IA.

| Name of the Transmission Line | ISTS Licensee | Discussion |
|-----------------------------------------|-------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| | | |
| 400kV OPGC-Jharsuguda Transmission Line | Odisha Generation Phase-II Transmission Limited | Not to be considered in PoC. Dedicated line shall be considered under the provision of CERC Connectivity Regulations as per Regulation No. 8(8)” |

35. Considering the dedicated nature of the above line, it was decided that corresponding transmission charges for the line were not to be included in the PoC pool but were to be governed in accordance with Regulation 8(8) of the Connectivity Regulations.

36. On 20.6.2018, during the 2nd Meeting of Validation Committee for the Year 2018-19 (Application Period from 1.7.2018 to 30.9.2018), OGPTL raised the issue regarding recovery of transmission charges for the 400kV OPGC-Jharsuguda D/C line implemented by OGPTL. In the said Meeting, OGPTL raised its claim for transmission charges by representing that the said line had been commissioned on 30.8.2017, it could be charged only on 20.12.2017 due to:

“non-availability of 400kV GIS bays to be provided by PGCIL at 400 kV Sundargarh-OPGC Circuit-I and II and 2 Nos. of 400 kV Line Bays to be provided by OPGC at OPGC generation switchyard, which were both commissioned on 5.12.2017 and 15.12.2017 respectively. Tariff Payment: From 30.8.2017 -5.12.2017 (To be paid by both PGCIL and OPGC) From 6.12.2017-till date (To be paid by OPGC).

Letters sent by OGPTL to NLDC on 5.4.2018 and CTU on 17.4.2018 for payment of transmission charges”.

37. However, when the Minutes of the said Meeting were issued on 10.7.2018, the following was recorded:

“Representative of CERC clarified that the lines were discussed during Validation Committee meeting held on 29.8.2017 and 29.11.2017. It was asked the reason as to why CTU did not raise the bill, when regulations and CERC order were clear. It was also stated that the issues are similar in nature to ones already dealt in Hon'ble Commission's order in petition no.43/MP/2016, 236/MP/2016 and 201/TT/2015. Accordingly, CTU was advised to raise the bills immediately as per CERC order in Petition No.43/MP/2016, 236/MP/2016, 55/MP/2016 and 201/TT/2015.”

38. CTU was specifically directed to raise transmission charges bills for the 400kV OPGC-Jharsuguda D/C line as claimed by OGPTL. Contesting the deemed COD declared by OGPTL for the connectivity line, the CTU filed Petition No.350/MP/2018 before this Commission challenging the deemed DOCO of the 400kV OPGC Jharsuguda D/C line and

set aside the directions of the Validation Committee Meeting for the purpose of transmission charges billing on bilateral basis. However, vide Order dated 21.12.2018, the said Petition was disposed of as withdrawn with a direction to take up the matter w.r.t. DOCO with CEA or in any other forum.

39. The method for sharing of transmission charges for the use of ISTS has been notified by this Commission under the Sharing Regulations whereunder, all entities that are physically connected with the ISTS are required to share the Yearly Transmission Charges (YTC). The PoC charges are computed based on the “Approved Injection” and “Approved Withdrawal” as validated by the Validation Committee set up under the Regulations. The method of determination of specific transmission charges applicable to a Designated ISTS Customer (DIC) where approved withdrawal or injection is not materializing either fully or partially is envisaged under the Sharing Regulations provides [in Regulation 8], inter alia, as under:

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

(1)

(5)

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

.....

(8) An applicant may be required by the Central Transmission Utility to construct a dedicated line to the point of connection to enable connectivity to the grid:

Provided that a thermal generating station of 500 MW and above and a hydro generating station of 250 MW and above, other than a captive generating plant, shall not be required to construct a dedicated line to the point of connection and such stations shall be taken into account for coordinated transmission planning by the Central Transmission Utility and Central Electricity Authority.”

40. The Petitioner was thus obligated to pay the transmission charges for the connectivity line after its inclusion in ISTS as per the aforesaid Validation Committee Meeting. Such payment of transmission charges was for the connectivity line and not for the transmission system identified under the LTA and had no relation with the LTA operationalisation and/or its relinquishment.

41. In accordance with the directions given by the Validation Committee in the Meeting dated 20.6.2018, and in line with CERC orders in Petition No. 43/MP/2016, 236/MP/15, 201/TT/15 etc. CTU, vide its letter dated 15.10.2018, raised transmission charges bill on the Petitioner in the sum of Rs.9,16,50,715/- for the connectivity line for the period from 30.8.2017 to 30.9.2018 and the Petitioner was requested to make payment directly to OGPTL. It is submitted that the said bill was raised in accordance with the Sharing Regulations and the Orders of this Commission in Petition No. 43/MP/2016, 236/MP/15, 201/TT/15 etc. The Petitioner was thus bound and obliged to pay the same to OGPTL. It may be mentioned here that in the meanwhile, CTU, vide letter dated 21.11.2017, had intimated the connection details for the connectivity granted to the Petitioner wherein, the commercial operation of the elements of the transmission system were detailed as under:

| | |
|----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| "Expected date of commercial operation | <ul style="list-style-type: none"> • Unit I: June, 2018 • Unit II: Sep' 18 • 400kV OPGC- Jharsuguda (Sundargarh) D/C line: deemed commissioned w.e.f. July, 2017*** • 765kV Jharsuguda (Sundargarh) Raipur Pool D/C line: 7.8.2019 |
|----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

*** As per OGPTL email dated 5.10.2017, 400kV OPGC- Jharsuguda D/C line is declared under deemed commissioned w.e.f. 30.8.2017. However, as per RFP document, commissioning schedule is July '17.

42. The Petitioner was thus aware of the deemed commercial operation of the said dedicated line declared by the Respondent No.2 and as such, could not be heard to contend that the transmission charges for the connectivity line were not payable by it; the Petitioner was further aware that the non-operationalisation of its LTA had no relevance or relation whatsoever with the payment of transmission charges for the connectivity line.

43. CTU was apprised by the Petitioner vide letter dated 13.12.2018 that it had been rendered incapable of selling its power on an inter-state basis due to change in provisions of power sale by the Central Government, and thus in view of the same, was constrained to relinquish the 600MW LTA. Stating as such, Petitioner requested CTU as under:

As these events have been squarely beyond the control of OPGC, they have frustrated the LTAA and TA and rendered OPGC's performance thereunder impossible. This may hence be treated as force majeure in terms of Agreements signed with CTU. Thus, under the circumstances, OPGC should not be held liable for such uncontrollable events.

Accordingly, CTU is hereby requested to cancel OPGC's LTA of 600MW with immediate effect and not to operationalise the 600MW LTA (or part thereof) including issue of any bills towards transmission charges, in respect of OPGC, as the entire LTA is being relinquished with immediate effect. We assure you of our co-operation in this regard.

We understand that Hon'ble CERC has reserved orders in Petition No. 92/MP/2015. Therefore, we undertake to extend our Construction Bank Guarantee for an amount of INR 30 Cr, until the Hon'ble CERC passes a final order in Petition No. 92/MP/2015, without prejudice to OPGC's rights under law."

44. CTU Vide its letter dated 17.1.2019 accepted the aforesaid relinquishment of LTA by the Petitioner as under:

"In this regard, it is to mention that Connectivity was granted to OPGC through 400kV OPGC- Jharsuguda (Sundargarh) D/C dedicated line as part of ISTS which has been implemented under TBCB. Further, LTA was granted through common transmission system for Phase-II generation projects in Odisha in addition to above dedicated ISTS.

Regarding inability of OPGC to execute Long Term PPAs utilizing 'Concessional fuel' in Model Bidding Document, it is to mention that the subject modification in Model Bidding



Document may not be considered a valid ground for force majeure as contended by OPGC. Accordingly, the claim of force majeure raised by OPGC is not acceptable.

Nevertheless, based on the request of OPGC, 600MW LTA shall be considered as relinquished w.e.f 1.1.2019 accompanied with liability for payment of applicable relinquishment charges as may be determined by Hon'ble Commission in light of Petition No. 92/MP/2015."

45. LTA granted to the Petitioner was relinquished in line with the relevant Regulations of this Commission. Notwithstanding such relinquishment, the Petitioner's liability to pay the transmission charges for the connectivity line continued and was liable to be duly discharged. However, subsequently, this Commission vide Order dated 8.3.2019 passed in Petition No.92/MP/15 ruled on the rationale behind insertion of Regulation 18 of the Connectivity Regulations to levy the relinquishment charges to ensure recovery of compensation from relinquishing entity so that the transmission assets built were serviced adequately and reinforced the need for strict interpretation of the Regulation without giving any room for waiver or exception in relinquishment charges on the ground of frustration of contract, non-operationalisation of LTA or any other reason whatsoever. The Petitioner is thus liable to pay relinquishment charges in accordance with the bill raised by Respondent No.1.

46. Subsequent to relinquishment of LTA and considering the non-payment of transmission charges levied on the Petitioner, CTU vide its letter dated 8.3.2019, raised a bill of transmission charges (including late payment surcharge against bill dated 15.10.2018) as under:

"Please find enclosed herewith Bill No. OGPTL- OPGC-02 dtd. 8.3.2019 for INR 4,27,55,679/- (INR Four Crore Twenty Seven Lakh Fifty Five Thousand Six Hundred Seventy Nine Only) towards transmission charges for the period from 1.10.2018 to 28.2.2019 & Late Payment Surcharge against Invoice Ref: OGPTL- OPGC-01 Dtd: 15.10.2018 pertaining to M/s Odisha Generation Phase-II Transmission Limited (OGPTL).



As per above, you are requested to make payment of INR 4,27,55,679/- (INR Four Crore Twenty Seven Lakh Fifty Five Thousand Six Hundred Seventy Nine Only) directly to M/s Odisha Generation Phase-II Transmission Limited (OGPTL), with an intimation to us”.

47. CTU thus raised the aforesaid bill alongwith details of transmission charges of 400KV PGC-Jharsuguda D/C line implemented by OGPTL. The answering Respondent reiterates that the transmission charges had been raised for the connectivity granted to the Petitioner and servicing of the said dedicated line built by OGPTL in accordance with the Sharing Regulations and was necessarily to be paid irrespective of operationalisation or subsequent relinquishment of LTA.

Reply filed by the Petitioner vide affidavit dated 15.7.2019

48. Clauses of the LTA Agreement, the TA and the Connection Agreement dated 04.12.2017 must be interpreted harmoniously and cherry-picking a favourable provision from one of these three agreements, as sought by CTU, is entirely erroneous.

49. Moreover, the contention that the said 400kV OPGC-Jharsuguda (Sundargarh) D/C Line is dedicated in nature is belied by the fact that neither of the two Respondents herein have provided a direct communication to the Petitioner regarding the alleged deemed commissioning of the said Line. This further fortifies Petitioner’s argument that the said Line was envisaged as a part of the overall transmission scheme envisaged under the LTA Agreement for evacuation of power from Petitioner’s Plant and therefore formed a part of the larger common transaction, i.e., grant of Open Access.

50. The TA dated 11.09.2013 and the Connection Agreement dated 04.12.2017 pertain to the same subject matter of connectivity to ISTS. The tripartite Connection Agreement being a subsequent agreement on the same subject matter as the TA is therefore extremely

relevant for interpretation of the TA. Clause 2.1 of the Connection Agreement is relevant in this regard and is reproduced hereunder:

“2 Agreement to Pay Charges and Costs

2.1 Agreement to Monthly Transmission Tariff

The Applicant declare that it shall pay the Monthly Transmission Tariff including ULDC/NLDC charges, for use of Inter-State Transmission System, as and when long term access, Medium-term open access or short-term open access is availed by the applicant, in accordance with the relevant regulation of the CERC in this regard.”

51. The liability to pay transmission charges was only for the use of ISTS and was subject to terms of the extant Connectivity Regulations. Since LTA was never operationalized, there is no question of levy of transmission charges.

52. In hearing dated 25.7.2019 the Petitioner, OGPTL, and CTU advanced their arguments in support of their contentions by relying on the clauses of LTA Agreement, Transmission Agreement, Regulations and Orders of the Commission and reiterated the submissions made in their respective pleadings. The Petitioner requested the Commission to continue the interim direction dated 16.5.2019 till the outcome of the Petition. OGPTL objected to the same and requested to vacate the interim direction. After hearing the parties, the Commission directed that the interim direction dated 16.5.2019 shall be continued till the outcome of the Petition.

Submission made by OGPTL vide affidavit dated 2.8.2019

53. The Transmission Agreement clearly provides in Recital D that the Transmission Line required by the Petitioner was to be a 'Dedicated Transmission Line' required for direct injection/ drawl of power from the Petitioner's generation asset. Further, the agreements categorically provide that OPGCL shall have to pay "transmission charges" upon connectivity.



54. The Petitioner always knew of the above clause, and the same was never disputed or challenged. It is a settled principle of law that parties to a contract cannot approbate and reprobate, and have to honour the commitments contained in the TA. As such, the Petitioner is liable to bear the transmission charges for the line constructed by the Respondent No. 2. The Petitioner has been claiming exemption from payment of Transmission Charges on the ground that there is no liability upon the said Petitioner, as the full LTA is a composite grant, and it is consisted of various elements, including the element constructed by the Respondent No. 2. The above stand of the Petitioner/ OPGCL is fundamentally wrong on account of the following:

- a. OPGCL executed the LTAA and TA dated 11.9.2013, in which OPGCL is liable to bear transmission charges for the element constructed by the Respondent No. 2;
- b. There was no challenge to the above clause of the TA. This means that the same attained finality; and

Accordingly, CTU raised invoices for transmission charges to be paid to the Respondent No. 2, upon OPGCL.

55. The Regulations providing for civil right in favour of the Petitioner were framed back in 2010, whereas, the said Petitioner entered into the LTA Agreement and Transmission Agreement in 2013 and tripartite connection agreement (involving the OGPTL) in 2017. It is trite in law that any right except a fundamental right protected by the Constitution of India, 1950 can be waived, either by contract or by conduct. In the present case the Petitioner has waived its right, if any, under Regulation 8(5) of the Sharing Regulations, 2010 both by

contract and by conduct, as the Petitioner signed all the agreements for connection after the Sharing Regulation, 2010 had already come into effect and also on account of the fact that even after signing of the said agreements, the Petitioner never disputed its liability to pay, until the commissioning of the said line.

56. Since, the OGPTL commissioned its line on 30.8.2017, and OPGCL has synchronized its power plant on 26.12.2018 and is injecting infirm power into the grid, OPGCL is liable to pay transmission charges for the period from 30.8.2017 till 26.12.2018, in accordance with default liability principles set by the CERC vide order dated 21.9.2016 in 43/MP/2016 and order dated 4.1.2017 in 155/MP/2016, read with Clause 3.0 of the Transmission Agreement dated 11.9.2013. In accordance with the aforementioned CERC orders, OGPTL has sent bills for transmission charges from 30.8.2017 to CTU, and CTU in turn has raised the bills on OPGCL. However, OPGCL has not made any payment, whatsoever, till date which is causing grave financial risk to the company. However, the OGPTL has remained unpaid since August 2017. In this context, reference may be made to the minutes of the Validation Committee meeting held on 20.6.2018, wherein, CTU was mandated to raise invoices for collecting transmission charges for the OGPTL as per the following orders:

- i. 43/MP/2016;
- ii. 236/MP/2015;
- iii. 55/MP/2016;
- iv. 201/TT/2015.

57. The above principle has also been upheld by APTEL in its judgement dated 18.1.2019 in Appeal No. 332 of 2016 in the case of Nuclear Power Corporation of India Ltd. v. CERC & Ors., wherein it is clearly laid down that transmission charges have to be paid by the defaulting party if the transmission system could not be put into use and cannot be



paid under POC mechanism for the delay in any transmission element by the defaulting party. Once, the line is utilized, the line is to be included in POC pool for recovery of transmission charges. The relevant Para of the judgement is quoted as under:

"It is now in dispute that the Respondent No.2 had commissioned the transmission lines on 26.12.2015 (COD) considered by the Commission as 01.3.2016 and the downstream element under the scope of the Appellant could be commissioned only on 11.11.2016. Subsequent to Judgement of A .No. 332 of 2016 & IA Nos.706 of 2016 & 699 of 2017 the commissioning of its lines in totality, the second Respondent is entitled to receive transmission charges from 01.3.2016 either from the Appellant due to its admitted default or through the POC charges from the LTTCs/beneficiaries. The Hon'ble Supreme Court in its judgement dated 3.3.2016 (Barh-Balia Judgement) has held that the beneficiaries cannot be made liable to pay for the delay in any transmission element which in turn, prevents the entire system to be put to use. Hence, the second Respondent cannot be paid under POC mechanism and alternatively, the transmission charges had to be paid by the defaulting party i.e. the Appellant."

58. It is also pertinent to note that the Petitioner has synchronized its Unit#4 of OPGCL Stage-II on 26.12.2018 and is injecting infirm power into the grid through 400kV OPGC-Jharsuguda D/C line.

59. Recently, OPGCL has filed Petition No. 185/MP/2019 seeking permission of the Commission for allowing drawl of start-up power and injection of firm power from Unit #4 of its plant. The Commission vide order dated 22.7.2019 allowed injection of infirm power by the Petitioner, into the grid for commissioning tests including full load test of Unit #4 upto 23.10.2019. Since, the 400kV OPGC-Jharsuguda D/C line constructed by the OGPTL is the only source for evacuation of power from OPGCL Power Plant, it becomes clear from the above order that OPGCL is drawing start-up power from the above line and injecting infirm power. Therefore, the said line is being completely utilized by OPGCL. Further, from 27.12.2018, the 400kV OPGC-Jharsuguda (Sundargarh) D/C line ought to be included in POC calculation for recovery of transmission charges as OPGCL is using the said line and injecting power to the tune of 600MW into the grid through this line.

60. It is submitted that as per the principle estoppel also, the Petitioner is liable to make payment of the transmission charges to the OGPTL, as it executed the TA, which under Clause 3.0 categorically provides so. Once, under the said regulatory framework, the OGPTL participates in the TBCB process knowing full well that OPGCL will have to pay transmission charges for connectivity with the transmission network. The argument of the non-operationalisation of the LTA by the CTU/ PGCIL will not come to the rescue of OPGCL as it had promised that it will pay transmission charges for connectivity.

61. Further, it is submitted that the LTA Agreement as well as the Transmission Agreement have been entered into between the CTU and the Petitioner, as long back as in 2013. Therefore, when the Respondent No. 2 participated in the tender qua construction of the said transmission arrangement as a TBCB Licensee, the said Respondent did it on the basis of the agreements already existing between PGCIL and OPGCL (LTAA & TA). The OGPTL herein constructed the said line on the understanding that irrespective of commissioning of the other parts of the Transmission System or beneficiaries being found by the Petitioner, the OGPTL would get paid the charges for its transmission line. However, the Petitioner is today disputing the same, clearly ignoring that a promissory estoppel has been created in favour of the OGPTL herein based upon the agreement entered into in 2013, and hence the Petitioner is liable to pay the said transmission charges.

62. On 15.5.2019, OGPTL had also served notice for Regulation of Power Supply under CERC (Regulation of Power Supply) Regulation, 2010 on OPGCL. However, OGPTL was restrained from taken any coercive action vide Record of Proceeding of the hearing dated 16.5.2019 of this Commission. In this context, OPGCL may be directed to release the payment of transmission charges as per the invoices raised by CTU within 30 days. In

absence of such direction, OGPTL may be given liberty to regulate the power supply of OPGCL as permitted under the Power Supply Regulations, 2010.

63. Commission may direct the Petitioner to make appropriate payments to the OGPTL within 30 days, failing which OGPTL may be given the liberty to regulate the power supply of the Petitioner by vacating the stay granted during the hearing dated 16.5.2019 of the instant petition.

Submission by OPGCL vide affidavit dated 2.8.2019

64. During the pendency of the captioned Petition, Respondent No. 1 has further raised purported transmission charges' bill, i.e., OGPTL-OPGC-03 dated 03.05.2019 for a cumulative amount of INR 1,83,85,553 for the period between 01.03.2019 and 30.04.2019 and OGPTL-OPGC-04 dated 11.07.2019 for INR 1,92,67,738/- for the period of 01.05.2019 to 30.06.2019 in addition to the aforesaid two bills. The Impugned Bills have also raised Late Payment Surcharge on the purported principal transmission charges.

65. The grant of connectivity to ISTS is merely the state of being connected to CTU's ISTS network, as borne out by the following provision of the Connectivity Regulations:

"2. Definitions

1. *In these regulations, unless the context otherwise requires:*

...

(e) *'Connectivity' for a generating station, including a captive generating plant, a bulk consumer or an inter-State Transmission licensee means the state of getting connected to the inter-State Transmission system;"*

66. Therefore, no transmission charges are payable on account of mere grant of connectivity, i.e., for the state of being connected to the ISTS.

67. There has been no delay by the Petitioner in commissioning its scope of work under the LTA Agreement. On 18.09.2017, the Petitioner received the clearance approval from the CEA for commissioning of its switchyard (along with the line bays). Thereafter, Respondent No. 1's scope of work, i.e., "2 nos. 400 kV line bays at Jharsuguda (Sundargarh)" was commissioned on 22.11.2017. Subsequently, OGPTL's 400 kV Line's Circuit – 2 was charged only on 24.11.2017 and the said Line's Circuit – 1 was charged only on 05.12.2017.

68. The Petitioner charged "2 nos. 400kV line bays at generation switchyard" on 19.12.2017 due to delay in commissioning of the upstream 400kV Line (within Respondent No. 2's scope of work) and associated bays at Jharsuguda Substation.

69. The Petitioner is not at all liable for payment to OGPTL. As submitted, the Petitioner is already paying injection/ withdrawal charges for injection of infirm power and drawl of start-up power in the form of PoC Bill-4, and such charges paid by the Petitioner are getting reimbursed to the relevant Designated ISTS Customers (DICs) (who are issued PoC Bill-1 for their operationalized LTAs). Therefore, since the DICs are getting the benefit of such payments made by the Petitioner in accordance with the extant regulations, the transmission charges for the dedicated transmission line should be included in the PoC charges for such DICs.

70. The entity/ entities responsible for the delay in commissioning of the ISTS system contemplated at Annexure-2 &3 of the LTA Agreement and the consequential non-operationalisation of Petitioner's LTA should be made liable to pay any and all transmission charges payable to OGPTL in accordance with law. Since there is no delay on part of the Petitioner, there is no question of payment of transmission charges by the Petitioner.



71. Without prejudice to the foregoing and in any case, promissory estoppel can only be invoked when a promise is made to a party and the said party alters its position based on such promise made to it. In the present case, Respondent No. 2 is raising a plea of promissory estoppel solely based on the TA to which it is not even a party. An essential ingredient for a promissory estoppel plea is privity of the alleged promise, which is completely missing in the present case. Since there is no privity in favour of Respondent No. 2 of the promise alleged by it to be made to it under the TA, the plea for promissory estoppel is entirely unsustainable.

Submission made by CTU vide affidavit dated 2.8.2019

72. The Petitioner has failed to appreciate that connectivity, which is defined to mean the state of getting connected to the ISTS, does not operate in vacuum and there is an actual physical activity of connectivity that takes place. When the connectivity line is implemented by the generator, the same becomes a part of the generation project whose cost is recovered through the fixed charges approved for the project. When the connectivity line is implemented by an inter-State transmission licensee, the line, after its commissioning, is to become a part of the ISTS and serviced through the PoC pool. It is the interregnum when despite its commissioning, the connectivity is not used on account of delay or abandonment of the generation project that the Regulations require the connectivity line to be serviced by the generator. The Petitioner has thus completely misconstrued the applicable regulatory provisions to wrongly contend that no “connectivity charges” are payable by it and that too when its LTA has been relinquished.

73. In view of the completion of construction of line and alleged non-availability of bays at sub-station built by Respondent No.1, OGPTL, vide its letter dated 23.8.2017 addressed

to the Eastern Region Power Committee (ERPC), declared deemed commercial operationalisation of 400kV OPGC-Jharsuguda D/C transmission line w.e.f. 30.8.2017. On 24.10.2017, OGPTL applied for the first time charging clearance from Eastern Region Load Despatch Center (ERLDC) which was accorded on 24.11.2017.

74. The issue as regards billing of transmission charges pertaining to the 400kV OPGC-Jharsuguda D/Cline was discussed in the 3rd Meeting of Validation Committee held on 29.8.2017. Considering the dedicated nature of the above mentioned line, it was decided that corresponding transmission charges for the line were not to be included in the PoC pool but were to be governed in accordance with Regulation 8(8) of the Connectivity Regulations.

75. Thereafter, on 20.6.2018, during the 2nd Meeting of Validation Committee, OGPTL raised the issue regarding recovery of transmission charges for the 400kV OPGC-Jharsuguda D/C transmission line implemented by OGPTL. In the said Meeting, OGPTL raised its claim for transmission charges by representing that the said line had been commissioned on 30.8.2017, it could be charged only on 20.12.2017 due to reasons not attributable to it. Minutes of the aforesaid Meeting were issued on 10.7.2018 in which Respondent No.1 was specifically directed to raise transmission charges bills for the 400kV OPGC-Jharsuguda D/Cline as claimed by OGPTL.

76. The Petitioner was aware of the deemed commercial operation of the said dedicated line declared by the OGPTL and as such, could not be heard to contend that the transmission charges for the connectivity line were not payable by it; the Petitioner was aware that the non-operationalisation of its LTA had no relevance or relation whatsoever with the payment of transmission charges for the connectivity line. As a matter of fact,

connectivity should always precede LTA as connectivity line is required to enable the generator to import start up power for construction activities and export infirm power during commissioning following which generator can utilize the LTA. Therefore, generator is liable to pay transmission charges for the connectivity line from the date of DOCO.

77. The liability to pay charges for such drawal is distinct from the liability to pay transmission charges for the connectivity line as per the Regulations of this Commission. Further, this is to mention that transmission charges for connectivity line are not included in charges for startup power as connectivity line has not been put to POC. Thus, there cannot be a case where the connectivity line is being utilized by generator and no one is paying for it and therefore, generator is liable to pay transmission charges for connectivity line built for it.

Analysis and decision

78. Based on the submissions of the parties and the documents available on record, the following issues arise for our consideration:

Issue No.1: Whether the Petitioner is liable to pay the Transmission Charges for 400kV OPGC-Jharsuguda D/C line from the date of deemed COD in terms of the TSA?

Issue No.2: Whether minutes of Validation Committee meeting dated 20.06.2018 have been issued in violation of any provisions of the PoC Regulations or any order of the Commission and consequently, are required to be set aside?

Issue No.3: Who shall be liable to pay the transmission charges on account of the delay in commissioning of the connected downstream/upstream systems of 400 kV OPGC-Jharsuguda D/C transmission line?

Issue No. 4: Whether the Petitioner is not liable to pay the transmission charges for 400 kV OPGC–Jharsuguda transmission line if LTA of OPGCL is not operationalized?



Issue No. 5: Whether the Petitioner is not liable to pay the transmission charges for the dedicated line when it was making payment of POC injection and withdrawal charges towards drawal of start up power and injection of infirm power?

Issue No. 6: Whether the Petitioner is liable to pay the transmission charges for 400 kV OPGC-Jharsuguda Transmission Line after relinquishment of LTA by Petitioner?

Issue No.7: How the recovery of the transmission charges for the 400 kV OPGC-Jharsuguda transmission line shall be made?

Issue No.8: Whether the transmission charges for 400 kV OPGC-Jharsuguda Transmission Line should be included in PoC pool?

79. We have examined the issues and recorded our decisions on each of the issues in the succeeding paragraphs.

Issue No.1: Whether the Petitioner is liable to pay the Transmission Charges for 400kV OPGC-Jharsuguda D/C line from the date of deemed COD?

80. The Petitioner has submitted that as per the LTA Agreement and Transmission Agreement, the transmission system to facilitate Petitioner's immediate evacuation of power included the 400kV OPGC-Jharsuguda (Sundargarh) D/C line, connecting Unit #4 of the Petitioner's Expansion Project to the ISTS at PGCIL's Jharsuguda (Sundargarh) Substation. The Petitioner has submitted that on 18.09.2017, it got the clearance approval from the Central Electricity Authority (CEA) for commissioning of its switchyard (along with the line bays). However, 400kV OPGC-Jharsuguda (Sundargarh) Circuit-2 of OGPTL (Respondent No.2) was charged on 23.11.2017 and Circuit- was charged on 5.12.2017. Thereafter, the Petitioner commissioned 2 nos. Of 400 kV line bays at generation switchyard on 19.12.2017. The Petitioner has submitted that CTU has raised two bills (Bill No OGPTL-OPGC-01 dated 15.10.2018 and Bill No. OPGTL-OPGC-02 dated 08.03.2019) on the Petitioner for payment of transmission charges alongwith late payment surcharge

for OGPTL's transmission elements for the entire period between 30.08.2017 and 28.02.2019 for a cumulative amount of INR 13,44,06,393.

81. The Petitioner has submitted that 400kV OPGC-Jharsuguda (Sundargarh) D/C line built by OGPTL was not a dedicated transmission line since it was not a part of the Petitioner's Plant and the said line was also not conceived as a separate identifiable project. The said transmission line was a part of the overall transmission system, as mentioned at Annexure-2 &3 of the LTA Agreement, for grant of LTA to Petitioner's Plant. Therefore, the planning had to be done in such a way so as to match commissioning schedule of different transmission elements required for evacuation of power from Petitioner's Plant to target regions/ drawl points, without which the commissioning of the transmission line for immediate evacuation to the nearest pooling point would be redundant. The petitioner has submitted that since pre-required transmission elements as per LTA Agreement have not been commissioned and CTU has not operationalized the Petitioner's LTA either in full or in part by CTU, CTU cannot raise the bills on the Petitioner for the said transmission system. The Petitioner has submitted that neither of the Respondents herein have provided a direct communication to the Petitioner regarding the deemed commissioning of the said Line and therefore, the transmission line in question cannot be considered as a dedicated transmission line. The Petitioner has also submitted that it has not entered into any Transmission Services Agreement (TSA) with either CTU or OGPTL and it was probably the LTTCs of OGPTL who have entered into the TSA and therefore, the said LTTCs should be made liable for payment of transmission charges.

82. CTU vide its affidavit dated 29.6.2019 has submitted that it filed Petition No.350/MP/2018 before this Commission challenging the deemed DOCO of the 400kV

OPGC Jharsuguda D/C line by OGPTL and to set aside the directions of the Validation Committee Meeting for the purpose of transmission charges billing on bilateral basis. However, vide Order dated 21.12.2018, the said Petition was disposed of as withdrawn with a direction to take up the matter w.r.t. DOCO with CEA or in any other forum. CTU had filed Petition No. 350/MP/2018 challenging the deemed CoD of 400 kV OPGC-Jharsugudu D.C line. However, CTU later withdrew the said petition to take up the matter with CEA or in any other forum. However, CTU has not made any submissions with regard to deemed COD of OPGC-Jharsuguda line in the present petition.

83. We have considered the submissions of the Petitioner and Respondents. The Petitioner had initially established a 2x210 MW (420 MW) thermal power project in District Jharsuguda, Odisha and power generated therefrom was being sold in its entirety to the distribution companies of Odisha. Thereafter, the Petitioner proposed to undertake development of an expansion project comprising of 2 units of 600 MW each. The Petitioner tied up 50% of the power to be generated at the expansion units for sale to the distribution companies in Odisha through GRIDCO Limited and proposed to transfer the remaining 50% of power outside the State for onward sale. The Petitioner applied to Respondent No.1 (CTU) for grant of connectivity for 618 MW and for grant of LTA for 600 MW for inter-State sale to the beneficiaries in the Northern, Western and Southern Regions. Respondent No. 1 (CTU) vide its letter dated 8.4.2013 granted the LTA to the Petitioner for evacuation of power from its project which was revised vide intimation letter dated 11.9.2013 to modify the start date of LTA from September 2017 to July 2017. Pursuant to the grant of LTA, the Petitioner entered into a Long Term Access Agreement with Respondent No. 1 on 11.9.2013 wherein the following transmission systems were envisaged for immediate evacuation of power from the generation project:

| S. No. | OPGC (IC-1320 MW, LTA-600 MW) (ISTS System) |
|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | <ul style="list-style-type: none"> • OPGC-Jharsuguda (Sundargarh) 400 kV D/C line (Triple Snowbird Conductor):through Tariff Based Competitive Bidding (TBCB) • 2 nos. 400 kV line bays at generation switchyard: under scope of generation developer • 2nos. 400 kV line bays at Jharsuguda (Sundargarh): under scope of POWERGRID |

Further, the common transmission system for Phase-II generation projects in Odisha (which included the generation project of the Petitioner was also included in the LTA Agreement. LTA Agreement provided that the LTA was to commence on the date when the transmission systems indicated in Annexure-2 and 3 of the LTA Agreement was actually commissioned. The connectivity was granted to the Petitioner vide intimation letter dated 8.4.2013 which was subsequently revised vide intimation letter dated 11.9.2013 at Jharsuguda 765 kV station of Respondent No. 1. The Petitioner entered into a Transmission Agreement dated 11.9.2013 with Respondent No. 1, which provided that the connectivity for 618 MW would commence from July 2017 and the dedicated transmission line for direct injection/ drawlof power from the premises of the Petitioner would be IB- TPS- Jharsuguda (Sundargarh) 400 kV D/C line with Triple Snowbird (to be implemented through TBCB). Therefore, OPGC-Jharsuguda (Sundargarh) 400 kV D/C line was the connectivity line for immediate evacuation of power from the generation project of the Petitioner.

84. Respondent No. 2 (Odisha Generation Phase-II Transmission Limited/ OGPTL) vide its letter dated 22.8.2017 intimated Respondent No. 1 with regard to completion of the OPGC-Jharsuguda (Sundargarh) 400 kV D/C line. Further, Chief Electrical Inspector under Central Electricity Authority after carrying out the inspection vide its letter dated 23.8.2017 accorded approval under Regulation 43 of the CEA (Measures relating to Safety and Electric Supply) Regulations, 2010 for energisation of 400 kV OPGC–Jharsuguda

Transmission Line. Respondent No. 2 vide its letter dated 23.8.2017 addressed to Eastern Region Power Committee declared the deemed COD of OPGC-Jharsuguda (Sundargarh) 400 kV D/C line w.e.f. 30.8.2017 in terms of Article 6.2.1 of the TSA with copies to CEA, CTU, ERLDC, CERC and the LTTCs of the transmission line. Since the transmission line could not be charged on account of the non-availability of 400 kV GIS bays by PGCIL and 2X400 kV line bays by OPGCL, OGPTL has declared the deemed CoD of the transmission line in terms of Article 6.2.1 of the TSA. Accordingly, OPTCL became entitled for the payment of transmission charges with effect from that date in terms of the TSA.

85. With regard to contention of petitioner that there was no direct communication to the Petitioner regarding the deemed CoD of the OPGC-Jharsuguda (Sundargarh) 400 kV D/C line, we observe that CTU vide letter dated 21.11.2017 had intimated the connection details for the connectivity granted to the Petitioner wherein, the commercial operation of the elements of the transmission system were detailed and it was mentioned that *“as per OGPTL email dated 5.10.2017, 400kV OPGC-Jharsuguda D/c line is declared under deemed commissioned w.e.f. 30.08.2017”*. Hence, the claim that the Petitioner was not aware of deemed CoD of OPGC-Jharsuguda (Sundargarh) 400 kV D/C line cannot be sustained.

86. The Petitioner has contended that OPGC-Jharsuguda line is not a dedicated line. The Transmission Agreement dated 11.09.2013 signed by the Petitioner with CTU contain the following provisions:

“D) AND WHEREAS the dedicated transmission line required for direct injection/drawl of power from premises of “OPGC” to the suitable points of ISTS has been finalized in accordance with the provisions of the Electricity Act, 2003 and is to be built, owned, operated and maintained by ISTS licensee as indicated at Annexure 2.

E) AND WHEREAS the implementation of the transmission system to be built, owned, operated and maintained by the ISTS licensee(s) who would be finalized through tariff based competitive bidding shall be in accordance with the directives of Empowered Committee constituted for identification of transmission projects.”

87. As regards the applicable transmission charges for the dedicated transmission system built by TBCB licensee, the Transmission Agreement dated 11.9.2013 provides as under:

“I) AND WHEREAS “OPGC” has to share and pay all the applicable transmission charges of the total transmission system as indicated at Annexure 2 from the date of connectivity as mentioned at Annexure-1 or actual commissioning of the system, whichever is later, in accordance with the sharing mechanism as decided/notified/determined/adopted by CERC from time to time.

.....

3.0 In case, “OPGC” delays to utilize the connectivity provided and the assets covered under the transmission system, as indicated at Annexure-2 have been declared under commercial operation, either in part or in full; the “OPGC” shall bear the charges so as to ensure full recovery of the transmission tariff corresponding to the commissioned portion of the transmission system indicated at Annexure-2.”

88. As per the provisions of the Transmission Agreement, OPGC-Jharsuguda (Sundargarh) 400 kV D/C line was identified to provide Connectivity to the Petitioner. The Petitioner agreed with CTU and undertook to pay the transmission charges of the connectivity line to be built by the TBCB licensee, as contained in Annexure-2 of the Transmission Agreement dated 11.9.2013, from the date of commissioning of the transmission line . Further, the Transmission Agreement provides that in an eventuality where delay is made by the Petitioner to utilize the connectivity, the transmission charges are to be paid in full, so as to ensure recovery of transmission tariff corresponding to the commissioned portion of the transmission system. Therefore, the tariff sharing framework envisaged in the Transmission Agreement clearly provides for sharing of the transmission charges of 400 kV OPGC-Jharsugda transmission line by OPGC from the date the said line is commissioned irrespective of whether the Petitioner utilizes the said transmission line or not.

89. Regulation 8(5) of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010, (Sharing Regulations) provides as under:

"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 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”

90. Regulation 8(8) of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 (Connectivity Regulations) provides as under:

“The dedicated transmission line from generating station of the applicant generating Company or any other entity on behalf of generating company viz Renewable Power Park Developer and Renewable Energy Implementing Agency to the pooling station of the transmission licensee (including deemed transmission licensee) shall be developed, owned and operated by the applicant generating Company or such other entity on behalf of generating company. The specifications for dedicated transmission lines may be indicated by CTU while granting Connectivity or Long term Access or Medium term Open Access:

Provided that CTU shall plan the system such that maximum length of dedicated transmission line does not exceed 100 km from switchyard of the applicant till the nearest pooling substation of transmission licensee:

Provided further that dedicated transmission line may exceed 100 km, if such an Applicant, so chooses:

Provided also that in case any connectivity grantee is not utilizing the bay allocated to it at ISTS substation, CTU may cancel its Connectivity as per provisions of these regulations and detailed procedure and allocate the bay to other Applicant. In such an event, the original grantee shall either dismantle its bay or enter into an Agreement with a new grantee as indicated by CTU for utilization of the bay within a period of 2 months of cancellation of Connectivity.

Provided that where the dedicated transmission lines have already been constructed/are under construction by CTU under coordinated transmission planning, the following shall apply:

(a) The transmission charges for such dedicated transmission lines shall be payable by the concerned generating company to the transmission licensee (including deemed transmission licensee) from the date of COD of the dedicated line till operationalisation of LTA of the generating station of the generating company:

(b) After operationalisation of the LTA, the dedicated transmission line shall be included in the POC pool and payment of transmission charges for the said dedicated transmission line shall be governed as per the CERC (Sharing of inter-state transmission charges and losses) Regulations, 2010 as amended from time to time.”

In the light of the provisions of the Transmission Agreement dated 11.9.2013, Sharing Regulations and Connectivity Regulations as quoted above, the Petitioner is liable to pay transmission charges for the 400 kV OPGC-Jharsugda transmission line which is in the nature of a dedicated transmission line even though it was executed by OGPTL as an inter-State transmission licensee.

Issue No.2: Whether minutes of Validation Committee meeting dated 20.06.2018 have been issued in violation of any provisions of the PoC Regulations or any order of the Commission and consequently, are required to be set aside?

91. The Petitioner has submitted that as per the decision in the Validation Committee Meeting dated 20.06.2018, CTU was allowed to bill annual transmission charges on the Petitioner and Respondent No. 1 in 50:50 proportions for the period between 30.08.2017 to 05.12.2017. The Petitioner has further submitted that it was not a part of the said Validation Committee Meeting. According to the Petitioner, despite the energisation of the 400 kV OPGC-Jharsugda transmission line only on 5.12.2017, CTU has raised the bills from 30.08.2017 to 05.12.2017 pursuant to the decision in the Validation Committee. Accordingly, the Petitioner has sought setting aside the Minutes of the Validation Committee.

92. We have perused the Minutes of Validation Committee Meeting dated 20.06.2018. The relevant portion of the Minutes is extracted as under:

“8(xi). Representative of Sterlite Power raised the issues regarding the recovery of transmission charges for LILO of one ckt of 400 kV D/C Khandwa – Rajgarh line at Khargone TPP under Khargone Transmission Limited and transmission charges for 400 kV D/C OPGC – Jharsuguda Transmission line under Odisha Generation Phase-II Transmission Limited.

(a) Issue of Khargone Transmission Limited (KTL): LILO of one Ckt 400 kV D/C Khandwa-Rajgarh Line at Khargone TPP was commissioned on 01.03.2018. However, due to non-readiness of bays at NTPC Khargone, the said transmission element could not be connected to Khandwa and Rajgarh Sub-Station of PGCIL. Tariff Payment: From 1.3.2018 to till date (To be paid by NTPC). Letters sent by KTL to NLDC on 1.4.2018 and CTU on 17.4.2018 for payment of transmission charges.

(b) Issue of Odisha Generation Phase-II Transmission Limited (OGPTL): 400 kV D/C OPGC-Jharsuguda Transmission Line was commissioned on 30.8.2017. However, due to non-availability of 400 kV GIS bays to be provided by PGCIL at 400 kV Sundargarh-OPGC Circuit -I and II and 2 Nos. of 400 kV Line Bays to be provided by OPGC at OPGC generation switchyard, which were both commissioned on 5.12.2017 and 15.12.2017 respectively, the 400 kV D/C OPGC-Jharsuguda transmission line could be charged on 20.12.2017. Tariff Payment: From 30.8.2017 -5.12.2017 (To be paid by both PGCIL and OPGC) From 6.12.2017-till date (To be paid by OPGC). Letters sent by OGPTL to NLDC on 5.4.2018 and CTU on 17.4.2018 for payment of transmission charges.

Representative of CERC clarified that the lines were discussed during Validation Committee meeting held on 29.8.2017 and 29.11.2017. It was asked the reason as to why CTU did not raise the bill, when regulations and CERC order were clear. It was also stated that the issues are similar in nature to ones already dealt in Hon'ble Commission's order in petition no.43/MP/2016, 236/MP/2016 and 201/TT/2015. Accordingly, CTU was advised to raise the bills immediately as per CERC order in Petition No.43/MP/2016, 236/MP/2016, 55/MP/2016 and 201/TT/2015.”

93. During the abovementioned meeting, M/s Sterlite/OGPTL raised the issue of recovery of transmission charges in respect of 400 kV OPGC-Jharsuguda transmission line. OGPTL also mentioned about the tariff payments by various entities in view of delay in upstream/ downstream system and the letters written by it to CTU and NLDC. The Representative of CERC clarified that in the light of the Orders of the Commission in similar cases, CTU should raise the bills immediately and accordingly, CTU was advised to raise the bills. In our view, the advice of the Validation Committee to CTU to raise the bills in respect of 400 kV OPGC-Jharsuguda transmission line cannot be said to be arbitrary or detrimental to the interest of the Petitioner. Therefore, we do not find any ground to interfere in the minutes of the Validation Committee.

Issue No. 3: Who shall be liable to pay the transmission charges on account of the delay in commissioning of the connected downstream/upstream systems of 400 kV OPGC-Jharsuguda D/C transmission line?

94. 400 kV OPGC-Jharsuguda transmission line was declared by OGPTL as having achieved deemed COD with effect from 30.8.2017 in terms of Article 6.2.1 of the TSA on account of delay in commissioning of 02 Nos. of 400 kV line bays at Jharsuguda (Sundargarh) executed by PGCIL and 2 Nos. of line bays at generation switchyard under the scope of the Petitioner. COD of 02 Nos. of 400 kV Line bays executed by PGCIL for termination of OPGC - Jharsuguda 400 kV D/C line at Jharsuguda (Sundargarh) of PGCIL has been approved by the Commission vide order dated 14.02.2019 in Petition No. 59/TT/2018 as 23.11.2017. The Petitioner has submitted that its bays were ready for energisation on 18.09.2017 with the approval of CEA. It emerges that as on the deemed COD of 400 kV OPGC-Jharsuguda transmission line i.e. 30.8.2017, line bays executed by PGCIL and generation switchyard bays executed by the Petitioner were not ready. When the generation Switchyard bays associated with OPGC Jharsuguda line were ready on 18.9.2017, line bays of PGCIL were not ready. As on 23.11.2017, i.e. the date of commercial operation of the line bays of PGCIL as approved by the Commission, the switchyard bays of the Petitioner were ready. However, the Circuit-1 and Circuit 2 of 400 kV OPGC-Jharsuguda transmission line were charged on 5.12.2017 and 20.12.2017 respectively. We are of view that the delay in the actual charging/putting in use of the 400kV OPGC-Jharsuguda transmission line, despite OGPTL having declared deemed COD on 30.08.2017, is attributable to the delay in commissioning of the 02 nos 400kV line bays each at Jharsuguda Sub-station of PGCIL and 2 Nos. of bays at generation switchyard of the Petitioner which were necessary for termination of the 400kV OPGC-Jharsuguda transmission line of OGPTL.



95. The issue of recovery of transmission charges of a transmission licensee whose transmission system was ready for commissioning as per the provisions of the TSA but could not be made operational or put to use due to non-availability/delay in upstream/downstream systems has already been settled by the Commission in orders dated 27.6.2016, 21.9.2016 and 4.1.2017 in Petition Nos. 236/MP/2015,43/MP/2016 and 155/MP/2017 respectively. The relevant portion of the order dated 27.6.2016 in Petition No. 236/MP/2015 is extracted as under:

“42. It is noted that 400kV 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. 400kV 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.”

96. Relevant portion of the order dated 21.9.2016 in Petition no. 43/MP/2016 is extracted as under:

“A related issue arises as to how recovery of transmission charges of transmission licensee shall be made when the transmission system under TBCB is ready as on its scheduled COD as per the provisions of the TSA but cannot be made operational or put to use due to non-availability/ delay in upstream/ downstream system. In our view, ISTS licensee executing the project under TBCB should enter into Implementation Agreement with CTU, STU, inter-State transmission licensee, or the concerned LTTC, as the case may be, who are responsible for executing the upstream/ downstream transmission system and clearly provide the liability for payment of transmission charges in case of the transmission line or upstream/downstream transmission assets.

In the absence of Implementation Agreement, the payment liability should fall on the entity on whose account an element is not put to use. For example, if the transmission line is ready but terminal bays belonging to other licensees are not ready, the owners of upstream and downstream terminal bays shall be liable to pay the charges to the owner of transmission line in the ratio of 50:50 till the bays are commissioned. In case one end bays are commissioned, the owner of other end bays shall be liable to pay the entire transmission charges of the transmission line till its bays are commissioned. The above principle shall be followed by CTU in all cases of similar nature in future.”

97. In order dated 4.1.2017 in Petition No.155/MP/2017, similar directions have been issued in the light of the earlier decision in order dated 21.9.2016 in Petition no. 43/MP/2016 as quoted above.

98. In the aforementioned orders, the principle has been clearly laid down that the transmission charges of a transmission line which has been declared deemed CoD on account of non-availability of upstream/downstream system, shall be borne by the defaulting entity on whose account the transmission line could not be put into use.

99. We observe that there is delay in upstream /downstream system as on date of deemed DOCO of OPGC –Jharsuguda line. OGPTL vide letter dated 23.08.2017 declared deemed COD of 400kV OPGC-Jharsuguda D/C line w.e.f. 30.8.2017 in accordance with



Article 6.2.1 of the TSA. Further, COD of 02 Nos. of 400 kV Line bays for termination of OPGC (IB TPS) - Jharsuguda 400 kV D/C line at Jharsuguda (Sundargarh) of PGCIL has been approved vide order dated 14.02.2019 in Petition No. 59/TT/2018 as 23.11.2017. OPGCL has submitted that its bay were ready for energisation on 18.09.2017 with approval of CEA and finally the 400kV OPGC-Jharsuguda D/C line was charged on 20.12.2017. Accordingly we observe that as on 30.8.2017 both associated Powergrid bays and generation switchyard bays were not ready. The Petitioner has claimed that as on 18.9.2017, generation Switchyard bays associated with OPGC Jharsuguda line were ready. We have perused CEA Certificate dated 18.9.2017. However it is not clear as to whether bays at generation switchyard associated with the subject line and associated downstream system to put the line in use was ready or not. We also observe that although Powergrid bays got ready as on 23.11.2017, the trial operation for line was completed only on 20.12.2017, which implies that generation was not ready as on 18.9.2017 as claimed by it. We are of view that the delay in the actual charging/commissioning of the 400kV OPGC-Jharsuguda D/C line, despite OGPTL having declared deemed COD on 30.08.2017, is attributable to the delay in commissioning of the 02 nos 400kV line bays each at Jharsuguda Sub-station and OPGCL generation.

100. Since both the Petitioner and PGCIL were responsible for delay inputting the 400 kV OPGC –Jharsuguda transmission line into service, the Petitioner and PGCIL shall be liable to pay the transmission charges in the ratio of 50:50 from date of deemed COD of 400 kV OPGC –Jharsuguda transmission line i.e. from 22.11.2017 when the bays of PGCIL achieved COD. From 23.11.2017 onwards, the Petitioner shall pay the transmission charges to Respondent No.2 for the 400 kV OPGC –Jharsuguda transmission line.

Issue No. 4: Whether the Petitioner is not liable to pay the transmission charges for 400 kV OPGC–Jharsuguda transmission line if LTA of OPGCL is not operationalized?

101. The Petitioner has contended that it cannot be levied the transmission charges for the 400 kV OPGC–Jharsuguda transmission line till its LTA is operationalized after commissioning of the other identified transmission elements as per Annexure 2 and Annexure 3 of the LTA Agreement. The Petitioner has submitted that Respondent No.1 had never intimated the Petitioner about operationalisation of the LTA and in the absence of operationalisation of LTA, no liability can be fastened on the Petitioner. The Petitioner has further submitted that it has not entered into Transmission Service Agreement either with Respondent No.1 or with Respondent No.2, and only the Long Term Customers of Respondent No.2 who have entered into TSA with Respondent No.2 are liable to pay the transmission charges.

102. Respondent No.1 has submitted that the connectivity applied for by the Petitioner was granted to it vide intimation dated 8.4.2013 as revised vide intimation dated 11.9.2013 at Jharsuguda (Sundergarh) 765 kV sub-station of PGCIL and the transmission system required for connectivity consisted of IB TPS- Jharsuguda (Sundergarh) 400 kV D/c line with Triple Snowbird Conductor which was decided to be implemented through TBCB route. The Petitioner also entered into a Transmission Agreement dated 11.9.2013 with Respondent No.1 laying down the terms and conditions for utilisation of connectivity. Respondent No.1 has submitted that the following were agreed in the Transmission Agreement for the connectivity line:

- (a) The Petitioner would pay applicable transmission charges from the date of connectivity or the actual commissioning of the connectivity system, whichever

was later, as per the sharing mechanism laid down by the regulations of the Commission;

- (b) The Petitioner would furnish a bank guarantee as security mechanism for the transmission system to be built by the transmission licensee;
- (c) If the Petitioner failed to utilise the connectivity and the connectivity line was commissioned in full or part, then the Petitioner was to bear the charges so as to ensure full recovery of the transmission tariff corresponding to the commissioned portion of the connectivity line;
- (d) The Transmission Agreement was to remain valid till the validity of the connectivity.

Respondent No.1 has submitted that since 400 kV OPGC –Jharsuguda transmission line is in nature of a dedicated transmission line, the liability for transmission charges shall be governed by the provisions of Regulation 8(5) of Sharing Regulations read with Regulation 8(8) of Connectivity Regulations.

103. We have considered the submissions of the Petitioner and Respondent No.1. We have gone through the LTA Agreement and Transmission Agreement. 400 kV OPGC – Jharsuguda transmission line has been included in the LTA Agreement as well as the Transmission Agreement. The transmission line is exclusively for evacuation of power from the generating station of the Petitioner. Recital D of the Transmission Agreement provides as under:

“D) AND WHEREAS the dedicated transmission line required for direct injection/drawal of power from the premises of “OPGC” to the suitable points of ISTS has been finalised in



accordance with the provisions of the Electricity Act, 2003 and is to be built, owned, operated & maintained by ISTS Licensee as indicated at Annexure2”.

Annexure 2 of the TA mentions “IB TPS-Jharsuguda (Sundergarh) 400 kV D/C line with Triple Snowbird (to be implemented through TBCB)”. Recital I of the Transmission Agreement reads as under:

“AND WHEREAS “OPGC” has to share and pay all applicable transmission charges of the total transmission system as indicated at Annexure 2 from the date of connectivity as mentioned at Annexure-1 or actual commissioning of the system, whichever is later, in accordance with the sharing mechanism as decided/notified/determined/adopted by CERC from time to time.”

As per Annexure 1 to the Transmission Agreement, commencement of connectivity is July 2017. Further, Article 3.0 of the Transmission Agreement provides as under:

“3.0 In case, “OPGC” delays to utilise the connectivity provided and the assets covered under the transmission system, as indicated at Annexure 2 have been declared under commercial operation, either in part or in full, OPGC shall bear the charges so as to ensure full recovery of the transmission tariff corresponding to the commissioned portion of the transmission system indicated at Annexure-2.”

104. As per the above quoted provisions in the Transmission Agreement, the Petitioner has accepted the contractual liability to bear the transmission charges of 400 kV OPGC – Jharsuguda transmission line from the date of its commercial operation irrespective of whether OPGC utilizes the said transmission line or not. In view of the specific provisions in the Transmission Agreement making the Petitioner liable for payment of transmission charges from the date of commercial operation of the 400 kV OPGC –Jharsuguda transmission line, operationalisation of the LTA after commercial operation of all the transmission assets covered under the LTA Agreement is not a pre-condition for payment of transmission charges of the 400 kV OPGC–Jharsuguda transmission line. We therefore do not find any merit in the contention of the Petitioner that the liability for transmission charges shall commence only after commissioning of all transmission assets as per the

LTA Agreement. Similarly, we also do not agree with the contention of the Petitioner that the LTTCs who have signed the TSA with Respondent No.2 shall bear the transmission charges since the Petitioner has specifically accepted the liability to bear the transmission charges of 400 kV OPGC–Jharsuguda transmission line as per the provisions of the Transmission Agreement.

105. Similar issue has been dealt with by the Commission in order dated 15.12.2017 in Petition 141/TT/2015, the relevant paragraphs of which is quoted below:

“29. The petitioner vide affidavit dated 1.9.2016 has submitted that the transmission system under instant petition has been identified to facilitate the connectivity of the generation project with the grid and in order to enable LTA, separate transmission system was envisaged.

30. We have considered submissions of petitioner and MBPL. We are not in agreement with MBPL that no liability towards payment of transmission charge should be levied on MBPL till August, 2015 as Annupur-Jabalpur D/C line could not have achieved the intended purpose for which it was constructed. We are of the view that the line under instant petition is dedicated line meant for evaluation of power from the generating station of MBPL for which PGCIL has granted Connectivity vide letter dated 19.4.2010 with the indicative date of operationalisation of connectivity as 1.2.2013. The said line is also indicated as connectivity line in Agreement dated 17.6.2011 between the petitioner and MBPL. Operationalisation of LTA depends on the availability of system strengthening in addition to the connectivity line included in the LTA Agreement. Only because some of the transmission lines covered under the System Strengthening have not been commissioned will not prevent the use of the connectivity line. In fact the connectivity line has been used to the extent of LTA operationalised with effect from 25.5.2015. Regulation 8(6) of the Sharing Regulations provides as under:-

“(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.”

In terms of the above provision, the transmission charges for the connectivity lines from 25.2.2016 (date approved as COD of the transmission lines in this order) till the COD of the first unit of generating station of MBPL shall be borne by MBPL.

.....

86. Petitioner has stated that the instant line is the Connectivity line of Respondent MBPL. The line under instant petition is dedicated line of generator. PGCIL has intimated grant of Connectivity to Respondent MBPL vide letter dated 19.4.2010 whereby date of start of Connectivity is indicated as 1.2.2013 and it is noted that “entire transmission charges for the Connectivity line shall be borne by MBPL. This fact that the line is the Connectivity Line is



also indicated in Agreement dated 17.6.2011 between Petitioner and Respondent. Hence as per Regulation 8(8) of CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009, the transmission charges from 25.2.2015 i.e. approved COD of the instant transmission asset to 19.5.2015 (day before date of start of LTA), transmission charges shall be payable by MBPL to the petitioner post which the transmission charges approved in the instant order shall be included in the computation of PoC charges as per Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulation, 2010 as amended from time to time."

106. As per the above decision, the transmission charges for dedicated transmission line are payable even when LTA is not operationalized. In the light of the said decision and analysis made in paras 104 and 105 of this order, we hold that the Petitioner is liable to pay transmission charges for the 400 kV OPGC –Jharsuguda transmission line from the date of deemed COD and non-operationalization of LTA does not affect its liability for payment of transmission charges for the said transmission line.

Issue No. 5: Whether the Petitioner is not liable to pay the transmission charges for the dedicated line when it was making payment of POC injection and withdrawal charges towards drawal of start up power and injection of infirm power?

107. The Petitioner in its affidavit dated 2.8.2019 has submitted that the Petitioner is already paying injection/ withdrawal charges for injection of infirm power and drawal of start-up power in the form of PoC Bill-4, and such charges paid by the Petitioner are getting reimbursed to the relevant Designated ISTS Customers (DICs) (who are issued PoC Bill-1 for their operationalized LTAs) and therefore, the Petitioner is not liable to pay the transmission. Respondent No.1 has submitted that the use of the said line for drawal of start-up power has not been stated by the Petitioner in its petition and even otherwise, the liability to pay charges for such drawal is distinct from the liability to pay the transmission charges for connectivity as per the regulations of the Commission.

108. We have considered the submissions of the Petitioner and Respondent No.1. Similar issue has already been dealt with in order dated 27.6.2016 in Petition No. 236/MP/2015.

The relevant portion of the said order is extracted as under:

“46. NTPC vide affidavit dated 14.12.2015 has contended that the charges payable by NTPC would correspond to the charges determined by the Commission for the relevant node under PoC mechanism and the same shall be adjusted in the pooled account in the next quarter. Therefore, the charges of beneficiaries would be reduced to the extent payment is made by the generator. Accordingly, the transmission charges as per the TSA for the first element of the petitioner are required to be included in the PoC charges. NTPC has submitted that as per provisions of the 4th amendment of Connectivity Regulations, it is required to pay the transmission charges corresponding to KTL's Line-1 only for drawl of startup power from 21.11.2015 onwards till commissioning of Unit-1 of Kudgi STPP. These charges would correspond to charges of relevant node as approved by the Commission. According to NTPC, the transmission charges for first element need to be included and recovered through POC mechanism as the transmission charges are payable only from COD of the transmission lines and not from the date of completion/deemed COD as claimed by the petitioner in accordance with Transmission Service Agreement and Sharing Regulations.

47. We have considered the submission of NTPC. In our view, NTPC is liable to pay transmission charges for the connectivity line as decided in preceding para in terms of Regulation 8 (5) of the Sharing Regulations. In addition to this, NTPC shall be liable to pay nodal charges for use of ISTS [other than Kudgi-Narendra (New)] towards drawl of startup power as per rates prescribed under Sharing Regulations.”

The above provides that liability of payment of transmission charges towards dedicated line is in addition to transmission charges paid towards drawl of startup power and injection of infirm power. In the light of the decision in Petition No.236/MP/2015, the contention of Petitioner that it is paying transmission charges towards startup power and hence should not be liable to pay transmission charges for dedicated line is rejected.

Issue No. 6: Whether the Petitioner is liable to pay the transmission charges for 400 kV OPGC-Jharsuguda Transmission Line after relinquishment of LTA by Petitioner?

109. The Petitioner has submitted that the Petitioner's relinquishment of its LTA was accepted by CTU vide letter dated 17.01.2019, w.e.f. 01.01.2019 and post such relinquishment, the Petitioner is not liable to pay the transmission charges for the dedicated transmission line i.e. 400 kV OPGC –Jharsuguda transmission line. The Petitioner has



further submitted that without prejudice to its case for the date of relinquishment as 13.12.2018 instead of 1.1.2019, the only charges that can be levied on the Petitioner post relinquishment are relinquishment charges in terms of this Commission's Order dated 08.03.2019 in Petition No. 92/MP/2015. The Petitioner has submitted that the Respondent No.1 has raised the bills for transmission charges for the months of January 2019 to June 2019 along with late payment surcharge on the principal transmission charges which is patently illegal post relinquishment. The Petitioner has submitted that it is already paying injection/withdrawal charges for injection of infirm power and drawal of start-up power in the form of Bill-4 which is getting reimbursed to the DICs and therefore, the transmission charges for the dedicated transmission line should be included in the PoC charges for such DICs. The Petitioner has further submitted that alternatively, the entity or entities responsible for the delay in commissioning of the transmission system contemplated in Annexure-2 and Annexure-3 of the LTA Agreement and consequent non-operationalisation of the Petitioner's LTA.

110. Respondent No.2 (OGPTL) on the other hand has submitted that the nature of the 400kV OPGC-Jharsuguda D/C line is that of a dedicated transmission line and hence, the Petitioner herein is liable to pay transmission charges for the same. Respondent No.1 has submitted that the Petitioner was obligated to pay the transmission charges for the connectivity line even after its inclusion in ISTS and such payment of transmission charges was for the connectivity line, and not for the transmission system identified under the LTA and therefore had no relation with the LTA operationalisation and/or its relinquishment.

111. We have considered the submissions of petitioner and respondents. We observe that 400 kV OPGC-Jharsuguda transmission line has been mentioned as a dedicated

transmission line in grant of Connectivity to OPGC. Transmission Agreement signed consequent to grant of connectivity also maintains the said 400 kV OPGC –Jharsuguda transmission line as dedicated transmission line. In addition to that, the Petitioner has been granted LTA for which the Petitioner has entered into LTA Agreement. The Petitioner has relinquished the LTA which has been accepted by CTU as effective from 1.1.2019. Even after relinquishment of LTA, the Petitioner continues to carry the liability for payment of transmission charges for the connectivity line. The Commission in Order dated 8.3.2019 in Petition No. 92/MP/2015 has elaborated:

“123. The methodology shall be applicable for the cases where the LTAs have been granted with identified system augmentation and generation projects have sought full or part relinquishment. The methodology shall not be applicable for dedicated transmission lines since it is the liability of the concerned generator to pay the transmission charges for such dedicated transmission line.”

112. It is clear from the above that relinquishment of LTA by Petitioner does not have any bearing on the liability to pay the transmission charges for the dedicated transmission line. Accordingly, we hold that the Petitioner is liable to pay transmission charges towards 400 kV OPGC-Jharsuguda transmission line notwithstanding its relinquishment of the Long Term Access.

Issue No.7: How the recovery of the transmission charges for the 400 kV OPGC-Jharsuguda transmission line shall be made?

113. OGPTL has submitted that from the tripartite agreement entered into between the parties therein and further evidenced from the fact that the sole purpose of 400kV OPGC-Jharsuguda D/C line was to connect the expansion project of the Petitioner with the ISTS, it becomes quite clear that the 400kV OPGC-Jharsuguda D/C line was a dedicated transmission line. Therefore, as per Regulation 8(8) of the Connectivity Regulations, even in case the Petitioner has abandoned its project or relinquished the LTA, it shall be liable for

payment of transmission charges. Hence, the question of payment by other LTTC's does not even arise. The non-payment of transmission charges by OPGCL has severely affected OGPTL's cash flows and is causing adverse impact to carry out business enterprise and in meeting its debt service obligations towards creation of transmission assets, thus making the transmission project commercial unviable.

114. We observe that 400 kV OPGC-Jharsuguda line was constructed as a dedicated transmission line to evacuate power from the generating station of the Petitioner in terms of the Transmission Agreement dated 11.9.2013 between the Petitioner and CTU. As per the TA, it is the liability of the Petitioner to pay the transmission charges. 400 kV OPGC – Jharsuguda transmission line was declared deemed COD as on 30.8.2017. CTU has raised bills towards the transmission line on 15.10.2018 and 8.3.2019 towards which no payment has been made by the Petitioner till date. We take a serious note of the lapse on the part of the Petitioner to pay the transmission charges as per the bills raised by CTU.

115. As per Regulation 11 of the Sharing Regulation, CTU is responsible for raising bills, collections and disbursement of the transmission charges to ISTS transmission licensee. CTU is directed to raise modified bills towards 400 kV OPGC-Jharsuguda transmission line to the extent required in terms the decision in this order within 15 days alongwith applicable charges as per the provisions of the TSA. The Petitioner shall be liable to pay the late payment surcharges for the bills raised by CTU for the period from 23.11.2017 onwards. The Petitioner and PGCIL are directed to pay transmission charges within 15 days of receiving the bills raised by CTU.

116. We further observe that the Petitioner has furnished Bank Guarantee towards OPGC-Jharsuguda Transmission line under Transmission Agreement dated 11.9.2013 which provides as follows:

“(a) "OPGC" shall furnish a Bank guarantee from a nationalized bank for an amount as specified by the CERC as security mechanism for the transmission system to be built, owned and operated by ISTS licensee (the same being maximum Rs.5 lakhs/mw, currently). The bank guarantee format is enclosed as Annexure-Y.”

117. We direct that in case, the Petitioner does not make payment of transmission charges as per bills raised by CTU within stipulated time, CTU shall be at liberty to encash the above-said Bank Guarantee and reimburse the transmission charges due to Respondent No. 2 (OGPTL) from such encashed BG.

118. Respondent No. 2(OGPTL) had served Regulation of Power Supply Notice on the Petitioner. During the hearing on 16.5.2019, Respondent No. 2 was directed not to take any coercive steps until further orders of the Commission. The said interim direction stands vacated from the date of issue of this order. In case of failure of the Petitioner to make the payment to Respondent No. 2 within 15 days of raising of bills by CTU, Respondent No.2 shall be at liberty to take necessary action in accordance with law.

Issue No.8: Whether the transmission charges for 400 kV OPGC-Jharsuguda Transmission Line should be included in PoC pool?

119. OGPTL has submitted that once the line is utilized, the line is to be included in POC pool for recovery of transmission charges. It has stated that Petitioner has synchronized its Unit#4 of OPGCL Stage-II on 26.12.2018 and is injecting infirm power into the grid through 400kV OPGC-Jharsuguda D/C line. Since, the 400kV OPGC-Jharsuguda D/C line constructed by the OGPTL is the only source for evacuation of power from OPGCL Power Plant, it becomes clear from the above order that OPGCL is drawing start-up power from



the above line and injecting infirm power. Therefore, the said line is being completely utilized by OPGCL. Further, from 27.12.2018, the 400kV OPGC-Jharsuguda (Sundargarh) D/C line ought to be included in POC calculation for recovery of transmission charges as OPGCL is using the said line and injecting power to the tune of 600MW into the grid through this line.

120. We have considered the submissions of Respondent No.2, OGPTL. We observe that 400 kV OPGC-Jharsuguda D/C line is dedicated line of OPGC. As per Transmission Agreement dated 11.9.2013, OPGC is liable for payment of transmission charges of 400kV OPGC-Jharsuguda D/C line. Further Regulation 8(8) of Connectivity Regulations provides that such line can be included in PoC only once LTA for such customer is operationalized. However, the Petitioner has already relinquished its LTA. It is clarified that relinquishment of the LTA shall not discharge the Petitioner from its liability to pay the transmission charges for the said line.

121. Respondent No.1 (CTU) is directed to raise the bills for the 400 kV OPGC-Jharsuguda D/C line on the Petitioner in terms of this order. CTU shall raise a modified consolidated bill for the past period along with applicable charges as per the TSA upto 31.12.2019 and monthly bills from 1.1.2020. The Petitioner is directed to pay the amount raised through the consolidated bill within 15 days from the date of raising the bill. In case of failure on the part of the Petitioner to pay the bill within the stipulated time, CTU shall take necessary action in accordance with Para 117 of this order.

Summary of decisions

122. Summary of our decisions in this order are capitulated as under:

- (a) From 30.8.2017 till 22.11.2017, both the Petitioner and Respondent No.1 shall share the transmission charges of 400 kV OPGC--Jharsuguda transmission line in the ratio of 50:50.
- (b) From 23.11.2017 onwards, the Petitioner shall be liable to pay the transmission charges for 400 kV OPGC--Jharsuguda transmission line.
- (c) Relinquishment of LTA by the Petitioner has no bearing on its liability to pay the transmission charges of 400 kV OPGC--Jharsuguda transmission line in accordance with the provisions of the Transmission Agreement.
- (d) Respondent No. 1 is directed to raise modified consolidated bill for the transmission charges upto 31.12.2019 alongwith applicable charges as per the TSA on the Petitioner and monthly bill w.e.f. 1.1.2020.
- (e) The Petitioner is directed to pay the consolidated bill for the period upto 31.12.2019 within 15 days from the date of raising the bill and the transmission charges so collected shall be paid to the Respondent No. 2. In the event of failure on the part of the Petitioner to pay the consolidated bills within the stipulated date, Respondent No. 1 shall take necessary action as per Para 117 of this order.

- (f) As regards the monthly bills raised w.e.f. 1.1.2020, the Petitioner shall be liable to pay the transmission charges within the due date indicated in the bills.

123. In view of the above, Petition No. 128/MP/2019 is disposed of.

sd/-
(I.S. Jha)
Member

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

sd/-
(P.K. Pujari)
Chairperson

