

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 265/MP/2018
Along with I.A. No. 80/2018**

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

Date of Order: 20th November, 2019

In the matter of:

Petition under Section 79 (1)(f) read with Section 142 of the Electricity Act, 2003 for issuance of direction for quashing of the letter dated 2.8.2018 issued by Power Grid Corporation of India Limited whereby, PGCIL has wrongful and arbitrarily proceeded to impose transmission charges to the tune of Rs. 6.41 Crore upon the Petitioner towards Long Term Access capacity 8.4 MW and also, through a subsequent letter dated 14.8.2018 threatened curtailment of Short Term Open Access with effect from 23.8.2018, which is in direct contravention of the final Order dated 31.5.2018 passed by the Commission in Petition No. 190/MP/2016.

And

In the matter:

Greenko Budhil Hydro Power Private Limited
Plot No. 1367,
Road No. 45, Jubilee Hills,
Hyderabad- 500033

.....**PETITIONER**

Versus

Power Grid Corporation of India Limited
Saudamini, Plot No-2,
Sector-29, IFFCO Chowk, Gurgaon
Haryana - 122001

....**RESPONDENT**

ORDER

The Petitioner, Greenko Budhil Hydro Power Private Limited (GBHPPL) has filed the present Petition under sub clause (f) of clause (1) of Section 79 read with Section 142 of the Electricity Act, 2003 (hereinafter referred to as the Act) seeking quashing of letters dated 2.8.2018 and 14.8.2018 issued by the Respondent i.e. Power Grid



Corporation of India Limited (hereinafter referred to as “PGCIL”), wherein PGCIL has asked the Petitioner to pay ₹6.41 crore towards transmission charges for Long Term Access (LTA) capacity of 8.4 MW, in terms of Bulk Power Transmission Agreement (BPTA) dated 18.10.2007 and also threatened that upon failure to make the said payment, the Short Term Open Access (STOA) shall also be curtailed.

Background

2. Lanco Green Power Private Limited (LGPPL) developed Budhil Hydro Power Project (2X35 MW) in the State of Himachal Pradesh on Develop, Build, Own, Operate and Maintain (DBO) basis. The name of the company was changed to M/s Lanco Budhil Hydro Power Pvt. Ltd (LBHPPL) on 6.8.2010 and was further changed to M/s Greenko Budhil Hydro Power Pvt. Ltd. (GBHPPL) on 20.11.2014 that has filed the present Petition.

3. On 30.3.2005, the Petitioner entered into a long term Power Purchase Agreement with PTC India Limited (hereinafter referred to as the “PTC PPA”) for a period of 35 years from the date of commercial operation of the generating station for supply of entire saleable power and energy. PTC entered into a Power Sale Agreement (PSA) dated 21.9.2006 with Haryana Power Generation Corporation Limited (HPGCL) for transfer of power from the Petitioner’s project to Haryana State. PTC obtained Long Term Open Access (LTOA) from CTU in the year 2005. The Petitioner and PTC signed a BPTA with CTU. As per the BPTA, PTC was the Injection Utility with injection point as the Chamera Pooling station and the Drawee Utility was the Haryana Power Generation Corporation Limited with drawal at all points where inter-connection between HPGCL and PGCIL systems exist. The capacity covered under the LTA was 61.6 MW for the first 12 years and 57.4 MW thereafter (after excluding the free power of 12%/18% as



the case may be). The BPTA defines PTC as the Long Term Transmission Customer (LTTC) which is liable to pay the transmission charges for the Chamera Pooling station from date of commercial operation of Budhil generation project till the pooling station becomes a part of regional transmission system and the regional transmission charges corresponding to 88% of the generation capacity of the project for the first 12 years and 82% of the generation capacity thereafter.

4. On 18.12.2009, the Petitioner terminated the PTC PPA dated 30.3.2005 citing certain force majeure events. Consequently, HPGCL challenged the termination of PTC PPA before Haryana Electricity Regulatory Commission (HERC). HERC vide its order dated 25.8.2011 held that it has jurisdiction to adjudicate the dispute with regard to termination of PPA. Aggrieved by HERC's order dated 25.8.2011, the Petitioner filed Appeal No. 188 of 2011 before the Appellate Tribunal for Electricity (hereinafter referred to as the Appellate Tribunal). The Appellate Tribunal vide its order dated 9.8.2012 held that HERC does not have jurisdiction over the matter as there is no nexus between PTC PPA dated 30.3.2005 and PSA dated 21.9.2006 and set aside the order of HERC. Aggrieved by the order of the Appellate Tribunal, both HPGCL and PTC filed Civil Appeal No. 9218/2012 and 1054/2013 respectively before the Hon`ble Supreme Court which are pending for the final adjudication.

5. In the meantime, a dispute arose on account of the payment of transmission charges to PGCIL. Since the said dispute could have created difficulties for the Petitioner to evacuate its power from May 2012 i.e. date of commercial operation of the project, the Petitioner agreed in a meeting dated 25.4.2012 held by Central Electricity Authority to pay the transmission charges. The meeting was also attended by PGCIL and PTC. Subsequently, the Petitioner approached the Commission vide Petition No.



190/MP/2016 seeking adjudication qua the issue as to which entity has to bear the transmission charges under BPTA dated 18.10.2007. The Commission, vide its order dated 31.5.2018 observed that PTC was the LTTC in terms of the BPTA dated 28.10.2007 and therefore, the liability to pay transmission charges rests solely upon PTC.

6. Meanwhile, PGCIL vide its letter dated 24.4.2018, directed the Petitioner for payment of transmission charges for LTA quantum of 8.4 MW as well as to open Letter of Credit (LC) for ₹25.09 lakhs in favor of PGCIL with respect to monthly transmission charges. PGCIL, vide its letter dated 2.8.2018, further directed the Petitioner for payment of transmission charges for 8.4 MW for evacuation of free power. The Petitioner, vide its letter dated 13.8.2018, apprised PGCIL that as per the Commission's order dated 31.5.2018 in Petition No. 190/MP/2016, the primary liability towards the payment of transmission charges under the LTA rests with PTC. PGCIL, vide its letter dated 14.8.2018, informed the Petitioner about curtailment of short term open access on account of non-payment of transmission charges for 8.4 MW.

7. The Petitioner has submitted that PGCIL has wrongly imposed transmission charges upon the Petitioner for LTA of 8.4 MW for supply of free power to the tune of 12% upto 12th year and 18% from 13th year onwards to the home State of Himachal Pradesh. In terms of the BPTA, it is the PTC which is the LTTC and the Petitioner is only a DIC. Therefore, the Petitioner has no obligation in accordance with the terms of the BPTA to supply free power to the home State under LTA only and it can use other modes of access for such supply of free power. In the present case, the free power being supplied to the home State of Himachal Pradesh is being supplied through STOA and the transmission charge for the said STOA is being borne by Himachal Pradesh



State Electricity Board (HPSEB).

8. In the above background, the Petitioner has prayed for the following reliefs:
- a) *Quash the impugned letters dated 02.08.2018 and 14.08.2018 issued by the Respondent/ PGCIL upon the Petitioner;*
 - b) *Declare that the Respondent/ PGCIL has abused its dominant position by issuing the impugned letters dated 02.08.2018 and 14.08.2018 in terms of Section 60 of the Electricity Act, 2003;*
 - c) *Grant liberty to the Petitioner to claim compensation from PGCIL, at a later stage, in the event prayer (b) is allowed;*
 - d) *Direct the Respondent/ PGCIL to pay penalty in terms of Section 142 of the Electricity Act, 2003; and*
 - e) *Issue appropriate orders under Section 146 of the Electricity Act, 2003 against the officials of the Respondent/ PGCIL for issuing the impugned letters dated 02.08.2018 and 14.08.2018.”*

9. The Petition was admitted and notice was issued to the Respondent, PGCIL to file its reply to the Petition. PGCIL, vide its affidavit dated 15.11.2018, has filed its reply and the Petitioner vide its affidavit dated 7.12.2018 has also filed its Rejoinder to the reply filed by PGCIL.

Reply of Respondent

10. PGCIL, in its reply vide affidavit dated 15.11.2018, has submitted as under:
- a) A perusal of BPTA shows that the said agreement was for evacuation of 61.6 MW power by PTC. However, the same BPTA specifically records that in the event the Petitioner (GBHPPL)/ Himachal Pradesh utility did not make adequate transmission arrangement and free power to Himachal Pradesh was also injected at the Chamera pooling sub-station of PGCIL, then the Petitioner shall be liable to pay transmission charges for injection of such free power. It is an admitted position that the free power from the project was transferred to Himachal Pradesh Utility through the inter-State transmission system and as such, the Petitioner became liable to pay transmission charges for the same.
 - b) In a meeting dated 25.4.2012 with Central Electricity Authority (CEA)



regarding the commissioning of the project, the issues regarding connectivity with the ISTS and control area of the project were discussed. The Minutes of the said Meeting specifically records that the Petitioner's project was connected only to ISTS and there was no separate arrangement for flow of free power to the Himachal Pradesh Utility and the Petitioner had unequivocally agreed to pay transmission charges for transmitting free power to the Himachal Pradesh utility.

c) The billing of LTA transmission charges to the Petitioner (for 61.6 MW and 8.4MW free power) accordingly commenced w.e.f. May 2012 in line with the Minutes of CEA Meeting dated 25.4.2012 after off-setting the STOA charges applicable as per prevalent Regulations and the Petitioner also started paying LTA charges to the Respondent from May 2012. Since the LTA charges were being paid directly by it, the Petitioner, upon the Respondent's request, also opened the required letter of credit as payment security towards transmission charges. However, from March 2016 onwards, the Petitioner stopped paying LTA charges to the Respondent, including for the free power, on the ground that it was not using the LTA for transmission of power to HPGCL because of termination of PPA with PTC. This was done even when all power evacuation from the project continued to take place through the system of the Respondent.

d) The Petitioner, vide its letter dated 15.3.2016 informed PGCIL, that it had entered into a PPA with Uttarakhand Power Corporation Ltd. (UPCL) for long-term supply of power from its project and requested PGCIL to change the drawee utility to UPCL and drawal location to all points where inter-connection between UPCL and the system of PGCIL existed. Since there could not be another LTA grant for the same power from the same project while the earlier LTA was still subsisting, the matter was taken up with PTC and based on its advice, informed the Petitioner vide letter dated 14.6.2016 that pending resolution of its issues with PTC, power from the project could be evacuated through use of medium-term open access. However, the Petitioner felt aggrieved by the refusal on part of PGCIL to change the drawee utility and, being apprehensive of any coercive action against recovery of unpaid transmission charges under the subject LTA, proceeded to file Petition No.190/MP/2016. During the pendency of the said Petition, separate bills for the 61.6 MW power and 8.4 MW (free power) were



continued to be raised on the Petitioner.

e) The Commission, in its order dated 31.5.2018 in Petition No. 190/MP/2016, did not give any finding as regards the payment of transmission charges for the supply of free power from the Project to the Himachal Pradesh Utility and therefore, the Petitioner continued to be liable for transmission charges for the supply of free power from the project to the Himachal Pradesh utility till the said free power continued to be transmitted through the ISTS.

f) BPTA was signed both by PTC and the Petitioner with PGCIL wherein the Petitioner had explicitly assumed the liability of payment of transmission charges for free power (8.4 MW) to Himachal Pradesh. Since the beginning i.e. May 2012, separate bills were being raised for 61.6 MW and 8.4 MW, which were paid by the Petitioner till March 2016. The Petitioner disputed the payment of transmission charges for the LTA when its request for transfer of LTA was not accepted by PGCIL and further the Petitioner approached the Commission through Petition No.190/MP/2016. Further, no such arrangement of payment of STOA charges by the State of Himachal Pradesh for the free power was even brought to the knowledge of PGCIL by the Petitioner. The offset for such STOA payment against the firm LTA charges is also not applicable as per the provisions of Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 (hereinafter referred to as the Sharing Regulations). Therefore, the Petitioner's argument that the payment towards the transmission charges of free power has already been made by the State of Himachal Pradesh under STOA and that LTA charges is not applicable, is not tenable.

Rejoinder by the Petitioner

11. The Petitioner, vide its rejoinder dated 7.12.2018, to the reply of PGCIL has submitted as under:

a) Regulation 26 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 (hereinafter to be referred as "Connectivity Regulations") specifically provides that the charges for use of



inter-State transmission system can only be claimed from long term transmission customers. Hence, *de hors* the requirement of the above Regulations, PGCIL has no ability to otherwise claim transmission charges.

b) PGCIL can claim transmission charges only in terms of the provisions of Regulation 26 of the Connectivity Regulations. There is no document available which designates or describes the Petitioner (or its predecessor, LGPPL/LBHPPL) as the LTTC qua 8.4 MW capacity being referred by PGCIL in the impugned letters. In such a scenario, no LTA charges or transmission charges can be claimed for 8.4 MW by PGCIL from the Petitioner.

c) PGCIL's sole reliance is placed upon the Recital to the BPTA, whereunder the heading, "*Case ii: evacuation arrangements not made for transfer of free power to HP*", it is mentioned that LGPPL will bear the transmission charges, and regional transmission charges, towards transfer of free power to the State of Himachal Pradesh. PGCIL's reliance on the recitals of BPTA is misplaced as it is settled principle of law that the Recitals of the contract are not binding upon the contracting parties in the event the operative part of the contract is unambiguous. The operative part does not put any obligation on the Petitioner towards PGCIL qua any payments.

d) The operative part of the BPTA starts from Clause 1.0 to Clause 6.0, and that the said Clauses are unambiguous and only pertain to the rights and obligations between PTC (as LTTC) and PGCIL. The operative part of the BPTA does not even once mention any obligation, whatsoever, on part of LGPPL/LBHPPL towards PGCIL qua any payments.

e) PTC applied for grant of LTA, and accordingly, the BPTA was executed by PGCIL with PTC as LTTC. The said BPTA does not mention any other entity, apart from PTC, as LTTC. Furthermore, under the Recitals, it is mentioned that Injection Utility is PTC for capacity of 61.6 MW for the first 12 years of the BPTA, and 57.4 MW thereafter. There is no LTA or any designated LTTC for 8.4 MW as referred by PGCIL in the impugned letters. Therefore, the impugned letters do not have any legal or contractual backing,



f) The Commission in its final order dated 31.05.2018 passed in Petition No. 190/MP/2016 specifically records that under the BPTA, the primary obligation to pay transmission charges vests with PTC. It is the PTC which is the only entity described as LTTC in the said BPTA. Hence, the BPTA authorizes PGCIL to claim transmission charges only from PTC, and from no other entity, whatsoever.

g) HPSEB, as an authorised representative of the Government of HP to avail free power from the project of the Petitioner, applied for short term open access and pays STOA charges. Hence, PGCIL is already recovering the transmission charges for flow of free power (8.4 MW) from the project of the Petitioner, from HPSEB. Therefore, in any event, PGCIL cannot at all be allowed to claim double charges, especially when there is no LTA or BPTA applied or allocated for the above quantum of free power.

h) The Commission, in Petition No. 210/MP/2014 titled as AD Hydro Power Limited v. PGCIL &Ors., has observed that the liability of transmission charges/ LTA charges arises only if the person or entity has availed long term access. The Commission vide final Order dated 16.10.2015 held that the LTA quantum has to be reduced with the quantum of free power to be supplied by AD Hydro to the State of HP. It was further held that for the free power component, since the free power share of State of HP was being supplied through STOA and STOA charges were being paid to PGCIL, then there remains no need to levy any LTA charges qua the said free power.

12. The Petitioner and PGCIL have also filed their written submissions dated 20.3.2019 and 11.3.2019 respectively which have been considered.

IA by the Petitioner

13. The Petitioner has also filed I.A. No 80/2018 wherein the Petitioner, has submitted that it has paid under bonafide mistake the long term transmission charges to the Respondent or PGCIL for 70 MW *qua* the BPTA dated 18.10.2007 from May 2012 to March 2016 despite the fact that the Petitioner is not liable to pay since the long-term transmission customer (LTTC) is PTC as per the said BPTA and not the Petitioner



herein. Hence, the Petitioner, pursuant to the order dated 31.05.2018 in Petition No. 190/MP/2016 will be filing a separate Petition seeking recovery of the transmission charges paid for the above period. The said relief is not being prayed in the present Petition. The Petitioner has prayed for leave to claim reliefs in terms of compensation and/ or refund, and any other allied or necessary reliefs, with respect to the long term transmission charges paid by the Petitioner to PGCIL in terms of the BPTA dated 18.10.2007 qua the capacity of 70 MW for the period of May 2012 to March 2016, through a separate Petition.

Analysis and Decision

14. After considering the submissions of the parties and perusal of documents on record, the following issues arise for our consideration:

(a) Issue No. 1: Whether the Petitioner is liable for the payment of transmission charges towards the supply of free power to the State of Himachal Pradesh?

(b) Issue No.2: What relief should be granted to the Petitioner?

(c) Issue No. 3: Whether any direction is required to be issued against PGCIL under Section 60, 142 and 146 of the Act?

Issue No. 1: Whether the Petitioner is liable for the payment of transmission charges towards the supply of free power to the State of Himachal Pradesh?

15. The Petitioner has mainly contended that no LTA agreement has been signed between the Petitioner and PGCIL and as such Petitioner is not an LTTC. Therefore, no transmission charges can be levied on the Petitioner by PGCIL towards LTA quantum of 8.4 MW corresponding to free power share of State of Himachal Pradesh. The Petitioner has further submitted that HPSEB has been independently availing STOA for evacuating its share of free power from the Petitioner's project, and has been paying STOA charges regularly. Since PGCIL is already getting STOA charges, there is no basis for levying LTA charges to the Petitioner.



16. PGCIL has mainly contended that although petitioner is not LTA grantee (the LTA grantee was PTC) but it was also specifically recorded in the BPTA that in the event that the Petitioner/ HPSEB did not make adequate transmission arrangement for evacuation of free power and free power to Himachal Pradesh was also injected at the Chamera pooling station, the Petitioner shall be liable to pay transmission charges for injection of such free power. Further, free power from the Petitioner's project is being transferred to HPSEB through ISTS and as such, the Petitioner is liable to pay the transmission charges as there was no arrangement whatsoever made for delivery of free power to HPSEB.

17. PGCIL distinguished the Commission's order dated 16.10.2015 in Petition No. 210/MP/2014- AD Hydro Limited versus PGCIL & Ors from the case of the Petitioner. PGCIL has submitted that BPTA in Petition No. 210/MP/2014 was a bipartite agreement between PGCIL and AD Hydro Ltd. for the installed capacity of the generating station and the controversy arose when AD Hydro Ltd. had sought reimbursement of transmission charges for free power supplied to Himachal Pradesh. PGCIL has submitted that in the present case, BPTA is a tripartite agreement for supply of contracted power to PTC wherein the Petitioner has undertaken to pay transmission charges to PGCIL for supply of free power to HPSEB in case separate arrangement for transmission of power is not put in place. Therefore, the Petitioner is liable to pay the transmission charges for free power.

18. We have considered the submissions of the parties. The entire controversy revolves around the question whether the Petitioner is liable to pay transmission charges towards supply of free power (8.4 MW) to the State of Himachal Pradesh. According to PGCIL, since the Petitioner has accepted the liability for payment of



transmission charges for evacuation of free power by signing the BPTA, the Petitioner is liable to pay the transmission charges for 8.4 MW capacity. The Petitioner has submitted that as per BPTA, it is PTC who was the Long term transmission customer and hence bills can be raised only on PTC and no other entity. Petitioner has stated that it has got no obligation in accordance with terms of BPTA to supply free power under LTA only. Further, the Petitioner has submitted that it has never applied for long term access and hence it is not a Long Term Customer and therefore, it cannot be saddled with the transmission charges for 8.4 MW capacity for evacuation of free power from its generating station.

19. As per the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2004 (Open Access Regulations) which was in vogue at the time of signing of the BPTA, a person desirous of availing long term access to the inter-State transmission system was required to apply to the CTU for the same with the following details:

“Procedure for Long-Term Customer

9.(i) An application for long-term access shall be submitted to the nodal agency.

(ii) The application shall contain the details, such as capacity needed, point(s) of injection, point(s) of drawal, duration of availing open access, peak load, average load and such other additional information that may be specified by the nodal agency. The nodal agency shall issue necessary guidelines, procedure and application forms within 30 days.

xxxx”

In the present case, PTC which is an inter-State trading licensee having a PPA with LGPPL applied for LTA for 60.2 MW for the first 12 years and 56.0 MW for 13th years onwards after excluding the free power to Government of Himachal Pradesh/HPSEB and auxiliary consumption and tie-line losses. Relevant extract of the LTA application made by PTC is extracted as under:



4	Details of power transfer equipment			
	i.	Quantum of power to be transmitted (MW)	First 12 years	13 th Year onwards
			60.2 MW (12% free power to HPSEB and 2% for Auxiliary Consumption & Tie-Line Losses)	56.0 MW (18% free power to HPSEB and 2% Auxiliary Consumption & Tie-Line Losses)
	ii.	Peak load to be transferred	60.2 MW	56.0 MW
	iii.	Average Load to be transferred	35 MW	
	iv.	Name(s) of Injecting Utility	Lanco Green power Private Limited	
	a.	Point(s) of injection of power	Budhil Power House (Located on the Right bank of River Ravi near Village Thalla) Budhil Hydro Electric Project Bharmour Tehsil, District Chamba, Himachal Pradesh.	
	b.	Its quantum	60.2 MW	

20. Based on its application, PTC was granted LTA for 60.2 MW for the first 12 years and 56 MW for remaining part of the LTA period. It is relevant to mention that no document has been placed on record to the effect that application seeking LTA for free power was ever made by either the Petitioner or Government of Himachal Pradesh or HPSEB. Subsequently, BPTA dated 18.10.2007 was signed between PGCIL, PTC and the predecessor of the Petitioner, i.e. LGPPL. The introductory part of the BPTA giving description of the parties to the BPTA reads as under:

"This Bulk Power Transmission Agreement entered into on the 18th day of ... October Two Thousand Seven between POWER GRID CORPORATION OF INDIA LIMITED incorporated under the Companies Act, 1956 and wholly owned by Government of India, having its registered office at 8-9, Qutab Institutional Area, Katwaria Sarai, New Delhi-110016 (hereinafter called "POWERGRID" which expression shall unless repugnant to the context or meaning thereof include its successors and assigns) as party of the first part and PTC India Ltd., a Company incorporated under the companies Act, 1956 having its office 2nd Floor, NBCC Tower, 15 Bhikaji Cama, New Delhi-110066 (hereinafter called "Long term transmission Customer" generally and PTC specifically which expression shall unless repugnant to the context or meaning thereof include its successors, and assigns) as party of the second part; and Lanco Green Power Pvt. Limited having its registered office at Lanco House, 141, Avenue # 8, Banjara Hills Hyderabad 500034 (hereinafter to be referred as "Lanco" specifically, which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors, and permitted assigns) as party of the third part.

And whereas PTC is a licensee and Lanco is a generating company and PTC is desirous to avail Long Term Open Access in accordance with Central Electricity



Regulatory Commission (Open Access in inter-State transmission) Regulations, 2004 and Electricity Act, 2003 to the transmission system of Powergrid”.

Thus in the BPTA, PTC has been referred to as “Long Term Transmission Customer” who was desirous to avail long term open access in accordance with the Open Access Regulations, whereas, LGPPL has not been referred to as a Long Term Transmission Customer.

21. Further, the BPTA provides for the details of long term access sought by PTC as under:

“And Whereas the long term open access is required by the Long term transmission customer as per the following details:

Injection Utility

*Name : PTC India Limited
Location : Chamera Pooling Station
Region : Northern Region
Capacity (MW) : 61.6 MW for the first 12 years and 57.4 MW thereafter, (excluding free power of 12% 18% as the case may be)*

DraweeUtility(ies)

*Name: Haryana Power Generation Corporation Limited (HPGCL)
Location: All points where the interconnection between HPGCL and POWERGRID system exists.
Region(s): Northern Region
Capacity: 61.6 MW for the first 12 years and 57.4 MW thereafter (excluding free power of 12%/ 18% as the case may be)”*

The BPTA clearly states that PTC, as the Long Term Transmission Customer, has sought LTOA with the injection point as Chamera Pooling Station in Northern Region. There is no mention in the BPTA that LGPPL had sought LTA for free power either on its own or on behalf of HPSEB. Further, the BPTA recognized the LTA capacity of 61.6 MW for the first 12 years and 57.4 MW from 13th years onwards. However, there is no mention about the LTA capacity for the free power.

22. Long term customer as per Central Electricity Regulatory Commission (Open Access in Inter-state Transmission) Regulations, 2004 is as under:-



“Categorisation of Transmission Customers

4 (i) *The transmission customers shall be divided into two categories, namely: (a) Long-term customers, and (b) Short-term customers.*

(ii) *The persons availing or intending to avail access to the inter-state transmission system for a period of twenty five years or more shall be the long term customers.*

Provided that the existing beneficiaries of a regional transmission system owned or operated by the Central Transmission Utility shall be deemed to be the long term customers of the particular regional system owned or operated by the Central Transmission Utility for the purpose of these regulations.

(iii) *The transmission customers other than the long-term customers shall be the short-term customers. Provided that the maximum duration for which the short-term access allowed at a time shall not exceed one year. Provided further that the short-term customer shall be eligible to obtain fresh reservation after expiry of his term.*

The above definition provides that Long Term Customer is the one who is availing or intending to avail access to the inter-state transmission system for a period of twenty five years or more.

Further, Long term customer as per CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 is as under:-

“(m) “long-term customer” means a person who has been granted long-term access and includes a person who has been allocated central sector generation that is electricity supply from a generating station owned or controlled by the Central Government;”

The above definition provides that Long Term Customer is the one who has been granted long term access or has been allocated central sector generation. In the instant case, Long term open access was applied for by PTC and long term open access was also granted only to PTC. The BPTA also stipulates only PTC as the Long term Customer. There are no records to indicate that any long term access was applied by LGPPL or was issued to LGPPL.

23. The transmission system agreed to facilitate the long term access has been



provided in the BPTA as under:-

“And whereas in accordance with the system evolved by CEA and POWERGRID, following scheme was agreed to facilitate long term open access:

- i) *220 kV D/C Budhil-Chamera pooling station line on single moose conductor and its associated bays at Chamera pooling station.*

This system shall be built, owned, operated and maintained by M/s Lanco Green Private Power Limited for evacuation of power from Chamera-III, LILO of this line at Chamera-III shall be carried out by POWERGRID as a regional scheme along with the commissioning of Chamera-III which is expected in August, 2010 as intimated by NHPC.

The sharing of applicable transmission charges of line segment from Chamera-III to Chamera pooling point after the commissioning of Chamera-III HEP shall be discussed in the Standing Committee Meeting of Northern Region and Lanco shall approach CERC for sharing of transmission charges.

- ii) *Establishment of 2X315 MVA, 400/220 kV Chamerapooling station with 400 kV interconnection with Chamera-II HEP (Part of Chamera-III transmission system- to be preponed to facilitate evacuation of power from Budhil HEP (to be constructed by POWERGRID as regional scheme).”*

As per the BPTA, the Petitioner is required to build 220 kV D/C Budhil-Chamera pooling station transmission line and its associated bays at Chamera pooling station and PGCIL is required to build 2X315 MVA, 400/220 kV Chamera pooling station with 400 kV interconnection with Chamera-II HEP as regional scheme.

24. The arrangements for transmission charges provided in the BPTA are as under:

“For transfer of power from Budhil generation project, a pooling station near Chamera-II along with its connectivity with Chamera-II, (which is a part of Chamera-II transmission system) is required to be preponed. The system would be built by POWERGRID and the transmission charges for this part, till it becomes part of regional system shall be borne/shared by PTC/Lanco. In regard to the payment of transmission charges corresponding to the amount of power as given in the Long Term application and for transfer of 12% free power for the first 12 years and 18% free power thereafter from Budhil generation project to Himachal Pradesh (HP), following is agreed.

Case: Evacuation arrangements made for transfer of free power to HP.

M/S HPSEB/Lanco shall make adequate transmission arrangement at their own cost and draw 12%/18% free power from Budhil generating station. PTC will bear the complete transmission charges of above Chamera pooling station for the period it is pre-poned till it becomes part of the regional system and the regional transmission charges of NR corresponding to 88% of the generation capacity of Budhil generation



project for the first 12 years and 82% of the generation capacity of Budhil generation project thereafter.

Case II : Evacuation arrangements not made for transfer of free power to HP

In the event, HPSEB/Lanco either does not make adequate transmission arrangement or draws 12% /18% free power from the Budhil generation , switchyard, full, power from Budhil generation project would be injected at Chamera Pooling station. For this, Lanco shall bear the transmission charges for Chamera Pooling station from its (date Of Commercial Operation) DOCO till the pooling station becomes part of regional transmission system and regional transmission charges of Northern region corresponding to 12% of the generation capacity of Budhil generation project for the first 12 years and 18% of the generation capacity of Budhil generation project thereafter.

And PTC shall bear transmission charges for Chamera Pooling station from its (Date of Commercial Operation) DOCO till the pooling station becomes part of regional transmission system and regional transmission charges of NR corresponding to 88% of the generation capacity of Budhil generation project for the first 12 years and 82% of the generation capacity of Budhil generation project thereafter.

And whereas long term transmission customer has agreed to share and pay all the transmission charges of POWERGRID including FERV, incentive, taxes etc. for the use of its transmission system of Northern Region including inter regional links and any addition thereof.

And whereas it has become incumbent upon both the parties to enter in to Bulk Power Transmission Agreement as envisaged under the Central Electricity Regulatory Commission (Open Access in inter-state transmission) Regulations, 2004.

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Now, therefore in consideration of the premises and mutual agreements, covenants and conditions set forth herein, and in the Agreement as contained in the Annexure A attached hereto which shall form an integral part of this Agreement, it is hereby agreed by and between the parties as follows:

1.0 (a) Long term transmission customer shall share and pay the transmission charges including FERV, incentive, taxes, etc of POWERGRID transmission system of Northern Region including charges for inter regional links and system strengthening scheme.”

As per the above provisions of the BPTA, PTC, which is the long term customer, has explicitly accepted to share the transmission charges of PGCIL transmission system of Northern Region including the inter-regional links and any additions thereof. Further, the Petitioner shall bear the transmission charges of the Chamera pooling station from its date of commercial operation till the pooling station become the part of the regional transmission system and the regional transmission charges of Northern Region corresponding to 12% of generation capacity of Budhil Generation Project for



the first 12 years and 18% of the generation capacity of Budhil Generation project thereafter. However, there is no corresponding provision in the operating part of the BPTA, whereby the Petitioner has accepted the liability to pay the transmission charges for free power.

25. A bare reading of recitals to BPTA suggests that the arrangement consists of two portions:

- (a) Transmission charges towards preponement of Chamera Pooling station along with its Connectivity to Chamera-II till it becomes part of regional system.
- (b) Northern Region transmission charges for the Long term transmission customer.

Transmission charges on account of preponement of Chamera Pooling station along with its Connectivity to Chamera-II till it becomes part of regional system.

26. BPTA provides that for transfer of power from Budhil generation project, a pooling station near Chamera-II along with its connectivity with Chamera-II, (which is a part of Chamera-II transmission system) is required to be preponed. The system would be built by PGCIL and the transmission charges for this part, till it becomes part of regional system, shall be borne/shared by PTC/ Lanco. The liability of PTC vs Lanco for this system has been elaborated in Case-I and Case-II below.

Case I: In case M/S HPSEB/Lanco shall make adequate transmission arrangement at their own cost and draw 12% / 18% free power from Budhil generating station, PTC will bear the complete transmission charges of above Chamera pooling station for the period it is preponed till it becomes part of the regional system.

Case II: In the event, HPSEB/Lanco either does not make adequate transmission arrangement or draws 12% /18% free power from the Budhil generation, switchyard, full, power from Budhil generation project would be injected at Chamera Pooling station. For this, Lanco shall bear the transmission charges for Chamera Pooling station from its (date Of Commercial Operation) DOCO till the pooling station becomes part of regional transmission system and regional transmission charges of Northern region corresponding to 12% of the generation capacity of Budhil generation project for the first 12 years and 18% of the generation capacity of Budhil generation project thereafter.

The above provides that in case HPSEB/ Lanco does not make own arrangement of evacuation of power and free power is injected at Chamera Pooling station, Lanco shall



bear transmission charges for Chamera Pooling station till it becomes part of regional system corresponding to 12%/18% generation capacity and regional transmission charges of Northern region corresponding to 12% of the generation capacity of Budhil generation project for the first 12 years and 18% of the generation capacity of Budhil generation project thereafter.

27. The issue of liability of transmission charges for Chamera Pooling station and its connectivity to Chamera-II has been dealt with by the Commission vide its order dated 2.1.2013 in Petition No. 94/TT/2011, quoted as follows:

“50. In the light of the submissions of the petitioner, we direct that the transmission charges for the transmission assets covered under Part-I shall be shared by the PTC/LANCO in line with the BPTA dated 18.10.2007 signed between PTC/LANCO and the petitioner, till these assets becomes part of the regional system i.e till the commissioning of Chamera –III HEP. After the asset becomes part of regional system, all the constituents of the Northern Region shall share the tariff in accordance with Central Electricity Regulatory Commission (sharing of inter-state transmission charges and losses) Regulations, 2010.”

28. Similarly, the Commission vide its order dated 16.11.2012 in Petition No. 92/TT/2011, observed the following:

“57. The petitioner has submitted that the transmission tariff for the 220 kV D/C transmission line from GIS Pooling Station Chamba - Chamera-III HEP shall be shared by the PTC/ LANCO in line with the BPTA dated 18.10.2007 between petitioner, PTC and LANCO, till the asset becomes part of the regional system i.e. till the commissioning of Chamera-III HEP. After this asset becomes part of regional system, all the respondents shall share the tariff and the transmission tariff shall be recovered on monthly basis in accordance with Regulation 23.

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59. The transmission charges for the transmission assets covered under this petition shall be shared by the PTC/ LANCO in line with the BPTA dated 18.10.2007 signed between PTC/ LANCO and the petitioner, till these assets become part of the regional system, i.e. till the commissioning of Chamera-III HEP. After the asset becomes part of regional system, all the constituents of the Northern Region shall share the tariff in accordance with the Central Electricity Regulatory Commission (Sharing of inter-state transmission charges and losses) Regulations, 2010.”

29. Further, the Petitioner filed Review Petition Nos. 18/RP/2017 & 19/RP/2017 and 65/RP/2016 & 66/RP/2016 in Petition Nos. 92/TT/2011, 94/TT/2011, 19/TT/2015 (True-up of 92/TT/2011) and 528/TT/2014 (True-up of 94/TT/2011). The issue highlighted by



the Review Petitioner in said petitions i.e. Petitioner in the instant case is regarding the complete payment of the transmission charges to be made by Lanco/ PTC, for the preponement of the commissioning of assets i.e. Chamera-III HEP – Pooling Station near Chamera-II HEP and 220 kV D/C Chamera-II P.S & 400 kV S/C Chamera-II to Chamera-II P.S line. Accordingly, the Commission vide its order dated 10.5.2019 in the above Review Petitions observed the following:

“27. However, it is noticed that NHPC was not a party in the Petition Nos.92/TT/2011, 94/TT/2011, 19/TT/2015 and 528/TT/2014. Accordingly, PGCIL is directed to file a fresh petition for determining the issue of sharing of transmission charges from 1.11.2011 to 24.5.2012, impleading GBHPPL and NHPC, besides the other beneficiaries of the instant transmission assets within 30 days from date of issue of this order. Further, GBHPPL shall keep the BG valid as per the Commission’s order dated 29.5.2017 in I.A No.29/IA/2017, till further directions of the Commission.”

30. We observe that issue of sharing of transmission charges for the preponed system till it becomes part of regional system has already been directed to be adjudicated by the Commission on filing fresh Petition by PGCIL impleading NHPC and GBHPPL. Therefore, in the instant Petition No. 265/MP/2018, we are not inclined give directions with regards to payment liability for the said period. We direct PGCIL to file the fresh petition as directed in the above-said Order.

Northern Region transmission charges for the Long term transmission customer.

31. BPTA provides that, in the event, HPSEB/ LGPPL does not make adequate transmission arrangement or draws 12%/18% free power from the Budhil generation switchyard, LGPPL was required to bear regional transmission charges of Northern region corresponding to 12% of the generation capacity of Budhil generation project for the first 12 years and 18% of the generation capacity of Budhil generation project thereafter.

32. As per the recital of BPTA under the para Case-II, LGPPL has the liability to bear



the transmission charges for the capacity corresponding to the free power when the Petitioner or HPSEB either does not make adequate transmission arrangement or draws the free power from the Budhil generation switchyard through ISTS. The words “transmission arrangement” has not been defined in the BPTA. The “adequate transmission arrangement” could mean setting in order the transmission system for evacuation of free power either through construction of intra-State transmission line or dedicated transmission line or through use of the available ISTS for evacuation of free power from the generation switchyard of the Petitioner till the nearest pooling station of HPSEB.

33. The Electricity Act, 2003 provides for open access for use of the transmission system of a licensee by any other licensee or consumer or a person engaged in generation. Section 2(47) of the Electricity Act, 2003 defines open access as under:

“Open access” means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission;”

34. In terms of the above provision, the Commission has specified Connectivity Regulations for Long Term Access and Medium Term Open Access. The Commission has also specified the Central Electricity Regulatory Commission (Open Access to inter-State Transmission System and related matters) Regulations, 2008 (hereinafter referred to as the 2008 Open Access Regulations) for short term open access. Long Term Access, Medium Term Open Access and Short Term Open Access have been defined in the Connectivity Regulations as under:

“2(1)(l) ‘Long Term Access’ means the right to use the inter-State transmission system for a period exceeding 12 years but not exceeding 25 years;”

2(1)(n) ‘Medium Term Open Access’ means the right to use the inter-State transmission system for a period exceeding 3 months but not exceeding 3 years;”

2(1)(s) ‘Short Term Open Access’ has the meaning ascribed thereto in the Central



Further, Regulation 2(1)(n-a) of the Open Access Regulations, 2008 defines short term open access as under:

“Short-term open access” means open access for a period up to one (1) month at one time.”

35. Regulation 8(6) of the Connectivity Regulations provides that “the grant of connectivity shall not entitle an applicant to interchange any power with the grid unless it obtains long-term access, medium-term open access or short-term open access”. Once a generating station is granted connectivity to the grid, it can only interchange any power through either long term access or medium term open access or short term open access. Therefore, evacuation of free power from the generating station of the Petitioner through either long term access or medium term open access or short term open access will meet the requirement of adequate transmission arrangement. Therefore, LGPPL or HPSEB can evacuate the free power through short term open access by paying the transmission charges which will meet the requirement of “adequate transmission arrangement”, especially when the Petitioner neither applied for long term access nor has been granted long term access. In our view, even in terms of the provisions of the BPTA, LGPPL or its successor cannot be saddled with the transmission charges for free power when they have neither applied for nor granted LTA and power is evacuated through short term open access by paying the charges.

36. The case of the Petitioner is squarely covered under the order of the Commission dated 16.10.2015 in Petition No. 210/MP/2014. In the said case, AD Hydro had applied for LTA for the entire installed capacity of 192 MW of its generating station and LTA was granted by CTU for the said capacity. Subsequently, AD Hydro requested for signing the BPTA less free power but PGCIL did not agree to the request on the



ground that LTA has to be availed for the entire installed capacity of the generating station. Consequently, AD Hydro signed the BPTA for the installed capacity of 192 MW. Further, there was a provision in the BPTA that the petitioner would pay the applicable charges and other charges corresponding to 192 MW and in case of direct drawl arrangement for direct drawl of free power to Govt. of Himachal Pradesh, without utilizing ISTS system, the transmission charges for such free power would not be applicable to the petitioner from the date of such arrangement. In the present case, PTC applied for LTA for capacity less free power and auxiliary consumption and was granted LTA for the said capacity. However, as regards free power it was provided that LGPPL/HPSEB would make adequate transmission arrangement for evacuation of free power and in the absence of such arrangement, full power would be injected in the Budhil sub-station and LGPPL would pay the transmission charges for free power. Therefore, the facts in both the cases stand on similar footing i.e. BPTA was signed for the entire installed capacity including free power through it was the responsibility of HPSEB/Lanco to make arrangement for evacuation of free power.

37. Regarding LTA application for the entire installed capacity, the Commission in the said order dated 16.10.2015 in Petition No.210/MP/2014 made the following observations:

“30. The question therefore arises as to whether PGCIL was justified in not acceding to the request of the petitioner to sign for BPTA less the free power. PGCIL’s contention is that since the entire power from the petitioner’s project would be injected into ISTS through 400 kV Nalagarh sub-station of PGCIL, the petitioner is liable to take the LTA for the entire capacity and pay the transmission charges accordingly.

31. The petitioner applied for LTOA and connectivity as per the OA Regulations, 2004. Regulation 9(iii) of the OA Regulations, 2004 provides that the application for long term access shall contain the following:

(ii) The application shall contain the details, such as capacity needed, point(s) of injection, point(s) of drawal, duration of availing open access, peak load, average load and such other additional information that may be specified by the nodal



agency. The nodal agency shall issue necessary guidelines, procedure and application forms within 30 days.

The above provisions clearly give the liberty to the LTOA applicant to apply for LTOA for the capacity needed and not for the entire capacity of the generating station. Therefore, there is no compulsion on the LTOA applicant to apply for LTOA for the entire capacity for the generating station if the generating station is connected only to ISTS. The generating station may choose to apply for LTOA for part capacity and intend to sell the remaining capacity under STOA (under OA Regulations, 2004, there was no MTOA) or may enter into an agreement under which it is the responsibility of the buyer to take power from the inter-connection point. In these cases, the LTOA applicant can apply for LTOA for capacity less than its installed capacity even though the evacuation from the project has to be through ISTS only.”

38. In the instant case also, the respondent has billed transmission charges to the Petitioner considering long term access for petitioner for 8.4 MW towards free power even without the Petitioner applying for LTA for the said capacity of free power, since the entire capacity including free power was to be injected at Chamera Pooling station. In the light of the findings as quoted above, the Petitioner is not liable for transmission charges as long term transmission customer.

39. The Commission in the said Order dated 16.10.2015 in Petition No. 210/MP/2014 also considered the provisions of the Implementation Agreement between AD Hydro and Government of Himachal Pradesh to see whether AD Hydro was under any obligations to bear the transmission charges for delivery of free power. Relevant part of the order is extracted as under:

“33. As per the IA, it is the responsibility of the petitioner to deliver the 12%/18% free power at the Nalagarh sub-station of PGCIL. Though the IA is silent about who shall apply for LTOA/LTA for this free power, the fact remains that 12%/18% free power is the property of Government of Himachal Pradesh after the date of commercial operation and it is responsibility of the Himachal Pradesh to evacuate this power beyond Nalagarh sub-station. Therefore, the responsibility of Government of Himachal Pradesh to evacuate the quantum of free power from Nalagarh sub-station onwards and liability to pay the transmission charges therefor cannot be transferred unilaterally by PGCIL to the petitioner without taking the consent of the Government of Himachal Pradesh. It is not in dispute that the petitioner applied for LTOA for 192 MW which included the free power. But the petitioner had raised the issue of free power in the LTOA meeting held on 30.5.2009 and subsequently, after discussion with HPSEB wrote a letter dated 29.7.2009 for signing of BPTA for the installed capacity after excluding free power. These efforts were made by the petitioner before signing the BPTA on 11.9.2009. It appears that the request of the petitioner to exclude the free power from the LTA quantum has not been seriously considered in either the LTOA meeting or subsequently by PGCIL and the petitioner has



been made to sign the BPTA for 192 MW on the ground that the petitioner's project being connected to ISTS it is required to sign the BPTA for the entire installed capacity and the petitioner should mutually decide the issue of transmission charges with Government of Himachal Pradesh in respect of free power. The petitioner as per the decision in the LTOA meeting took up the matter with Government of Himachal Pradesh who declined to accept the liability on the ground the Government of Himachal Pradesh is selling power under short term open access and paying the charges therefor.

34. The Commission directed PGCIL to submit details of all hydro stations in India which are connected to ISTS network and treatment of free power from those hydro stations in the matter of grant of LTA. On perusal of PGCIL's affidavit dated 10.12.2014, it is evident that there is no uniformity in the treatment of free power from hydro stations connected to ISTS network. It is observed that most of the hydro generators had applied for LTA for the entire quantum of power. According to PGCIL, LTA was granted as per their LTA applications. It is however noted that there are some cases where PGCIL has granted LTA for capacity less than the installed capacity where the applicants sought LTA after reducing free power component. In case of Lanco Hydro Energy Private Limited (installed capacity= 76 MW), it had applied for LTA of 76 MW but PGCIL granted LTA of 66.88 MW after reducing free power to home State based on the request of the applicant. In case of Malana-II and Karcham Wangtoo HEP which are directly connected to ISTS and where direct drawl arrangements have not been made by the State Govt. for availing free power, PGCIL granted connectivity and LTA for the reduced quantum i.e. less than installed capacity. In the present case, PGCIL's decision for granting LTA to the petitioner for the full quantum without excluding free power despite the written request of the petitioner and directing the petitioner to pay transmission charges for the entire LTA quantum till direct drawl arrangement is made by Government of Himachal Pradesh for utilizing its free power share without using ISTS, is neither supported by any statutory provision nor any decision of the Commission nor the practice followed by PGCIL in case of other hydro generators.

35. In view of the fact that the petitioner made a written request to PGCIL vide letter dated 29.7.2009 for signing the BPTA for the installed capacity minus free power which was prior to the date of signing the BTPA and the PGCIL has permitted other generators to sign BPTA for reduced quantum than the installed capacity even though these generators are connected to ISTS only as in the case of the petitioner, we are of the view that the petitioner is entitled for LTA/BPTA for the quantum of installed capacity minus the free power. Accordingly, PGCIL is directed to reduce LTA of the petitioner by deducting 12% for the first 12 years and 18% for the balance 28 years in accordance with the Implementation Agreement from effective date of LTA and revise the BPTA/TSA accordingly."

40. Thus, in AD Hydro Case, the Commission has taken a view that PGCIL's decision to grant LTA for the entire capacity without excluding free power and making the generator to pay the transmission charges for the said capacity is neither supported by any statutory provision, nor any decision of the Commission.

41. In the present case, we have perused the provisions of the Implementation Agreement between Government of Himachal Pradesh and LGPPL. Para 5.4 of the



Implementation Agreement provides as under:

“5.4 Royalty

5.4.1 The royalty in the shape of free power will be levied @12% of the Deliverable Energy (Net generation measured at the interconnection point) of the project for the period starting from the date of synchronization of the first generating unit and extending upto 12 years from Commercial Operation Date of the Project. For the balance Agreement of 28 years, the royalty in the shape of free power will be charged @18% of the Deliverable Energy.

5.4.2 In case the Government levies any duty/tax on generation and supply of power, the same shall be borne by the Company except for royalty which will be borne by the Government.”

Deliverable Energy has been defined in the Implementation Agreement as under:

1.2.15 “Deliverable Energy” shall mean the electrical energy generated at the Station, as measured at generator(s) terminals less the summation of the following:

- (i) Actual auxiliary consumption for the bona fide use of auxiliaries, lightening and ventilation in the Power Station and intake works and the transformation losses (from generation voltage to transmission voltage) of the step up transformers at the power house switchyard; and*
- (ii) Transmission losses at actual, which shall be the difference of the electrical energy measured at sending and receiving ends of the transmission line (i.e. the power station end and the interconnection point);*

For this purpose and subject to above, the energy meter reading shall be taken on monthly basis at the inter-connection point.”

Memorandum of Understanding between Government of Himachal Pradesh and M/s LGPPL dated 23.9.2004 provides as follows:

“8. The Company will be required to make arrangements for evacuation of power from the project to the Board’s/PGCIL’s substation (designated or interconnection point) as per the provisions in the DPR. For evacuation of power beyond the interconnection point, the Company shall tie up with HPSEB/PGCIL for arrangement of suitable integrated transmission system at mutually agreed Wheeling Charges.”

42. The Government of Himachal Pradesh is entitled for royalty @12%/18% of the deliverable energy which is measured at the generator terminal. There is no provision in the MOU or IA which saddles the Petitioner with the liability to evacuate free power from the generation bus bar till the STU point. In fact, Government of Himachal Pradesh and HPSEB have neither applied for LTA nor have asked the Petitioner to apply for LTA for free power on their behalf to PGCIL. On the other hand, HPSEB is evacuating its share



of free power by availing short term open access.

43. The Petitioner has signed the BPTA and accepted the liability for paying the transmission charges for free power in case transmission arrangement is not made by the Petitioner/HPSEB. Accordingly, HPSEB is already paying the Short Term Open Access charges for evacuating free power from the bus bar of the generating station. The Petitioner, therefore, cannot be held liable for transmission charges for the capacity corresponding to free power as Long Term Customer as the Petitioner had neither applied on its own nor on behalf of Government of Himachal Pradesh/ HPSEB for LTA for this capacity and accordingly, it has not been treated as Long Term Customer in the BPTA, as PTC has been treated.

44. The Commission, vide Order dated 16.03.2017 in Petition No. 306/MP/2015, has also taken a similar view where LTA was granted for more capacity than what was applied for. Relevant extract of the said order is as under:

“15. The Petitioner has submitted that even though the Petitioner had applied for LTA for 273 MW, it was decided in the WREB meeting that LTA would be granted for the installed capacity as per the CERC norm to which LAPL agreed. We are of the view that none of the parties have explained as to the provisions of the regulations under which the LTA quantum to be granted should be equal to the installed capacity. The issue of reduction of LTOA granted to the Petitioner was discussed in the WRPC meeting held on 22.11.2014 and the relevant portion of the minutes of the said meeting is extracted as under: “19.2 Reduction of LTOA in respect of Lanco Amarkantak PGCIL representative as regards to revision LTOA quantum of Lanco Amarkantak from 300 MW to 273 MW as requested by PTC, informed that the same has been accepted in SCM. However, MoM is awaited. WR beneficiaries opined that if Lanco Amarkantak had applied LTOA for 300 MW then the quantum of reduction in LTOA may have the financial implications as per the provisions of the relevant CERC Regulations. PGCIL representative informed that before the grant of connectivity, 2009 Regulations of CERC, it was in general a practice to grant LTOA along with connectivity to a new generator on the proposed installed capacity. Accordingly, Lanco Amarkantak was granted connectivity with an LTOA for the gross installed capacity (300 MW) and not the ex-bus capacity, though Lanco Amarkantak has applied to LTOA of 273 MW. WRPC agreed for reduction in LTOA quantum of Lanco Amarkantak from 300 MW to 273 MW, since Lanco Amarkantak/PTC, originally, has applied for connectivity and LTOA of 273 MW only.” Thus, PGCIL has explained that prior to the Connectivity Regulations, it was a general practice to grant LTOA along with connectivity to a new generator on the proposed installed capacity. It was agreed in WRPC that since the Petitioner had originally applied for connectivity and LTOA for 273 MW, LTA of the Petitioner would be reduced to 273 MW. Therefore, there was no statutory basis for



granting the LTOA corresponding to installed capacity, even though the application was made for a capacity lower than the installed capacity after adjusting the auxiliary consumption.

16. The Petitioner was granted LTOA under the Open Access Regulations, 2004. Regulation 2(b) of the Open Access Regulations, 2014 defines "allotted transmission capacity" as under: "2(b) Allotted transmission capacity means the power transfer in MW between the specified point (s) of injection and point (s) of drawal allowed to a long term customer on the Inter-State transmission system under normal circumstances and the expression "Allotment of transmission capacity" shall be construed accordingly". As per the above provision, allotted transmission capacity shall mean the power transfer allowed to a long term transmission customer between the specified point of injection and specified point of drawal on the inter-State transmission system under normal circumstances. The Petitioner had indicated 273 MW as the capacity for which LTOA was required. This figure has been arrived at after accounting for 9% auxiliary consumption. Since auxiliary consumption is consumed at the generating station, only the capacity net of auxiliary consumption can be scheduled between the point of injection and point of drawal. Therefore, allotment of transmission capacity under the LTOA should be net of auxiliary consumption, in the present case 273 MW. In fact, WRPC has agreed to reduce the LTOA quantum from 300 MW to 273 MW in line with the LTOA application of the Petitioner. The fact that as per the earlier decision of WREB, the Petitioner has entered into a BPTA for 300 MW cannot be held against the Petitioner and the anomaly that has been brought into the LTOA and BPTA by not granting the LTOA for the quantum applied for needs to be corrected.

17. In our view, the Petitioner had applied for LTOA for 273 MW after deducting the auxiliary consumption from the installed capacity of 300 MW of Pathadi TPS of LAPL which was overlooked at the time of granting LTOA. Since the Petitioner could inject power into ISTS for the capacity net of the auxiliary consumption, the Petitioner has been burdened with the transmission charges for the capacity corresponding to auxiliary consumption. We direct that the LTOA/LTA of the Petitioner be reduced from 300 MW to 273 MW."

45. Similarly, the Commission vide Order dated 7.10.2019 in Petition No. 187/MP/2017 observed as follows:

"17. In the instant case, we observe that Petitioner had applied for LTA of 1100 MW and hence the Petitioner cannot be made liable to make the payment for the LTA quantum of 1200 MW in the absence of any LTA application.

18. Accordingly, we are of the view that the LTA granted to the Petitioner shall be considered as 1100 MW."

46. In light of above, we are of the view that even though the Petitioner has signed the BPTA, it has neither applied for nor was granted LTA for free power. Since free power is evacuated by HPSEB by availing short term open access, the Petitioner cannot be saddled with the transmission charges for the same power subject to our



decision on Issue No.2.

Issue No.2: What relief should be granted to the Petitioner?

47. Since the Petitioner has signed BPTA and has voluntarily accepted the liability for payment of Northern regional transmission charges for free power till the adequate arrangement is made by Petitioner/HPSEB, and nothing has been produced on record to prove that it has ever disputed such liability till filing of the present petition, the Petitioner cannot escape the liability for transmission charges till the date of filing of instant petition when the Petitioner disputed its liability for transmission charges for free power. Accordingly, we hold that the Petitioner shall not be liable for payment of transmission charges for free power from the date of filing of this petition. Keeping in view the totality of the facts of the case and the provisions of the MOU and IA, we hold that since the Petitioner did not apply for LTA, the Petitioner shall not have liability to pay the transmission charges for free power from the date of filing of the petition. However, the bills already raised by CTU towards free power after the date of filing this petition shall be adjusted against STOA charges within a period of 3 months from date of issue of this Order.

48. The Petitioner has filed I.A. No. 80/2018 wherein it has submitted that the Petitioner has paid the long term transmission charges to the Respondent for 70 MW *qua* the BPTA dated 18.10.2007 from May 2012 to March 2016 due to bona fide error on its part. The Petitioner has submitted that it is not liable to pay this charge since the long-term transmission customer (LTTC) was PTC as per the said BPTA, and not the Petitioner. The Petitioner has further stated that pursuant to the order dated 31.05.2018 in Petition No. 190/MP/2016, it will be filing a separate Petition seeking recovery of the transmission charges paid for the above period and that the said relief is not being



prayed in the present Petition. The payment of transmission charges by the Petitioner for the LTA granted to PTC for 61.6 MW from May 2012 to March 2016 has been dealt in our order dated 31.5.2018 in Petition No.190/MP/2016 which has been challenged by the Petitioner in Appeal No. 296 of 2019 in the Appellate Tribunal for Electricity. Therefore, the liability of the Petitioner for payment of transmission charges for the LTA taken by PTC shall be according to the decision of the Appellate Tribunal in the said appeal. In so far as the transmission charges for free power of 8.4 MW is concerned, the Commission's decision is per the paragraph 47 above. IA No. 80/2018 is disposed of accordingly.

Issue No. 3: Whether any direction is required to be issued against PGCIL under Sections 60, 142 and 146 of the Act?

49. The Petitioner has made a prayer seeking declaration that PGCIL has abused its dominant position by issuing the impugned letters dated 2.8.2018 and 14.8.2018 in terms of Section 60 of the Act. The Petitioner has further sought direction against PGCIL to pay penalty in terms of Section 142 of the Act and appropriate order under Section 146 of the Act for issuing the impugned letters dated 2.8.2018 and 14.8.2018. We have perused these letters. PGCIL has issued the impugned letters to the Petitioner to pay the transmission charges for LTA for free power in terms of the BPTA of 2007 and the said BPTA has not been disputed by the Petitioner at any time prior to filing the Petition and has willingly paid the charges up to February 2016. Accordingly, in our view, no case is made out against PGCIL under Sections 60, 142 and 146 of the Act.

50. The Petition No. 265/MP/2018 and I.A No. 80/2018 are disposed of in terms of the above.

sd/-
(I. S. Jha)
Member

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

sd/-
(P. K. Pujari)
Chairperson

