

Central Electricity Regulatory Commission
New Delhi

Petition No. 162/MP/2017

Coram:

Shri P.K. Pujari, Chairperson

Dr. M. K. Iyer, Member

Date of Order: 19th June, 2019

In the matter of

Petition under Section 79 (1)(c), (d) & (f) and other applicable provisions of the Electricity Act, 2003 seeking directions against the Respondent in relation to the Medium Term Open Access for transfer of power from the Western Region to Northern Region

And

In the matter of

KSK Mahanadi Power Company Limited
8-2-293/82/A, Road No. 22,
Jubilee Hills,
Hyderabad - 500033

....Petitioner

Vs

1. Powergrid Corporation of India Limited
Saudamini, Plot No. 2
Section 29, Gurgaon
Haryana - 122001
2. Power System Operation Corporation Limited
Western Regional Load Despatch Centre
F-3, Central Road, MIDC Area,
Marol, Andheri (East),
Mumbai - 400093

...Respondents

Parties present:

Ms. Swapna Seshadri, Advocate, KSKMPCL
Ms. Parichita Chowdhury, Advocate, KSKMPCL
Ms. Suparna Srivastava, Advocate, PGCIL
Shri S.K. Niranjana, PGCIL
Shri S.K. Venkatesh, PGCIL
Shri G. Chakraborty, NLDC
Shri A. Rajan, POSOCO



ORDER

The Petitioner is a generating company as defined in Section 2(28) of the Electricity Act, 2003 (hereinafter referred to as 'the 2003 Act') and is in the process of establishing a 3600 MW (6 x 600 MW) coal-based Thermal Power Project (hereinafter referred to as "the generating station") in District Akaltara in the State of Chhattisgarh. Two units of the generating station are under operation and the balance units are at various stages of construction and commissioning. The date of commercial operation of the first unit is 13.8.2013 and the second unit is 25.8.2014.

2. The Petitioner has presently the following PPAs for supply of power from the generating station:

- (a) PPAs dated 31.7.2012 & 19.12.2014 between the Petitioner and the distribution licensees of the State of Andhra Pradesh for supply of 400 MW of power;
- (b) PPA dated 27.11.2013 between the Petitioner and Tamil Nadu Generation and Distribution Corporation (TANGEDCO) in the State of Tamil Nadu for supply of 500 MW;
- (c) PPA dated 26.2.2014 between the Petitioner and the distribution licensees in the State of Uttar Pradesh for aggregate supply of 1000 MW of power; and
- (d) PPA dated 18.10.2013 with the Government of Chhattisgarh for supply of 5%/ 7.5% of the net power (gross power generated minus the auxiliary consumption) under the host State obligations.

3. The Petitioner, KSK Mahanadi Power Company Limited (KSKMPCL) has filed this petition seeking the following reliefs:

- (a) *Hold and declare that the action of WRLDC is restricting the operationalization of the MTOA to the extent of the 258.5 MW to UP Discoms and increasing the capacity to 505 MW and 770 MW against 1000 MW*



LTA despite PGCIL communicated to WRLDC, is erroneous and contrary to the applicable Regulations;

(b) Direct that PoC charges claimed for the capacities not operationalized and made available to schedule power to Procurers under bilateral contract(s) of the Petitioner due to wrong actions of WRLDC and refund the amounts already realized for the said period, if any;

(c) Direct Respondent No.1 restraining from claiming the PoC charges for the quantum not allowed for scheduling by WRLDC despite operationalization by CTU and also not to initiate any action for invocation of Letter of Credit available with CTU for payment security towards realization of such amounts, till the disposal of this present petition;

(d) Direct WRLDC to allow for scheduling of quantum(s) as would be intimated by Powergrid for the present and such further capacity as available in future, without any restriction based on the plant capacity available;

(e) Hold and declare that for the period when the MTOA operationalization has been restricted, the POC charges can also be restricted only to the extent of the MTOA and LTA been scheduled;

(f) Hold and direct Powergrid to refund the excess POC charges levied based on the MTOA operationalization of 505 MW in aggregate as against the actual operationalization of only 258.5 MW, for the respective period during Dec'16 and Jan'17 on account of the restriction imposed by WRLDC;

(g) Hold and direct Respondent No.1 to give credit for the excess POC charges levied based on the MTOA operationalization of 505 MW in aggregate as against the actual operationalization of only 258.5 MW MTOA for the respective period during Dec'16 & Jan'17 as well as LTA operationalization of 1000 MW in aggregate as against the actual operationalization of only 770 MW, for the respective period during April '17 to June'17 on account of the restriction imposed by WRLDC in the subsequent bills;

(h) Award interest at the rate of 15% per annum on the excess charges collected by Powergrid in terms of prayer (d) above from the date of payment till the date of refund;

(i) Award costs of the present proceedings; and

(j) Grant such other further order(s) as the Hon'ble Commission may deem just in the facts of the present case;



Background of the case

4. The Petitioner, on execution of the PPA with the discoms of UP on 26.2.2014 for 1000 MW had filed LTA application with the Respondent No. 1 (PGCIL) for grant of LTA with the start date as 30.10.2016. Since LTA was not available from the intended start date, the Petitioner, after waiting for six months, filed an MTOA application against the same PPA on 7.10.2015 for 1000 MW, with the start date of 30.10.2016, in accordance with the OM dated 7.5.2015 of MOP, GOI. In terms of the applicable regulations, PGCIL on 10.12.2015 granted the MTOA for transfer of 1000 MW capacity from the generating station of the Petitioner to the UP discoms. Subsequently, based on the capacity as available and in accordance with the Commission's orders dated 9.11.2016 in IA No. 53 of 2016 and 54 of 2016 in Petition No. 84/MP/2016, PGCIL on 10.11.2016 communicated the operationalization of 505 MW capacity under MTOA (out of the total grant of 1000 MW). It was stated that the enhancement in operationalization of MTOA for the remainder quantum shall be done progressively based on margins available in the WR-NR corridor. On 13.12.2016, PGCIL intimated the Respondent No. 2 (WRLDC) to enable the power transfer of 505 MW MTOA in accordance with the prevalent regulations/procedures of the Commission.

5. The Petitioner vide its e-mail dated 13.12.2016 approached WRLDC and NRLDC for scheduling power from 14.12.2016 in terms of the MTOA operationalized by PGCIL. However, WRLDC vide communication dated 13.12.2016 intimated the CTU and the Petitioner that the capacity of only up to 258.5 MW can commence scheduling as against MTOA of 505 MW operationalized by PGCIL. This was on the purported basis that the



available capacity of the generating station limited the operationalization of MTOA only to 258.5 MW. Even this restricted capacity of 258.5 MW was not immediately operationalized by WRLDC as it demanded confirmation/ consent from the Petitioner and the UP discoms before commencement of the scheduling. However, based on the representations of the Petitioner, WRLDC vide letter dated 16.12.2016 permitted the scheduling of 258.5 MW capacity.

6. In view of the insistence of WRLDC to limit the operationalization of MTOA to UP Discoms to 258.5 MW in order to maximize supply under MTOA to UP discoms, the Petitioner proceeded to tie up alternate source of supply for 275 MW for supply to TANGEDCO and also intimated the same to WRLDC that only 225 MW would be scheduled to TANGEDCO, and requested WRLDC to permit the operationalization of the entire MTOA 505 MW capacity to UP discoms. WRLDC vide its communication dated 20.12.2016 sought copies of PPAs with TANGEDCO, APSPDCL, APEPDCL, UPPCL stating that as per Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 (hereinafter referred to as the IEGC or the Grid Code) clause 6.4.14 all regional entities shall file all the bilateral agreements with respective RLDCs & RPCs for being considered for scheduling and regional energy accounting. The Petitioner on 21.12.2016 submitted that it had already filed the relevant PPAs with CTU along with the LTA/MTOA applications as required under clause 6.4.14 of the IEGC) and stated that the issues raised by WRLDC is beyond the scope of applicable regulations. However, in view of the urgency, the Petitioner



forwarded to WRLDC the consent of TANGEDCO for the alternate source of supply and requested WRLDC to schedule the entire 505 MW MTOA by operationalizing the same without delay. In response, WRLDC by communication dated 28.12.2016, sought freezing of the quantum of supply to each of the supply corridors and demanded an undertaking from the Petitioner to allow scheduling of MTOA of 505 MW. Though the transmission capacity was not utilised for scheduling to UP discoms for the period 18.12.2016 to 31.12.2016, PGCIL took the stand that MTOA charges would be payable on the total capacity as decided by PGCIL.

7. The Petitioner vide letter dated 10.1.2017 objected to the above stand of PGCIL and submitted that when MTOA was not operationalized to the extent of 505 MW, the question of raising the invoice for POC charges for 505 MW does not arise. However, PGCIL on 2.2.2017 responded stating that the charges for MTOA quantum are based on PGCIL's communication for operationalization of MTOA and therefore payable. The Petitioner vide letter dated 7.2.2017 requested PGCIL to revise the POC charges as per the quantum allowed for scheduling by WRLDC i.e. 258.5 MW for the period from 1st to 14th January, 2017 and 505 MW for the period from 15th to 31st January, 2017. Thereafter, by letter dated 8.2.2017 to PGCIL, the Petitioner detailed the events and once again requested PGCIL for revision of the transmission charges for the quantum operationalized during the month of December, 2016. However, PGCIL vide its letter dated 9.2.2017 maintained that the POC bill for January, 2017 is in order and demanded settlement in terms of the Regulations of the Commission. The present arrangement was permitted by WRLDC on this basis till 31.3.2017 and it is



apprehended that WRLDC would proceed on the same basis beyond March, 2017 also.

8. The LTA for supply of 1000 MW from the Project to UP discoms was operationalized by the CTU on 24.3.2017 and it was further communicated that with the operationalization of 1000 MW LTA, the part-operationalized MTOA shall stand cancelled. However, WRLDC vide its letter dated 27.3.2017 insisted on a revised undertaking from the Petitioner stating that the earlier undertaking was valid only till March, 2017 and revised undertaking was in order to operationalize the quantum of LTA similar to the undertaking given earlier for operationalization of MTOA. The Petitioner on 7.4.2017, without prejudice to its rights, again submitted revised undertaking confirming the capacities that would be exported from its project to various Procurers. However, WRLDC did not grant permission for scheduling of power through LTA and verbally requested for submission of consent from Procurers for the said LTA.

9. Thereafter, PGCIL vide its letter dated 18.4.2017 communicated that as per decision during meeting held on 23.3.2017, the liability towards payment of transmission charges shall start from 20.4.2017. CTU vide its letter dated 19.4.2017 to WRLDC and NRLDC, advised to operationalization of 1000 MW LTA capacity granted to the Petitioner. In response, the Petitioner vide letter dated 26.4.2017 intimated PGCIL that since WRLDC was awaiting confirmation of UP discoms for allowing 770 MW of power scheduling, the transmission charges to be billed and paid should accordingly be from the date when WRLDC would allow the scheduling of



power. CTU issued bill dated 5.5.2017 towards POC charges for 1000 MW for the month of April, 2017 for Rs.12,07,89,187/- for the period from 20th April, 2017 to 30th April, 2017 (11 days) and also raised a separate bill for Rs.9,03,73,214/- for the period from 1st April, 2017 to 19th April, 2017 (19 days) towards MTOA of 505 MW. Thereafter, WRLDC, based on the communication dated 15.5.2017 from UP discoms, permitted the petitioner for scheduling of 770 MW LTA from 17.5.2017. CTU vide letter dated 29.5.2017 stated that the transmission charges are based on the contracted LTA/MTOA quantum and not on the scheduled quantum of power and hence, the petitioner was liable to pay the transmission charges for the full LTA quantum that has been operationalized (i.e. 1000 MW) irrespective of its scheduling. Similarly for the month of May, 2017 though the capacities utilized were 505 MW till 16th May, 2017 and 770 MW till 31st May, 2017, CTU claimed for full PoC charges of 1000 MW LTA. Thereafter, based on the revised undertaking from the Petitioner on 5.6.2017 and consent dated 6.6.2017 from UP discoms, LTA for 1000 MW was permitted by WRLDC for scheduling from 7.6.2017.

Submissions of the Petitioner

10. In the above background, the Petitioner in this Petition has made the following submissions:

- (a) The CTU while granting MTOA for 505 MW has strictly complied with the provisions of the 2009 Connectivity Regulations of the Commission governing the grant of connectivity. However, the action on the part of WRLDC to restrict the operationalization of MTOA has no support in terms of the Regulations nor can such restrictions be imposed by WRLDC.



(b) WRLDC has proceeded on the basis that the petitioner is required to schedule 100% of the capacity under the PPA at all points of time to the Procurers. It has proceeded on the assumption that under the PPAs with TANGEDCO and AP discoms, the Petitioner schedules 100% at all points of time and it is impossible for the Petitioner to schedule more than 258.5 MW for UP discoms.

(c) The above basis is wholly misconceived. The quantum of capacity to be scheduled by the Petitioner to the Procurers is a bilateral matter under the PPA, with consequences provided for in the PPA on the normative capacity to be declared for achieving more than or less than the normative capacity. This has nothing to do with WRLDC. The total schedule from the generating station for all its procurers cannot exceed total available capacity.

(d) WRLDC's incorrect interpretation of the applicable regulations, insistence of prior consent of procurers before commencement of scheduling of power, wanting to study and interpret the PPAs has severely prejudiced the Petitioner and has restricted its ability to utilise the MTOA though directed to be operationalized by CTU in accordance with the Transmission Service Agreement signed with PGCIL.

(e) The action of WRLDC to freeze the quantum of supply to each of the supply corridors and demand for undertaking from Petitioner to schedule 505 MW was contrary to the applicable regulations and has affected the Petitioner as it would restrict the flexibility available to the generator to respond to changes in demand of the discoms in each of the States. In any event the consequences of availability being declared at a particular level is provided for in the PPA and the WRLDC has no role in determining as to how much electricity is to be scheduled to a particular State on a day to day basis. However, the total capacity to be scheduled from the generating station cannot exceed 1200 MW minus the auxiliary consumption.



(f) As per sixth amendment (carried out in 2017) to CERC (Grant of Connectivity, LTA and MTOA in Inter-state transmission and related matters), Regulations, 2009 (hereinafter referred to as the 2009 Connectivity Regulations), WRLDC should have commenced scheduling as per MTOA grant and must have observed for five days and in case the Petitioner is not utilizing the full capacity operationalized by CTU, then should have sought clarification from the petitioner for under-utilization of MTOA.

(g) There can be no question of WRLDC seeking to impose restrictions on the operationalization of the MTOA based on the presumption that the generator is required to schedule 100% capacity on daily basis to each of its procurers under the respective PPAs. In terms of the prevalent regulations, it is settled position that once MTOA is awarded and operationalized by CTU, the role of RLDC is only to schedule the power as per directions of the generator/customer.

(h) WRLDC which is the system operator has without any authority overstepped its brief in forcing the Petitioner to give undertaking thereby depriving the right to utilise the MTOA accorded by the CTU as per regulations.

(i) Since MTOA of 505 MW was not operationalized, the question of raising the invoice for POC charges for 505 MW does not arise. PGCIL and WRLDC have taken contradictory views to the detriment of the Petitioner. While PGCIL has taken a position that 505 MW is to be operationalized and entire charges are payable, WRLDC has taken a position that till the time the plant capacity is available to the extent of MTOA, the same cannot be operationalized. In other words, even if the generator is able to utilise the MTOA operationalized to fulfil bilateral obligations under the PPAs, the same would not be permitted by WRLDC unless the total capacity of the generating station is sufficient to schedule 100% capacity to all the PPAs at all points of time.



(j) When WRLDC as a statutory authority restricts the operationalization of MTOA to the extent of the capacity of the generator, after meeting 100% capacity tied up with other purchasers, the question of levy of POC charges on MTOA capacity not being operationalized does not arise. The action of WRLDC in denying scheduling of MTOA power as operationalized by PGCIL is not covered by any provisions of the regulations notified by the Commission. The regulations only permit the WRLDC to seek clarification from the Commission if there is consistent under-utilisation of capacity in scheduling electricity.

(k) Once MTOA is awarded and operationalized by PGCIL, the role of RLDC is only to schedule the power as per decision of the generator/customer. It is open to the generator and procurers to declare available capacity and schedule as per prevailing circumstances, subject to consequences as provided in the PPA.

(l) The Regulations do not permit RLDC to restrict the power export schedules beyond 24 hours let alone seeking undertaking for 3-month schedule, thereby freezing supply schedules of a generator. The actions of WRLDC are clearly overstepping its powers and functions. In view of the above actions, the Petitioner has been adversely affected in the following manner:

- i. Fulfilment of obligation under PPA on start of MTOA could not be done. The capacity of 505 MW intimated to be operationalized on 13.12.2016 could not be operationalized. The 505 MW could be operationalized only by curtailing the operationalization of MTOA for TANGEDCO.
- ii. Despite the fact that the MTOA operationalized is restricted to the total exportable capacity of 258.5 MW, PGCIL is levying the charges for the capacity of 505 MW. The said capacity is not made available by WRLDC, even though it is sought to be utilized by the Petitioner.

(m) In view of the actions in violation of regulations by WRLDC, there was no capacity utilised for scheduling by the Petitioner during



the period from 20.4.2017 till 16.5.2017 despite submission of requisite undertakings as demanded by WRLDC. On the other hand, CTU has demanded payment of POC charges as per bills raised irrespective of scheduling or not.

11. Accordingly, the Petitioner has submitted that the payment of PoC charges for the non-utilized capacity, as detailed under, should be reversed by CTU.

Period	PoC bill ref	Value of Bill (Rs)	Period of capacity not allowed by WRLDC	LTA Capacity billed (MW)	Capacity utilized by Petitioner (MW)	Amount claimed by CTU (Rs)	Amount to be reversed for non-operationalized capacity (Rs)
16 th -31 st Dec, 2016	91102871	7,78,26,333/-	16th to 31st Dec, 2016	-	258.5	3,98,37,835/-	3,79,88,498/-
1 st to 15 th Jan, 2017	91102937	14,41,58,310/-	1 st to 15 th Jan, 2017	-	246.5	11,01,10,060/-	3,40,48,250/-
20 th to 30 th April, 2017	91103358	12,07,89,167/-	20 th to 30 th April, 2017	1000	NIL	NIL	12,07,89,167/-
1 st to 16 th May, 2017	91103498	30,56,70,691/- for full month	1 st June to 6 th June, 2017	1000	505 during 1 st to 16 th May & 770 from 17 th May	19,35,58,570/- (i.e 79671586 towards 505 MW for 16 days + 113940984/- towards 770 MW for 15 days)	11,21,12,121/-
1 st to 6 th June, '2017	91103634	29,37,88,469/-	1 st June to 6 th June, 2017	1000	770 during 1 st to 6 th June & 1000 from 7 th to 31 st June'17	28,02,74,199/- (towards 770 MW for 6 days & 1000 MW for 25 days)	1,35,14,270/-

Hence the present Petition has been filed by the Petitioner seeking the reliefs as stated in para 1 above.



12. The Petition was admitted on 7.9.2017 and notice was issued to the Respondents with directions to complete pleadings in the matter. The Respondent, WRLDC vide affidavit dated 13.10.2017 and the Respondent, PGCIL vide affidavit dated 27.10.2017 have filed their replies to the Petition. The Petitioner vide affidavit dated 12.2.2018 has filed a common rejoinder to the above said replies filed by the Respondents. The Petitioner has also filed the additional information vide affidavit dated 18.5.2018 in terms of the directions of the Commission vide ROP of hearing dated 26.4.2018.

Submissions of Respondent, WRLDC

13. The Respondent, WRLDC in its reply affidavit has mainly submitted as under:
- (a) The generating station is connected to the Inter-State Transmission system at the 765/400 kV Champa Pooling Station of PGCIL. As per the Connectivity Agreement dated 23.8.2012 signed between the Petitioner and the CTU, the Petitioner had envisaged a total installed capacity of 3600 MW.
 - (b) While the 1000 MW PPA was signed with the UP discoms on 26.2.2014, no additional generating unit has been commissioned by the Petitioner till date. WRLDC is yet to receive any intimation from the Petitioner on the commencement of commissioning activity of any of the additional four units envisaged.
 - (c) With the grant of 505 MW of MTOA to the Petitioner for supplying power to the UP discoms from 13.12.2016, the total approved/ operationalized LTA + MTOA quantum became 1366.5 MW. However, the ex-bus capacity of the generating station as on date is only 1120 MW capacity. Thus, for the operationalization of scheduling of power as per grant of MTOA to UP discoms, the capacity fell short by 246.5 MW.
 - (d) In the above circumstances, while honouring the already existing and operationalized PPAs for AP discoms and TANGEDCO as per Clause 6.4.14 of



the IEGC, the maximum schedule for UP discoms that could have been allowed was only 258.5 MW as against the 505 MW indicated by CTU.

(e) It can be inferred from Clause 6.4.9 of the IEGC that there has to be a mutually agreed schedule between the generator and its buyers. This is based on the premise that sufficient generation capacity is available *ab initio* to honour all contracts (three in this case) simultaneously.

(f) Clause 6.5.19A of the IEGC is on the premise that sufficient generation capacity is available to honour all the contracts and only in case of tripping of any generating unit, the schedules under LTA, MTOA & STOA (other than collective) need to be revised downwards.

(g) In the above circumstances, it was felt that the existing and operationalized PPAs of 861.5 MW (LTA & MTOA) from Petitioner to TANGEDCO and AP discoms were to be honoured. Hence, against the latest MTOA scheduling request from the Petitioner to UP discoms for 505 MW, a maximum quantity of 258.5 MW (1120-861.5) could be allowed for scheduling by WRLDC. Also, certainty in LTOA and MTOA scheduling helps in optimum utilisation of the inter-regional transmission corridors by utilising the balance transfer capability (ATC) for the short term market.

(h) It is evident from concurrent reading of the provisions of 'Congestion Regulations' and 'Open Access Regulations', that in order to declare available margin on inter-regional corridors, for processing STOA applications, RLDC and NLDC require a firm LTA/MTOA figure (in MW) which is operationally feasible in each Inter-Regional (IR) corridor.

(i) It is evident that the request of the Petitioner to operationalize 1366.5 MW in December 2016 was above the ex-bus generation capability of 1120 MW, which would have led to a situation of blocking 246.5 MW (1366.5-1120) of inter-regional transfer capability.

(j) As per 6th amendment to the 2009 Connectivity Regulations in 2017, any under-utilized LTA and MTOA capacity by any generator have to be released for scheduling MTOA and STOA transactions, depending upon the period of



such under-utilization and the action of WRLDC has been in line with this regulation.

(k) In terms of clause 6.4.14 of the IEGC, when any deviation from the contract is proposed due to non-availability of commensurate generation capacity at seller's end, the consent of the buyer is necessary before commencement of scheduling under LTA/MTOA, so as to avoid any future disputes. Hence, WRLDC has taken undertakings from the seller and consent from the buyers for the proposed selling pattern suggested by the buyers. The undertaking from the Petitioner was also required to restrict the total injection schedule for the Petitioner to its ex-bus capability.

(l) As per definitions provided in the 2009 Connectivity Regulations, LTA/MTOA granted by CTU is a right to access to the transmission system granted to the Petitioner for scheduling its power. However, the schedules prepared by RLDC are always on deemed delivery basis. Hence, the physical scheduling by RLDCs can take place only if the entity has got the capability to deliver the power. Therefore, the two activities viz. operationalization of LTA/MTOA and commencement of scheduling against the same are distinctly separate activities.

(m) The claim of the Petitioner that the quantum of the capacity to be scheduled by the Petitioner is a bilateral matter and that RLDC has no role in it, is misconceived in the light of Regulation 2.2.1 (b) of the IEGC as the scheduling by the Petitioner involves Inter-Regional transmission links.

(n) By limiting the scheduling quantum up to ex-bus generation capability of the Petitioner, WRLDC has helped both the seller and the buyers with the firm commitment with respect to the PPAs. Further, during any reported emergency by the Petitioner in respect of its generating station or for any other reason, WRLDC always extended support by scheduling power to TANGEDCO and AP discoms as per the Petitioner's request.

(o) Making adequate generation available with respect to quantum of LTA/MTOA availed and PPAs signed by the generator is a sole responsibility of



the generator. The incapability of the generator in bringing its generation units in time matching with the operationalization of LTA/MTOA and PPA and the resulting consequences cannot be attributed to Respondent No.1 or Respondent No. 2.

(p) Payment of transmission charges cannot be linked with the actual power scheduled. PoC charge is based on the quantum of transmission access (LTA/MTOA) granted by CTU to any entity as per their request. Scheduling by RLDC depends on the availability of ex-bus power with the generator.

(q) The under-utilized LTA/ MTOA capacity by any generator is to be released to other MTOA and STOA customers, depending upon the period of under-utilization. Thus, the claim of the Petitioner is completely flawed in stating that the said capacity of 505 MW was not made available by WRLDC to the Petitioner.

(r) WRLDC has acted for optimum utilization of inter-regional corridors in efficient and effective manner and ensure that no inter-regional transfer capability had gone unutilized. If WRLDC had not acted in the above manner, the medium term and short term markets would have been deprived of the margin of 780 MW in IR corridor.\

(s) On account of WERLDC's action, the petitioner could ensure continuous supply to its beneficiaries even with an ex-bus generation capacity of 1120 MW and PPAs of 1900 MW.

14. Accordingly, the Respondent, WRLDC has submitted that it has acted in the best of its knowledge and understanding of the regulations and to ensure efficient and economic operation of the power system keeping in view the larger interest of the grid.

Submissions of Respondent, PGCIL

15. The Respondent No. 1, PGCIL vide reply affidavit dated 27.10.2017 has submitted the following:



(a) The MTOA of 1000 MW for transfer of power from the Petitioner's project to UP Discoms was granted on 10.12.2015 for the period from 30.10.2016 to 29.10.2019. The said MTOA was part operationalized for 505 MW in terms of the Commission order dated 9.11.2016 in Petition No. 84/MP/2016.

(b) During the 10th JCC Meeting in WR held on 7.10.2015, the Petitioner had informed that two of its 600 MW units were already commissioned and the third unit was scheduled for commissioning by September, 2016. Therefore, at the time of grant of MTOA on 10.12.2015 (for the period starting from 30.10.2016) the Petitioner had indicated availability of generation capacity for supply of power under LTA/MTOA.

(c) In terms of Regulation 8 (5) of the Sharing Regulations, 2010, the Petitioner is obligated for payment of applicable transmission charges irrespective of non-materialization of approved injection/withdrawal for any reason whatsoever. Further the capacity of 505 MW in the transmission corridor have been allocated and blocked for the Petitioner's MTOA which was operationalized by CTU.

(d) The LTA of 1000 MW to UP Discoms was granted on 29.7.2016 (w.e.f. 13.10.2016 or availability of transmission system whichever is later). As regards the submission of Petitioner that LTA of 1000 MW could not be scheduled during the period between 20.4.2017 to 16.5.2017 in view of pending confirmation from UP Discoms, it is indicated that Petitioner has admitted that it signed PPA on 26.2.2014. Moreover, LTA was to be effective from 30.10.2016 which got delayed till 20.4.2017 on account of non-availability of transmission system. Therefore, it is difficult to comprehend that during such a long period from signing a PPA till operationalization of LTA in April, 2017, the Petitioner could not coordinate with UP Discoms for availing power under the PPA. Therefore, no relief can be claimed against CTU.



16. Accordingly, PGCIL has submitted that the prayer of the Petitioner against PGCIL with respect to payment of applicable transmission charges against LTA/MTOA is devoid of merits and not maintainable.

Rejoinder of the Petitioner

17. The Petitioner vide its common rejoinder affidavit dated 12.2.2018 has submitted the following:

(a) The issue which arise in this Petition is the unilateral action of WRLDC restricting the open access that has been operationalized by PGCIL for transfer of power to UP Discoms without any authority under the Regulations and the Grid Code and the insistence of PGCIL for payment of transmission charges for the capacity that was not utilized by the Petitioner on account of action of WRLDC.

(b) While the LTA/MTOA granted by PGCIL to the Petitioner for 3600 MW in terms of the prevalent Regulations, WRLDC contended that LTOA/MTOA is granted by CTU considering 1200 MW and the same was brought to the notice of WRLDC on 19.12.2016 by the Petitioner.

(c) While PGCIL is seeking charges for the capacity on the ground that the same is operationalized and was ready to be used by the Petitioner, WRLDC is not permitting the Petitioner to use the transmission capacity said to have been operationalized by PGCIL. There is no question of the Petitioner being asked to pay the transmission capacity which was not utilized.

(d) The contention of WRLDC that unless there is generation capacity available, the transmission open access cannot be operationalized is contrary to the contention of PGCIL that once the transmission capacity is available, the generation capacity not being there is no defence for operationalization of transmission capacity and payment of charges.

(e) The action or inaction of PGCIL/WRLDC has resulted in a situation where the Petitioner who wanted to use the transmission capacity for supply to UP



Discoms was denied by WRLDC and PGCIL has illegally collected transmission charges for same capacity which was prevented to be used by WRLDC.

(f) RLDC is neither the arbitrator on the issues under the contract nor is concerned with the commercial mechanism under the contracts. So long as the generating company has entered into PPA with licensee and is seeking to schedule electricity, the open access which has been granted, RLDC has no authority to seek scheduling of electricity only to a limited capacity or direct that only the capacity of 100% generation is available for scheduling to other beneficiaries will be permitted. Thus, RLDC is only concerned with the operation of the grid and not with the inter-se rights and obligations of parties under the PPA.

(g) The Petitioner has obligations of minimum supply under the PPA and if the supply is not met, the consequences are provided in the PPA. WRLDC has no say in the quantum of electricity that the Petitioner is required to supply to its Procurers.

(h) The Petitioner in this case has a freedom of how much capacity is used on daily scheduling by abiding the provisions of IEGC and all other prevailing CERC Regulations. In the present case the Petitioner was forced to approach the Procures for consent for the scheduling pattern for allowing the Petitioner to utilize the corridor for supply to UP Discoms. Only after the Petitioner was forced to give an undertaking that the supply to other Procurers from the generating station would be permanently curtailed till additional capacity is created was the operationalization of open access to UP discoms allowed. This in effect is tantamount to WRLDC dictating the terms of implementation of the PPA and refusing to use the transmission capacity allocated to the Petitioner.

(i) While CTU is responsible for granting LTA and MTOA and their operationalization, RLDC is responsible for scheduling the operationalized LTA/MTOA as provided in Regulation 2.3.1 of IEGC. However, WRLDC has overstepped in exercising the powers by restricting the operationalized capacity to the Petitioner from scheduling.



(j) The Petitioner requested WRLDC to act in accordance with IEGC clause 6.4.14 and schedule power as informed by CTU and assured that the petitioner will be abiding by the provisions of IEGC and PPA and scheduling power accordingly. However, WRLDC has acted upon unilaterally and restricted the operationalization of capacity.

(k) WRLDC has no authority to refuse the operationalization of open access on the ground that the generation capacity is not available. Further, for the period when the Petitioner was denied the use of the transmission capacity, the corresponding transmission charges cannot be levied. The Petitioner had been carrying the financial burden on one side for amounts collected by PGCIL towards non-operationalized capacity and on the other side without any reimbursement from discoms of the said charges.

18. The Petition was heard on 26.4.2018 and the Commission after directing the Petitioner to submit the copy of PPAs entered into with AP discoms and the parties to file written submissions reserved its orders in the Petition. Since the order in the Petition could not be issued prior to one Member, who formed part of the Coram, demitting office, the Petition was finally heard on 23.10.2018 and the Commission reserved its order in the Petition.

19. In compliance with the directions of the Commission, the Petitioner vide affidavit dated 18.5.2018 has furnished the copies of the PPAs executed with the AP discoms, UP discoms and TANGEDCO. Also, in terms of the liberty granted vide ROP dated 26.4.2018, only the Petitioner vide affidavit dated 6.6.2018 has filed its written submissions in the matter.

Written Submissions of Petitioner

20. The Petitioner in its written submission has mainly reiterated its submissions in the Petition and rejoinder. It has, however, added that the reliance on the sixth



amendment to the 2009 Connectivity Regulations carried out in 2017 is not justified since the said regulation came into force much after the actions taken by WRLDC. The Petitioner has also stated that WRLDC should have commenced scheduling as per MTOA grant and must have observed scheduling of power for five days and in case the Petitioner was not utilising the full capacity operationalized by CTU, then notice or clarification should have been sought from the Petitioner. The Petitioner has submitted that the question of payment of transmission charges would arise only if the MTOA is operationalized and when the operationalization and utilisation is restricted by WRLDC, PGCIL is not entitled to levy the charges. The two parties who are related parties cannot seek their own benefit by acting contradictory to each other's position. Accordingly, the Petitioner has submitted that it is entitled for relief as claimed in the Petition. The arguments of the learned counsel for the Petitioner and Respondent PGCIL were mainly on the lines of the submissions made in their respective pleadings.

Issues for Consideration

21. Based on the submissions of the parties, the following issues emerge for consideration:

Issue No.1: Whether the actions of WRLDC in restricting the operationalization of MTOA (as against 505 MW) and LTA (as against 1000 MW) to UP discoms is contrary to the provisions of IEGC and other Regulations of this Commission?

Issue No.2: Whether the Petitioner is entitled for refund of the POC charges levied based on the operationalization of MTOA and LTA to UP discoms for the period from December 2016 till June 2017?

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



Issue No.1: Whether the actions of WRLDC in restricting the operationalization of MTOA (as against 505 MW) and LTA (as against 1000 MW) to UP discoms is contrary to the provisions of IEGC and other Regulations of this Commission?

23. As stated, the Petitioner had entered into a PPA with the AP discoms, TANGEDCO, and the UP discoms for supply of 400 MW, 500 MW and 1000 MW of power respectively. While the Petitioner had availed MTOA for AP discoms and LTA for TANGEDCO, it had applied for LTA for 1000 MW on 26.2.2014 for UP discoms, with the start date as 30.10.2016. As LTA was not available from the intended start date of 30.10.2016, the Petitioner applied for 1000 MW MTOA for UP discoms, which was granted by CTU vide letter dated 10.12.2015, with effect from 30.10.2016. Meanwhile, in IA No. 53 & 54/2016 (in Petition No. 84/MP/2016) filed by Chhattisgarh State Power Trading Company Limited, the Commission vide its order dated 9.11.2016 had observed that the CTU may take necessary action to deal with the cases of the applicants/ any other MTOA customers in terms of the 2009 Connectivity Regulations and the Detailed Procedure thereunder. Accordingly, the CTU, as against the total grant of 1000 MW MTOA for supply to UP discoms, operationalized the MTOA for 505 MW vide letter dated 10.11.2016. Though the Petitioner requested WRLDC to schedule the 505 MW to UP Discoms, WRLDC vide its letter dated 13.12.2016, informed the Petitioner that since the installed capacity of the Petitioner's generating station was only 1200 MW and the Petitioner was having MTOA of 361.5 MW with AP Discoms and LTA of 500 MW with TANGEDCO, MTOA capacity of only 258.5 MW was available for scheduling to the UP Discoms.

24. According to the Petitioner, even this restricted capacity of 258.5 MW MTOA was not immediately scheduled as WRLDC demanded confirmation from the Petitioner and UP discoms before commencement of scheduling. By the letter



dated 13.12.2016, the WRLDC had demanded the consent/ views from the Petitioner and UP discoms. The extracts of the letter dated 13.12.2016 of WRLDC is as under:

1. *KSKs present installed capacity is 1200 MW (2 x 600 MW) and ex-bus is 1120 MW.*
2. *Presently, KSK is having 361.5 MW MTOA with AP discoms (347.0+14.5) and LTA of 500 MW with TN totaling to 861.5 MW*
3. *Balance available power is only 258.5 MW and with the MTOA operationalization of 505 MW by Power grid/CTU, WRLDC can only commence scheduling of maximum upto 258.5 MW*

KSK Mahanadhi and UP discoms is requested to kindly give consent/views on the above.

25. However, based on the representations from the Petitioner, WRLDC vide its letter dated 16.12.2016 permitted the scheduling of 258.5 MW capacity. The relevant portion of the said letter dated 16.12.2016 is extracted hereunder:

“..With the grant of further 505 MW of MTOA for UPPCL, the total approved /operationalized LTA & MTOA quantum as on date is 1366.5 MW. However, the present ex-bus capacity of the station is only 1120 MW. Thus, for operationalization of scheduling of power as per the grant of open access, the capacity available falls short of 246.5 MW.

Under the circumstances while honoring the already existing and operationalized PPAs for APEPDCL & TANGEDCO as per clause 6.4.9 & 6.4.14 of the IEGC, the maximum schedule for UPPCL that can be operationalized is only 258.5 MW against 505 MW indicated by CTU appears to be only the appropriate course of action. WRLDC/NRLDC shall be proceeding accordingly in the manner and KSK Mahanadhi & UPPCL is hereby requested to commence the scheduling.”

26. In view of the insistence of WRLDC to limit the operationalization of MTOA to UP discoms to only 258.5 MW (as against 505 MW that was operationalized by the CTU) as aforesaid, the Petitioner proceeded to tie up alternate source of supply for 275 MW to TANGEDCO and intimated the same to WRLDC that only 225 MW would be scheduled to TANGEDCO and requested WRLDC by letter dated 19.12.2016 to permit the operationalization of the full 505 MW to UP discoms. The relevant extract of the said letter dated 19.12.2016 of the Petitioner to WRLDC is as under:



“1. We request you to act in accordance with the IEGC clause 6.4.14 and schedule power as informed by CTU. Needless to mention, we will be abiding by the provisions of the IEGC and PPA and scheduling power accordingly.

2. Accordingly, as explained above, kindly operationalize the 505 MW granted by CTU for supply to UP discoms.”

27. In response, WRLDC vide communication dated 20.12.2016 sought copies of the PPAs with TANGEDCO, AP discoms and UPPCL stating that as per clause 6.4.14 of the IEGC all regional entities shall file all the bilateral agreements with respective RLDCs & RPCs for being considered for scheduling and regional energy accounting. The Petitioner vide its communication dated 26.12.2016 forwarded to WRLDC the consent of TANGEDCO to alternate source of supply and requested WRLDC to schedule 505 MW MTOA without delay. However, WRLDC by its communication dated 28.12.2016 sought the freezing of the quantum of supply to each of the supply corridors and demanded an undertaking from the Petitioner in order to allow the scheduling of 505 MW MTOA. The relevant extract of the communication is as under:

“As per your e-mail dated 26th Dec 2016 enclosing consent letter from TANGEDCO on their approval for supply of power through alternate generating source for 275 MW from 16th Dec 2016 to 31st Jan 2017 and 250 MW from 15th Feb 2017 to 31st March 2017. Accordingly, you are requested to submit an undertaking stating as follows:

- i. That KSK would continue to supply power to TANGEDCO from alternate source depending upon the COD of another 600 MW unit.*
- ii. Clearly mentioning the quantum of power to be scheduled to different entities in line with the consent given by TANGEDCO limiting to ex-bus maximum scheduling of IC-Auxiliary till the COD of another 600 MW.*
- iii. That there is no violation of any agreement made with the distribution licensees i.e TANGEDCO, APSPDCL, APEPDCL & UPPCL or any other agencies.*
- iv. That KSK shall indemnify at all times, defend and save WRLDC, SRLDC, NRLDC and NLDC harmless from any and all damages, losses, claims, demands, suits, recoveries, cost and expenses, court costs, attorney fees and all other obligations by or third parties arising out of or resulting from this scheduled transaction*
- v. That KSK will abide by IEGC and all prevailing regulations of CERC and the directions of RLDC/NLDC arising therefrom*
- vi. That in case of non-availability of alternate source for reasons such as unit/line outages, corridor constraints etc, KSK shall continue to supply only the*



balance quantum to TNAGEDCO as mentioned in TANGEDCO letter dated 15/12/2016.”

28. The Petitioner has submitted that with the threat of claims for damages from the State utilities for non-supply of power after 31 days of operationalization of MTOA by CTU, the Petitioner was forced to provide the undertaking on 13.1.2017 as desired by WRLDC vide above letter dated 28.12.2016. Based on the undertaking, WRLDC vide its communication dated 14.1.2017 intimated the configuration of changes in scheduling limits with various beneficiaries of the Petitioner with effect from 00.00 hrs on 15.1.2017. The same is extracted hereunder:

“WRLDC, NRLDC and SRLDC has configured the required changes in scheduling limits with various beneficiaries of KSK in line with the undertaking wef 0000 hrs of 15/01/2017.”

29. While the above arrangement was permitted by WRLDC till 31.3.2017, the LTA for supply of 1000 MW power to UP discoms was operationalized by CTU vide its communication dated 24.3.2017 and it was stated by CTU that the part-operationalized MTOA for 505 MW stood cancelled.

“Further, with the above operationalization of LTA, the MTOA granted for 1000 MW which was part operationalized for 505 MW vide letter at Sl No (4) against the same PPAs that of LTA for supply of power from generation project of KSK Mahanadi Power Company Ltd in Chhattisgarh to UP discoms as per intimation C/CTU-Plg/M/2015/27 dated 10.12.2015 shall stand cancelled with immediate effect upon operationalization of LTA. Further the MTOA agreement signed, if any, shall stand annulled.”

30. However, WRLDC vide its communication dated 27.3.2017 insisted on a revised undertaking from the Petitioner by stating that the earlier undertaking (provided by letter dated 13.1.2017 by the Petitioner) was valid only till March 2017. The Petitioner, without prejudice to its rights, submitted the revised undertaking vide its letter dated 7.4.2017. Further, the CTU vide its letter dated



19.4.2017 advised WRLDC and NRLDC to operationalize the 1000 MW LTA granted to the Petitioner as under:

“.....We also attach herewith the letter no.....dated 24.3.2017 regarding operationalization of the LTA for transfer of 1000 MW power from its generation project to beneficiaries in NR (UP discom)

The LTA may be operationalized in line with ED (NLDC) letter no. NLDC/PGCIL/1252 dated 13.1.2016.”

31. However, WRLDC did not grant permission for scheduling the LTA quantum, but verbally insisted on submission of written consent from UP discoms, which was given on 15.5.2017. Thereafter, WRLDC permitted the scheduling of 770 MW LTA from 17.5.2017. Subsequently, based on a revised undertaking from the Petitioner on 5.6.2017 and from UP discoms on 6.6.2017, WRLDC permitted the scheduling of 1000 MW LTA to UP discoms from 7.6.2017.

32. The Petitioner is mainly aggrieved by the restriction imposed by WRLDC in scheduling of power under MTOA to 258.5 MW and LTA to 770 MW for supply to UP discoms (as against 505 MW MTOA and 1000 MW LTA operationalized by CTU), for the above said period. It has submitted that the quantum of capacity to be scheduled by the Petitioner in favour of its Procurers is a bilateral matter under the PPA, with consequences provided for in the PPA. The Petitioner has further submitted that WRLDCs insistence on consent of the Procurers prior to the commencement of scheduling apart from time taken in studying and interpreting the PPAs, has severely prejudiced the Petitioner and has restricted its ability to utilize the MTOA and LTA quantum which was directed to be operationalized by the CTU. The Petitioner has added that once MTOA or LTA has been granted to be operationalized by the CTU, the role of RLDC is only to schedule the power as per indications by the generator/ procurer.



33. Per contra, WRLDC has submitted that with the grant of 505 MW of MTOA to UP discoms from 13.12.2016, the total approved/ operationalized LTA+MTOA quantum for the Petitioner became 1366.5 MW and since the ex-bus capacity of the station is 1120 MW, the capacity fell short by 246.5 MW. It has contended that the 6th amendment to the 2009 Connectivity Regulations empowers the RLDCs to seek explanation from entities for under-utilization of LTA and MTOA and further declaration on the likely period of under-utilization. Referring to clauses 6.4.9 and 6.5.19A of the Grid Code, WRLDC has submitted that in case where the ex-bus capacity itself is not adequate to honour all three contracts, it is difficult to arrive at any mutually agreed schedule. WRLDC has also referred to Clause 6.4.14 of the Grid Code and has submitted that when any deviation from the contract is proposed due to non-availability of commensurate generation capacity at Sellers end, the consent of buyer is necessary before the commencement of scheduling under LTA/ MTOA. Accordingly, WRLDC has submitted that it has acted to the best of its knowledge and understanding of the regulations to ensure efficient and economic operation of the power system keeping in view the larger interests of the grid.

Analysis and Decision

34. The submissions have been considered. Section 28 of the 2003 Act deals with the functions and responsibilities of RLDCs as extracted under:

“Section 28. (Functions of Regional Load Despatch Centre): -

(1) The Regional Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in the concerned region.

(2) The Regional Load Despatch Centre shall comply with such principles, guidelines and methodologies in respect of the wheeling and optimum scheduling and despatch of electricity as the Central Commission may specify in the Grid Code.



(3) The Regional Load Despatch Centre shall -

(a) be responsible for optimum scheduling and despatch of electricity within the region, in accordance with the contracts entered into with the licensees or the generating companies operating in the region;

(b) monitor grid operations;

(c) keep accounts of quantity of electricity transmitted through the regional grid; (d) exercise supervision and control over the inter-State transmission system; and (e) be responsible for carrying out real time operations for grid control and despatch of electricity within the region through secure and economic operation of the regional grid in accordance with the Grid Standards and the Grid Code.

(4) The Regional Load Despatch Centre may levy and collect such fee and charges from the generating companies or licensees engaged in inter-State transmission of electricity as may be specified by the Central Commission.”

35. As per the above provisions, the RLDCs are apex bodies to ensure integrated operation of the power system in the concerned region. RLDCs are required to comply with the principles, guidelines and methodologies in respect of wheeling and optimum scheduling and dispatch of electricity as per the Grid Code specified by this Commission. RLDCs have been vested with the responsibilities for optimum scheduling and dispatch of electricity within the region in accordance with the contract entered into with the licensees or generating companies operating in the region. RLDCs have also been given the responsibility to monitor grid operation; to keep account of the quantity of electricity transmitted through the regional grid; to exercise supervision and control over the inter-State transmission system; and to carry out real time operation for grid control and dispatch of electricity within the region through secure and economic operation of the regional grid in accordance with Grid Standards and Grid Code. In terms of Regulation 2.3.1(a) of the Grid Code, the RLDC is expected, amongst others, to be responsible for optimum scheduling and dispatch of electricity within the region in accordance with the contracts entered into with the licensees of the generating companies operating in the region.



36. Regulation 6.5 of the Grid Code deals with the scheduling and dispatch procedure for long term access, medium term open access and short term open access. Some of the relevant provisions of Regulation 6.5 of Grid Code so far as they are applicable to coal based ISGS are extracted as under:

“1. All inter-State generating stations (ISGS) shall be duly listed on the respective RLDC and SLDC web-sites. The station capacities and allocated/contracted Shares of different beneficiaries shall also be listed out.

2. Each State shall be entitled to a MW despatch up to (foreseen ex-power plant MW capability for the day) x (State’s Share in the station’s capacity) for all such stations. In case of hydro-electric stations, there would also be a limit on daily MWh dispatch equal to (MWh generation capacity for the day) X (State’s Share in the stations capacity).

3. By 8 AM every day, the ISGS shall advise the concerned RLDC, the station-wise ex-power plant MW and MWh capabilities foreseen for the next day, i.e., from 0000 hrs to 2400 hrs of the following day.

4. The above information of the foreseen capabilities of the ISGS and the corresponding MW and MWh entitlements of each State, shall be compiled by the RLDC every day for the next day, and advised to all beneficiaries by 10 AM. The SLDCs shall review it vis-à-vis their foreseen load pattern and their own generating capability including bilateral exchanges, if any, and advise the RLDC by 3 PM their drawal schedule for each of the ISGS in which they have Shares, long-term and medium-term bilateral interchanges, approved short-term bilateral interchanges.

7. By 6 PM each day, the RLDC shall convey:

(i) The ex-power plant “despatch schedule” to each of the ISGS, in MW for different time block, for the next day. The summation of the ex-power plant drawal schedules advised by all beneficiaries shall constitute the ex-power plant station-wise dispatch schedule.

(ii) The “net drawal schedule” to each regional entity, in MW for different time block, for the next day. The summation of the station-wise ex-power plant drawal schedules from all ISGS and drawal from /injection to regional grid consequent to other long term access, medium term and short-term open access transactions, after deducting the transmission losses (estimated), shall constitute the regional entity-wise drawal schedule.

8. The SLDCs/ISGS shall inform any modifications/changes to be made in drawal schedule/foreseen capabilities, if any, to RLDC by 10 PM or preferably earlier.

18. Revision of declared capability by the ISGS(s) having two part tariff with capacity charge and energy charge and requisition by beneficiary (ies) for the remaining period of the day shall also be permitted with advance notice. Revised schedules/declared capability in such cases shall become effective from the 4th time block, counting the time block in which the request for revision has been received in the RLDC to be the first one.



18(a) Notwithstanding anything contained in Regulation 6.5.18, in case of forced outages of a unit, for those stations who have a two part tariff based on capacity charge and energy charge for long term and medium term contracts, the RLDC shall revise the schedule on the basis of revised declared capability. The revised declared capability and the revised schedules shall become effective from the fourth time block, counting the time block in which the revision is advised by the ISGS to be the first one

20. If, at any point of time, the RLDC observes that there is need for revision of the schedules in the interest of better system operation, it may do so on its own, and in such cases, the revised schedules shall become effective from the 4th time block, counting the time block in which the revised schedule is issued by the RLDC to be the first one.”

37. As per the above provisions, the RLDCs shall decide and convey the ex-power plant “despatch schedule” to each of the ISGS and the “net drawal schedule” to each regional entity, in MW for different time blocks, for the next day. Subject to modifications that may be required in the dispatch schedule of ISGS and net drawal schedule of regional entities in terms of Regulations 6.5.8, 6.5.18, 6.5.18a and 6.5.20 of the Grid Code, the scheduling and drawal of electricity from the ISGS shall be carried out on day ahead basis.

38. WRLDC has relied upon Clause 6.4.14 of the Grid Code and has submitted that when deviation from contract is proposed due to non-availability of commensurate generation capacity at the Sellers end, the consent of buyer is necessary before commencement of scheduling under LTA/ MTOA, so as to avoid future disputes. The Petitioner has argued that the insistence of prior consent of Procurers before commencement of scheduling is beyond the terms of the applicable regulations.

Clause 6.4.14 of the Grid Code provides for the following:

“Any bilateral agreements between buyer and seller for scheduled interchanges on long term, medium term basis shall also specify the interchange schedule, which shall be duly filed with CTU and CTU shall inform RLDC and SLDC, as the case may be about these agreements in accordance with Central Electricity Regulatory Commission (Grant of Connectivity, Long -Term Access and Medium Term Open Access in inter-State Transmission and related matters) Regulations, 2009.”



39. Some of the provisions of the 2009 Connectivity Regulations and the Detailed Procedure under the said regulations for grant of MTOA and LTA are extracted under:

“The last proviso to Regulation 10(1) of the Connectivity Regulations provides as under:

10. Relative priority

(1) Applications for long term open access or medium term open access shall be processed on first come first served basis separately for each of the aforesaid type of access:

xxxx

Provided also that if an intra-State entity is applying for long-term access or medium-term open access, concurrence of the State Load Despatch Centre shall be obtained in advance and submitted along with the application to the nodal agency. The concurrence of the State Load Despatch Centre shall be in such form as may be provided in the detailed procedure.”

Regulation 21 provides for the grant of Medium Term open Access as under:

(1) On being satisfied that the requirements specified under clause 2 of Regulation 9 are met, the nodal agency shall grant medium term open access for the period stated in the application

Xxx

(2) Immediately after the grant of medium term open access, the nodal agency shall inform RLDCs and SLDC concerned so that they can consider the same while processing request for grant of STOA, received under CERC (open access in inter-State Transmission) Regulations, 2008 as amended from time to time

The Detailed Procedure under the Connectivity Regulations provides the following procedure for grant of MTOA:

“9.3. The nodal agency for grant of MTOA shall be the CTU i.e. Power Grid Corporation of India Ltd.

xxx.

9.4. MTOA is the right to use the ISTS for any period exceeding three months but not exceeding three years and shall be provided on the basis of availability of transmission capacity in the existing transmission system or transmission system under execution and likely to be available from the intended date of MTOA. In case of delay in commissioning of transmission system under execution considered for such grant, which was beyond the control of the CTU, then date of commencement of MTOA shall be extended upto the date of commercial operation of the above system.

Xxx



11.2. The application for MTOA shall be made as per the enclosed application format (FORMAT-MTOA-2) and shall include details like quantum of power to be injected at the suppliers point, details of injection & drawl points, time period from and upto which access is required, the source of power, clearance from respective SLDCs for intra state entities etc. and other details as sought in the application format.”

12. Concurrence from SLDC / SLDCS

12.1. If a State Utility or an intra-state entity is applying for MTOA, concurrence of the concerned State Load Dispatch Centres, both from injection and drawl point SLDCs is to be submitted along with the application in the enclosed format (FORMATMTOA-3).

12.2. Where necessary infrastructure required for energy metering and time-block-wise accounting already exists and required transmission capacity in the State network is available, and the applicant has a valid PPA for buying or selling power for the same quantum for which MTOA is sought, then the SLDC shall convey its concurrence to the applicant in writing within 10 (ten) working days of receipt of the application.

12.3. In case SLDC decides not to give concurrence, the same shall be communicated to the applicant in writing, giving the reason for refusal within 10 (ten) working days of receipt of the application.

.....

15. Application

15.1. Documents to be submitted along with the application:

→ Duly filled in Application in specified format. Incomplete application shall be rejected.

→ Proof of payment of Application fee

→ Concurrence from SLDC / SLDCs as applicable.

→ PPA or Sale-purchase agreement of power

→ In case of generating station or consumer not already connected to grid, documentary evidence for completion of the connectivity showing that the same shall be completed before intending date of MTOA

16. Grant of MTOA

16.1. The CTU shall notify the following on 31st day of March of each year:

Total Transfer Capability (TTC) for 4 (four) years i.e. on 31st March, 2010, TTC shall be declared for period 1st April, 2011 to 31st Mar 2015. This may be revised by CTU due to change in anticipated network topology or change of anticipated generation or load at any of the nodes, giving reasons for such change.

Transmission Reliability Margin considered along with basis.

Available Transfer Capability (ATC) for MTOA will be worked out after allowing the already approved applications for Long-term access, Medium Term Open Access and Transmission reliability margin. The grant of MTOA shall be subject to ATC

16.1 f. Immediately after grant of medium-term open access, the nodal agency shall inform the RLDCs and SLDCs concerned so that they can consider the same while processing requests for short- term open access received under Central



17. SCHEDULING OF MEDIUM TERM OPEN ACCESS TRANSACTION

The scheduling jurisdiction and procedure, curtailment and revision of schedule of MTOA transactions, metering, energy accounting and accounting of (Unscheduled Interchange) UI charges shall be as per the Regulations and the Indian Electricity Grid Code, as amended from time to time. While scheduling on day-ahead basis, long-term access customers would have the highest priority, followed by medium term customers and then followed by short-term customers.

The Detailed Procedure under the 2009 Connectivity Regulations provides the following procedure for grant of LTA is as follows:

“23.3. In case an intra-State entity is applying for LTA, concurrence of concerned State Transmission Utilities of states having injection and drawl points shall be obtained in advance in the prescribed format [FORMAT-LTA-3] and attached with the application. “

a. Format LTA-3 to be issued by SLDC provides as follows:

Declaration

a) xxx

b) We have the required infrastructure for energy metering and time block wise accounting in place. The State/ Distribution licensee network has the required transfer capability for transfer of power as per specified ceiling.

“25.2

xxxx

(iii) The applicant/concerned licensee shall inform, in writing, at least ninety days ahead of scheduled date of commissioning and commercial operationalization of their generation project/system strengthening scheme, as applicable to POWERGRID with copy to RLDC/NLDC and other concerned/affected persons.

(iv) Based on information received above, the nodal agency shall confirm the applicant and concerned licensees at least sixty days ahead of scheduled date of commencement of long-term transaction and direct the applicant to:

a) Establish adequate payment security within fifteen days; and

b) Submit a request for scheduling of transaction to RLDC/NLDC within fifteen days.”

40. It is, therefore, evident that in terms of Clause 6.4.14 of the Grid Code, PPAs are required to be filed with the CTU and the CTU after due examination of the issues would grant MTOA/ LTA, as the case may be, in accordance with the applicable regulations of the Commission. The 2009 Connectivity Regulations and Detailed Procedure notified thereunder only contain provisions for obtaining a ‘no-objection’ of SLDC at the time of application of LTA /MTOA, but does not in any



manner, support the contention of WRLDC that consent/ concurrence of the Procurer or SLDC is required to be obtained at the time of commencement of LTA/ MTOA. In the present case, the CTU after being satisfied of the PPAs filed by the Petitioner had granted MTOA for 505 MW and LTA for 1000 MW to the Petitioner for supply of power to the UP discoms. CTU vide its communication had also informed the RLDC/ SLDC as regards the operationalization of MTOA and LTA for the said quantum for supply to the UP discoms. Hence, RLDC as a system operator, instead of limiting the scheduling to 258.5 MW MTOA and 770 MW LTA, was required to schedule the power as per the access by CTU and PPA.

41. It is pertinent to mention that Article 4 of the PPA executed by the Petitioner provides that the Seller shall give the Procurer(s) and the concerned RLDC at least sixty (60) days advance preliminary written notice and at least thirty (30) days advance final written notice i.e. seller will intimate the buyer. There exists no provision for obtaining the Procurers consent with respect to the supply from scheduled source and scheduled date. It, however, provides for obtaining the consent of the Procurer where the scheduled date of delivery needs to be revised. As per Article 4.4 of the PPA, the Seller undertakes to sell to the Procurers and Procurers undertake to pay the tariff to the Seller for all the available capacity up to the contracted capacity and the scheduled energy of the Project, subject to the terms of the Agreement. Further, the Seller shall sell all available capacity up to the contracted capacity to each procurer in proportion to each procurer's then existing allocated contracted capacity pursuant to dispatch instructions. It is pertinent to mention that dispatch instructions are issued by RLDC through dispatch schedules to ISGS (in this case the Petitioner) and drawl schedule to the regional entities (in this case the Procurers). Therefore, in normal circumstances,



RLDCs shall schedule the power from the generating Project of the Petitioner to the Procurer States in accordance with the provisions of the Grid Code. Further, Article 4.8 of the PPA provides as under:

“4.8 Liquidated Damages for delay in commencement of supply of power to Procurer(s)

4.8.1 If the Seller is unable to commence supply of power to the Procurer(s) by the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be, other than for the reasons specified in Article 4.7.1, the Seller shall pay to each Procurer, liquidated damages as per this Article 4.8.1, for the delay in such commencement of supply of power and making the Contracted Capacity available for dispatch by the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be.

Provided that the Seller shall have the option to supply power from any alternative generation source from the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be, for a continuous period not exceeding twelve (12) months at the same Tariff as per the terms of this Agreement. Provided further that the cumulative Availability from such alternative generation source in the twelve (12) months period shall not be less than the Normative Availability. If the Seller fails to commence such supply of power or fails to achieve the required Availability as mentioned above in this para, it shall pay to the Procurer(s) liquidated damages as per this Article 4.8.1.

42. Thus, in case of failure to commence supply or to achieve the required availability, the Seller would be liable to pay liquidated damages to the Procurers.

43. It is, therefore, clear from the above that the provisions of the 2009 Connectivity Regulations, the Detailed Procedure thereunder and the provisions of the PPA do not support the contention of WRLDC that the consent of buyer is necessary before the commencement of scheduling under LTA/ MTOA. As the scheduling is on day-ahead basis and based on the requirements of each of the Procurers, it is open to the generator and Procurers to declare the ‘availability’ and ‘schedule’ as per prevailing circumstances, subject to the consequences provided in the PPA.



44. It is observed that WRLDC has referred to the Commission's order dated 8.8.2014 in Petition No. 85/MP/2013 with regard to interpretation of clause 6.4.14 of the Grid Code and has stated that all regional entities are required to submit such contracts with RLDCs and RPCs for facilitating 'scheduling and energy accounting'. The Commission's order dated 8.8.2014 is extracted hereunder:

"25. Since as per the provisions of the Section 28 (3) of the Act and Regulation 6.4.14 of the Grid Code, RLDC is required to monitor the scheduling, despatch and energy accounting in accordance with the contract, in our view WRLDC as the System Operator has the power to look into the provisions of the PPA and ask the parties for compliance in relation to the matters relating to grid operation and scheduling and dispatch of power."

45. Thus, the Commission in the above said order had observed that all agreements shall be filed before the RLDC/ RPC Secretariat for being considered in scheduling and energy accounting. It was also observed in the said order that WRLDC has the power to look into provisions of the PPA and ask for parties for compliance in matters relating to grid operation and scheduling and dispatch of power. These observations of the Commission cannot, in our view, entitle WRLDC to seek additional requirement such as NOC from the Procurers.

46. It is noticed that the MTOA capacity of 505 MW for which access was granted by CTU on 13.12.2016 was not considered for scheduling by WRLDC. However, the said capacity could be used for scheduling only by curtailing the scheduling under MTOA for TANGEDCO. According to WRLDC, unless the generation capacity is available with the Petitioner to supply power to the UP discoms (after deducting the full capacity from the existing PPAs), the transmission capacity for supply to UP discoms cannot be utilized for scheduling. The WRLDC has referred to Clause 6.4.9 and 6.5.19A of the Grid Code which is extracted hereunder:



Clause 6.4.9

“The ISGS, other generating stations and sellers shall be responsible for power generation/power injection generally according to daily schedules advised to them by RLDC/SLDC on the basis of contracts/requisitions received from SLDC/buyers/Power Exchanges.”

Clause 6.5.19A

“In case of revision of schedule of a generating unit, the schedules of all transactions under the long-term access, medium term open access and short term open access (except collective transactions through power exchange) shall be reduced on pro-rata basis”

47. Per contra, the Petitioner has submitted that RLDC has no authority to seek scheduling of electricity only to a limited capacity or to direct that only if the capacity of 100% generation is available for, scheduling of other beneficiaries will be permitted. In our view, this stand of WRLDC is not in consonance with the provisions of the Grid Code and the 2009 Connectivity Regulations. Moreover, the aforesaid clauses of the Grid Code are not applicable to the present case.

48. In the present case, CTU has granted open access to the Petitioner and once the capacity has been made available and kept reserved for the Petitioner, for which charges are payable, the Petitioner should have the freedom/ flexibility to schedule the power to the distribution licensees as per their requirements from time to time, albeit in terms of the provisions of the Grid Code and the prevailing regulations of the Commission. In our considered view, Clause 6.5 of the Grid Code read with Regulation 17 of the 2009 Connectivity Regulations and the Detailed Procedure thereunder, provides WRLDC to restrict the export schedules only for reasons of transmission constraints and not otherwise. In any event the total schedule from the generating station of the Petitioner for all its Procurers cannot exceed the total available capacity. As stated earlier, WRLDC seeking consent of



the Procurers for scheduling of MTOA/ LTA is not in consonance with the prevailing regulations, Grid Code, Connectivity Regulations and PPA.

49. One more submission of WRLDC is that the 6th amendment to the 2009 Connectivity Regulations empowers the RLDCs to seek explanation from entities for underutilisation of LTA and MTOA granted and further declaration on the likely period of under-utilisation. Regulation 16B of 2009 Connectivity Regulations which provides as follows:

“16B. Underutilisation of Long term Access and Medium term Open Access: In case it is observed by RLDCs that the LTA or MTOA customer’s request for scheduling is consistently (for more than 5 days) lower than the quantum of LTA or MTOA granted by the Nodal Agency (i.e.; CTU), RLDC may issue a notice to such LTA or MTOA customer asking the reasons for such under-utilization. The LTA or MTOA customer shall furnish the reasons for such under-utilization and will provide such details like the reduced requirement, likely period, etc. by the following day. The unutilized transfer capability will then be released for scheduling of Medium term and Short-term open access transaction depending upon the period of such underutilization with a condition that such transaction shall be curtailed in the event original LTA or MTOA customer seeks to utilize its capacity: Provided that where the capacity tied up under LTA is released under MTOA, the concerned generator shall not be liable to pay the LTA charges for such reallocated capacity.”

Accordingly, WRLDC has submitted that it has acted in line with this regulation, which in turn has helped the Petitioner in arranging alternate supply in advance to fulfil the obligations under the PPAs.

50. Per contra, the Petitioner has stated that in terms of this regulation, WRLDC should have commenced scheduling as per MTOA grant and must have observed scheduling and despatch of power for five days and only in case the Petitioner was not utilising the full capacity operationalized by CTU, the WRLDC should have sought clarification from the Petitioner for under-utilisation of MTOA.



51. In our view, this submission of WRLDC is not acceptable and is clearly an afterthought. The aforesaid regulation 16B has been inserted by the 6th amendment to the 2009 Connectivity Regulations vide Notification dated 17th February 2017. We note that the MTOA for the Petitioner for 505 MW was operationalized by CTU in December 2016 and WRLDC had asked for various documents even before the said amendment was notified. WRLDC cannot now be heard to say that it was acting as per the provisions of the Regulations, which admittedly was not in existence during the time. Even otherwise, we note that the Petitioner has entered into PPAs with the Procurers and having been granted access by CTU through MTOA and LTA for supply of power to Procurers, the Petitioner had sought the scheduling of the same from WRLDC. In our view, the consent sought by WRLDC from the Petitioner/ Procurers for scheduling under MTOA/ LTA was not necessary. Therefore, we find no reason to entertain such submissions of WRLDC.

52. From the discussions above, it emerges that the Petitioner was deprived of scheduling the full MTOA quantum of 505 MW for supply to UP discoms for the period from 16.12.2016 till 14.1.2017. Only after reduction of scheduling under MTOA of TANGEDCO and after receipt of the consent/ undertaking, WRLDC had scheduled power upto the full MTOA quantity of 505 MW to UP discoms from 15.1.2017 and continued till 31.3.2017. Although the CTU vide communication dated 19.4.2017 permitted the operationalization of the LTA capacity of 1000 MW, WRLDC did not allow scheduling for want of Procurer's consent which was not required to the Petitioner during the period from 20.4.2017 to 30.4.2017. WRLDC had allowed scheduling of 505 MW against 1000 MW LTA to the UP discoms during



the period from 1.5.2017 to 16.5.2017. Thereafter, WRLDC scheduled only 770 MW (instead of LTA of 1000 MW) during the period from 17.5.2017 till 6.6.2017 as it sought consent/ undertaking from the Petitioner and the Procurers. After receipt of undertaking and consent as aforesaid, WRLDC had scheduled the entire 1000 MW LTA capacity of the Petitioner for supply to UP discoms, with effect from 7.6.2017 to 30.6.2017 (as claimed in the Petition). Thus, the scheduling of MTOA and LTA capacity by WRLDC to UP discoms from the Project of the Petitioner is summarized as under:

Period	Capacity considered for scheduling (in MW)
16.12.2016 till 31.12.2016	258.5
1.1.2017 till 14.1.2017	246.5
15.1.2017 till 19.4.2017	505
20.4.2017 till 30.4.2017	-nil-
1.5.2017 till 16.5.2017	505
17.5.2017 till 31.5.2017	770
1.6.2017 till 6.6.2017	770
7.6.2017 till 30.6.2017 (as per petition)	1000

53. According to the Petitioner, the action of WRLDC in restricting the schedules, apart from depriving the Petitioner of its right to utilize the MTOA/ LTA operationalized by CTU, has adversely affected the Petitioner, since transmission charges were levied on the entire capacity (505 MW MTOA and 1000 MW LTA) which were not availed by it during the aforesaid period. Accordingly, the Petitioner has prayed for a declaration that the action of WRLDC is erroneous and contrary to the applicable regulations.

54. We observe that WRLDC after receipt of consent/ undertaking from the Procurers had immediately scheduled the full capacity of MTOA and LTA for supply to the UP discoms. According to us, the action of WRLDC in limiting the schedule and seeking consent/ undertaking are based on its understanding and knowledge of



the provisions of the Act, Grid Code, the 2009 Connectivity Regulations and PPA and has acted as per its best judgment in the circumstances. We, therefore, refrain from issuing any directions against WRLDC. However, in order to ensure a smooth operation of the system in such cases, where the LTA/ MTOA capacity under different PPAs taken together is more than the installed capacity, RLDCs shall adopt the following procedure;

(a) The concerned generating station shall declare the allocation under different PPAs upto the capacity limited to the installed generation capacity on day ahead basis;

(b) RLDCs shall carry out scheduling accordingly based on the requisition of the Procurers/ beneficiaries.

Issue No.2: Whether the Petitioner is entitled to refund of the POC charges levied based on the operationalization of MTOA and LTA to UP discoms for the period from December 2016 till June 2017?

55. The Petitioner has submitted that even though the entire MTOA has not been allowed for scheduling by WRLDC for the period from 16.12.2016 to 31.12.2016, the MTOA charges would be payable on the total capacity as decided by PGCIL. The Petitioner by letter dated 10.1.2017 informed PGCIL that since MTOA was not even operationalized to the extent of 505 MW, the question of raising the invoice for POC charges for 505 MW does not arise. The Petitioner has submitted that despite its objection, PGCIL chose to levy the POC charges for the month of January 2017 against which the Petitioner vide its communication dated 7.2.2017 requested PGCIL to revise the POC charges as per quantum allowed for scheduling i.e. 258.5 MW for the period from 1st January, 2017 till 14th January, 2017 and 505 MW for the period from 15th January, 2017 till 31st January, 2017. The Petitioner has stated that due to bills raised by PGCIL vide letter dated 9.2.2017, the



payments against POC bills of December 2016 and January 2017 were remitted by Petitioner without prejudice to its rights. The Petitioner has further submitted that PGCIL issued bill dated 5.5.2017 towards POC charges for 1000 MW for the month of April, 2017 for Rs.12,07,89,187/- for the period from 20.4.2017 till 30.4.2017 (11 days) and also raised separate bill for Rs.9,03,73,214/- for the period from 1.4.2017 to 19.4.2017 towards MTOA. It has further submitted that for the month of May 2017, though the capacities utilised were 505 MW till 16.5.2017 and 770 MW till 31.5.2017, PGCIL had claimed POC charges for full 1000 MW LTA. The Petitioner has submitted that in view of the violation of regulations by WRLDC, there was no capacity utilised for scheduling by the Petitioner during the period from 20.4.2017 till 16.5.2017 despite submission of requisite undertaking, as demanded by WRLDC for scheduling power to UP discoms. Accordingly, the Petitioner has prayed for a direction on PGCIL/ CTU to refund the excess charges levied based on MTOA operationalization of 505 MW in aggregate (as against the actual operationalization of 258.5 MW MTOA) for the period during December 2016 & January 2017 as well as LTA operationalization of 1000 MW (as against the actual operationalization of 770 MW LTA) for the period during April 2017 to June 2017 on account of restriction imposed by WRLDC in subsequent bills.

56. The Respondent No.1, PGCIL vide its reply affidavit dated 27.10.2017 has submitted that in terms of Regulation 8(5) of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses), 2010 (referred to as “the Sharing Regulations”), the Petitioner is obligated for payment of applicable transmission charges irrespective of non-materialisation of approved



injection/ withdrawal for any reason whatsoever. It has further submitted that the capacity of 505 MW in the transmission corridor had been allocated & blocked for the petitioner's MTOA which was operationalized by CTU. CTU has stated that the Petitioner cannot claim any relief against CTU for its failure to get the LTA of 1000 MW scheduled from the date on which its operationalization has been permitted by CTU. Accordingly, CTU has submitted that the bills for payment of transmission charges were correctly raised by CTU in accordance with the applicable regulations.

57. The Petitioner vide its rejoinder affidavit dated 12.2.2018 has submitted the following:

(a) While PGCIL is seeking charges for the capacity on the ground that the same is operationalized and ready to use by the petitioner, the WRLDC is not permitting the petitioner to use the transmission capacity said to have been operationalized by PGCIL. Then there is no question of the petitioner being asked to pay for the transmission capacity which was not utilised.

(c) The basic premise of WRLDC that unless there is generation capacity available, the transmission open access cannot be operationalized goes contrary to the basic contention of PGCIL that once the transmission capacity is available, the generation capacity not being there is no defence for operationalization of transmission capacity and consequently payment of charges.

(d) The action/ inaction of Respondents 1 and 2 have resulted in a situation wherein the Petitioner who wanted to use the transmission capacity for supply to the Discoms of Uttar Pradesh was denied by WRLDC to supply electricity, but on the contrary PGCIL has illegally levied and collected transmission charges for the same capacity which the petitioner was prevented from using by WRLDC.



(e) The Open access charges benefit is not available to the Petitioner since the Procurers have not reimbursed the same to the Petitioner. Resultantly, the Petitioner is carrying the financial burden without any reimbursement from discoms of the said charges.

Analysis and Decision

58. The submissions have been considered. While the Petitioner has argued that it is not liable to pay for the transmission capacity which WRLDC did not permitted to operationalize, PGCIL has contended that the Petitioner is obligated to pay the transmission charges in terms of Regulation 8(5) of the Sharing Regulations. In our view, this Regulation does not support the contentions of PGCIL. Regulation 8(5) of the Sharing Regulations, as amended on 1.4.2015 provides as under:

“Where the approved withdrawal or approved injection in case of a DIC is not materialising either partly or fully for any reason whatsoever, the concerned DIC shall be obliged to pay the transmission charges allocated under these regulations”

59. The Statement of Reasons in support of said Regulation is extracted as under:

“32.13 We have considered the submissions.

32.14 In regard to the suggestions of APP, APL and LKPL, we are of the view that transmission asset having been created for the generator, in the event of delay in commissioning of generator, transmission charges need to be paid by the generator. Further, generating company and transmission licensee should periodically coordinate progress of construction work so that the transmission line gets commissioned matching with the commissioning of generation.

32.15 We agree with the submission of CTU for insertion of the words 'before commencement of LTA' in the second proviso.

32.16 In regard to the suggestions of DVC, we are of the view that the provisos are for the transmission system considered for LTA and if there is delay in commissioning of generator, the generator has to share transmission charges corresponding to its LTA granted in the ISTS.

32.17 In regard to the suggestions of MBPPL and Shri Ravinder, we are already seized of this issue and have included this solution in the Staff Paper on Transmission Planning Connectivity, Long/Medium Term Open Access and Other Related Issues (September, 2014). However, these shall be applied for deep connection. The Commission will take a view based on the comments received



from the stakeholders on the staff paper and this suggestion will be considered there.

32.18 In regard to suggestions of AD Hydro, we are of the view that after the scheduled commencement date of LTA, the generator is liable to pay charges as the capacity has been booked for it.

32.19 In regard to suggestions of NTPC, we are of the view that the generator and transmission licensee need to coordinate to ensure matching of commissioning of generation and evacuation system. They should enter into IA and may accordingly take care of matching the schedule of commissioning. Further, we are of the view that transmission system is planned considering the future requirement of generation and load. It is necessary for both generation and transmission to come up simultaneously by phasing the implementation of transmission system as far as possible to match the commissioning schedules of generation project with the transmission systems. The burden due to delay cannot be passed on to existing users. There should be an IA between the generator and the transmission licensee. Beyond the period covered in IA, the generator is liable to pay transmission charges. We would consider the suggestion regarding compensation to generator in the event of its power getting bottled up due to delay in commissioning of transmission system after considering the views of the stakeholders when we take up amendments in the Regulations based on feedback of all stakeholders on the aforementioned staff paper on Connectivity, LTA, etc. issued in September, 2014.

32.20 We have also noted that the substantial part of the system required for LTA gets commissioned but the LTA does not get operationalized on the ground that the full system identified for grant of LTA has not been commissioned. It is possible that substantial changes happen in the load-generation balance and commissioning of some of the transmission lines gets affected. Hence, CTU should inform generator, the quantum of power that can be evacuated on the scheduled date of commencement of LTA. If the system is ready to evacuate full LTA quantum, the generator shall have to pay the transmission charges corresponding to the full quantum w.e.f. commencement date of LTA. However, when some of the required transmission system considered for full LTA is not available by the scheduled date and full LTA cannot be operationalized, part operationalization of LTA shall be done after the scheduled date of operationalization. In case of generating station with multiple units, LTA shall be operationalized if the transmission systems are available for evacuation of entire contracted power from a particular unit.

32.21 In regard to submission of TPL, we agree to the first suggestion that the transmission charges shall be payable for the LTA quantum and not on the installed capacity. Further, DSM is for treatment of deviation in generation and not for sharing of charges of ISTS. The present regulation deals with payment of transmission charges during start up.

60. It is evident from the above that the Commission while framing the said regulation had only envisaged a situation wherein the generator, in case of delay in the commissioning of the generating station for any reason, becomes liable to



pay transmission charges, since the transmission asset has been created for the generator.

61. On the contrary, in the instant case, it is the generator, who wanted to utilise the transmission capacity, but was prevented from using the same by the System operator (RLDCs). The CTU had operationalized the MTOA capacity of 505 MW and LTA capacity of 1000 MW and the Petitioner was ready to utilise the said capacity for supply to UP discoms. However, WRLDC had restricted the scheduling of MTOA capacity and LTA capacity during December 2016 to June 2017 for various reasons. Thus, Regulation 8(5) of the Sharing Regulations does not become applicable, as the non-operationalization of transmission capacity was solely due to restriction imposed by WRLDC. Any levy of transmission charges on the Petitioner for such capacity not permitted to be utilized, is not appropriate.

62. We have in this order held that the limiting of schedules by WRLDC and seeking consent/ undertaking of the Procurers for operationalization of the open access granted by CTU is contrary to the provisions of the Grid Code, the 2009 Connectivity Regulations and the Detailed Procedure thereunder. Based on the above discussions, we hold that the Petitioner is liable to pay transmission charges as per POC mechanism corresponding only to the capacity allowed by WRLDC for supply of power to UP discoms for the said period. The Petitioner shall not be required to pay POC charges for the capacity for which it was prevented from using LTA/ MTOA by WRLDC. In other words, for the period when the scheduling under MTOA and LTA was restricted, the liability to pay transmission charges shall also be restricted to the extent such MTOA and LTA capacity was allowed by WRLDC.



63. Though the Petitioner in this Petition has prayed for refund of the excess transmission charges recovered by CTU, we are of the view that the CTU shall make adjustment of the excess transmission charges recovered in terms of our observations above, against the future bills payable by the Petitioner. We direct accordingly.

64. Petition No. 162/MP/2017 is disposed of in terms of the above.

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

Sd/-
(P. K. Pujari)
Chairperson

