

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 530/MP/2020
along with I.A. No. 45/IA/2020**

Coram:

**Shri P.K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member**

Date of Order: 11th August, 2021

In the matter of:

Petition under Sections 79(1)(c),79(1)(f) and other applicable provisions of the Electricity Act, 2003 seeking directions against the Respondents in relation to wrongful rejection of the application for Short Term Open Access for transfer of power from Western Region to Southern 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. Western Regional Load Despatch Centre,
F-3, Central Road, M.I.D.C.Area,
Marol, Andheri (East), Mumbai-400093

2. Southern Regional Load Despatch Centre,
29, Race Course Road, Bangalore,
Karnataka-560069

....Respondents

Parties Present:

Ms. Swapna Seshadri, Advocate, KSKMPL
Shri Anand Ganesan, Advocate, KSKMPL
Shri Ashwin Ramanathan, Advocate, KSKMPL
Ms. S. Usha, WRLDC and SRLDC
Shri Ashok Ranjan, WRLDC
Shri Aditya Das, WRLDC



ORDER

The Petitioner, M/s KSK Mahanadi Power Limited (KSKMPL) is a generating company as defined under Section 2(28) of the Electricity Act, 2003 (in short, 'the 2003 Act') and is in process of developing 3600 MW (6 x 600 MW) coal-based thermal power project (hereinafter referred to as 'the Project') at village Nariyara, Akaltara Tehsil, Janjgir Champa district in the State of Chhattisgarh. At present, three units of the Project are under operation and as per the Petitioner, the balance units are at various stages of construction and commissioning. The Project is a regional entity of Western Region and is connected to the Inter-State Transmission System (ISTS) at the 765/400 kV Champa Pooling Station of the Power Grid Corporation of India Ltd. (PGCIL).

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

(a) PPAs dated 31.7.2012 and 19.12.2014 with the distribution licensees of the State of Andhra Pradesh for supply of 400 MW;

(b) PPA dated 27.11.2013 with Tamil Nadu Generation and Distribution Corporation (TANGEDCO) in the State of Tamil Nadu for supply of 500 MW;

(c) PPA dated 26.2.2014 with the distribution licensees in the State of Uttar Pradesh (in short, 'the UP Discoms') for aggregate supply of 1000 MW; 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 has filed the present Petition seeking the following reliefs:

“(a) Hold and declare that the action of SRLDC and WRLDC in rejecting the STOA application made by the Petitioner is erroneous;

“(b) Direct WRLDC to grant STOA to the Petitioner in terms of the Regulations framed by the Hon'ble Commission;



(c) Hold and direct that the Respondents are liable to compensate the Petitioner for the loss incurred on account of non-supply of power by the Petitioner from its generating station;

(d) Direct that any penalties which will have to be paid by the Petitioner to the respective Distribution Companies under its PPAs for short supply of power due to the unreasonable restrictions imposed by the Respondents will have to be paid by the Respondents to the Petitioner subject to prudence check by this Hon'ble Commission;

(e) Award costs of the present petition in favour of the Petitioner and against the Respondents;

(f) Pass such other further orders as the Hon'ble Commission may deem just in the facts of the present case;"

4. The Petitioner has also filed Interlocutory Application (IA) No. 45/2020 seeking interim directions on the Respondents to grant STOA to the Petitioner for supply of electricity to the distribution companies of the State of Andhra Pradesh (hereinafter to be referred as 'the AP Discoms').

Submissions of the Petitioner

5. In support of its prayers, the Petitioner has made the following submissions:

(a) With regard to the power supply to the AP Discoms from the Project, the Petitioner had initially been granted Medium Term Open Access (MTOA) by Power Grid Corporation of India Ltd. (in short, "PGCIL/CTU") on 20.9.2012 for 400 MW, which was operationalized on 16.6.2013 and the same expired on 15.6.2016. The Petitioner applied for renewal of MTOA which was granted on 19.8.2015 for 347 MW, operationalized on 16.6.2016 and expired on 15.6.2019. Further, MTOA for 14.5 MW was operationalized on 16.6.2016 and expired on 15.6.2019. Also, MTOA for 38.5 MW was granted on 8.9.2016, operationalized on 1.4.2017 and expired on 31.12.2019.

(b) After expiry of the three MTOAs (347 MW, 14.5 MW and 38.5 MW), the Petitioner had been supplying power to the AP Discoms by availing Short Term Open Access (STOA) in terms of the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008 (hereinafter referred as "the STOA Regulations").



(c) STOA as applied by the Petitioner was granted by the Respondent No.1, Western Regional Load Despatch Centre (WRLDC) and the Respondent No.2, Southern Regional Load Despatch Centre (SRLDC) for the period from June 2019 to January 2020 for supply of power to the AP Discoms. The Petitioner was supplying power to the AP Discoms during this period (June 2019 to January 2020) in terms of its PPA, without any dispute regarding open access. Detail of STOA granted during the period from June 2019 to January 2020 is enclosed as 'Annexure-C to the petition.

(d) On 27.1.2020, the Petitioner in a routine manner, in terms of the procedure laid down under the STOA Regulations made a "First Come First Serve" (FCFS) application to SRLDC for availing STOA of 392 MW for supply of power to the AP Discoms for the period from 1.2.2020 to 8.2.2020.

(e) On 30.1.2020, the Petitioner received an email communication from WRLDC objecting to the STOA application of the Petitioner for the reason that the Petitioner already had LTA with the UP Discoms, TANGEDCO and CSPDCL for a total of 1582 MW. Therefore, while the maximum schedule from the Project is 1680 MW (installed capacity of 1800 MW minus Auxiliary power consumption of 120 MW), WRLDC sought to enquire as to the basis on which the Petitioner had applied for open access for a quantum more than its installed capacity.

(f) The above-mentioned email communication dated 30.1.2020 assumes importance for the reason that the very same issue had already been decided by the Commission in its order dated 19.6.2019 in Petition No.162/MP/2017, filed by the Petitioner against WRLDC for curtailing open access on the purported basis that the Petitioner did not have sufficient installed capacity to supply as per the PPAs entered into by it.

(g) The principle decided by the Commission in order dated 19.6.2019 is applicable even in the present case. Firstly, the grant of STOA is in no manner dependent on the applicant's capacity to fulfill its obligations under the PPAs entered into by it. Regulation 3(2) of the STOA Regulations is clear on the aspect of criteria for grant of STOA.



(h) In terms of the provisions of the STOA Regulations, a short-term customer is eligible to avail open access if there is a sufficient margin available in ISTS. The grant of STOA is not dependent on the capacity of the applicant to utilize the open access, or even to cater to its other PPAs. The Commission has also taken a consistent view that for grant of open access, only the technical issues in relation to the transmission network is relevant and the Load Despatch Centers (RLDCs and SLDCs) cannot go into other criteria.

(i) The stand taken by WRLDC is also misconceived for the reason that in any event the total availability declared and scheduling of power on a daily basis cannot exceed the total installed capacity of the generating station of the Petitioner.

(j) The Petitioner has obtained LTA for 1900 MW and is being charged transmission charges for the entire 1900 MW. Out of this, 400 MW is on target region basis, and STOA charge paid by the Petitioner is being claimed as credit against LTA charges being levied from the Petitioner. Thus, in effect, the Petitioner is paying the entire charges for 1900 MW, but is being denied the use of 400 MW on the ground of apparent insufficient generation capacity. This is self-contradictory, in as much as for the levy of charges, the Petitioner is being levied charges for transmission capacity, without reference to the generation capacity. However, for utilization of the transmission network, the same is being denied on the ground of apparent insufficient generation capacity.

(k) Even if reliance is placed on the Grid Code by WRLDC stating that the compliance with PPA is to be ensured, all the three PPAs of the Petitioner are pursuant to tariff based bidding process under Section 63 of the 2003 Act. The obligation to supply is similar in all the three PPAs. In any event, the actual supply and the inter-se rights and obligations under the PPA are between the Petitioner and its procurers and are of no concern to WRLDC.

(l) The procedure for short term open access in terms of the STOA Regulations requires the Petitioner to apply to SRLDC and obtaining NOC of APSLDC. Accordingly, NOC of APSLDC has been obtained. The only role of



WRLDC is inter-se with SRLDC to ensure margins on the transmission network. WRLDC has gone beyond its role.

(m) The Petitioner wrote to WRLDC vide email dated 30.1.2020 placing on record the Commission's order dated 19.6.2019 in Petition No.162/MP/2017 and requested WRLDC to grant and operationalize STOA as sought for. While there was no response to the email of the Petitioner, WRLDC vide email dated 31.1.2020, imposed further conditions for issuance of NOC for STOA.

(n) Thereafter, SRLDC on 31.1.2020 addressed email to the Petitioner stating that its application for STOA had been rejected due to rejection of consent by WRLDC. In view of the rejection of STOA application by SRLDC and WRLDC, the Petitioner was constrained to arrange for alternate supply to perform its obligations under its PPA with the AP Discoms.

(o) The action of WRLDC in restricting STOA on the plea of available capacity at the Project is in gross violation of the Commission's order dated 19.6.2019 in Petition No. 162/MP/2017. In the said order, the Commission while declining to issue any directions against WRLDC had also laid down the procedure to be adopted by RLDCs in such circumstances, where the open access capacity under different PPAs taken together was more than the installed capacity.

(p) The action of WRLDC is an afterthought. This is amply evident from the fact that for the period from June 2019 till January 2020, WRLDC and SRLDC had duly granted STOA to the Petitioner, without raising any issue with regard to the installed capacity of the Project. Therefore, while there was no change in the factual scenario in January 2020, there was no occasion for WRLDC to change its stand for the month of February 2020.

(q) On account of the wilful breach of STOA Regulations and the order of the Commission by WRLDC, the Petitioner has been severely prejudiced in so far as having to arrange for alternate supply to the AP Discoms. WRLDC has clearly overstepped its powers and functions in seeking to impose restrictions on the grant of STOA based on the presumption that the Petitioner is required



to schedule 100% capacity, on daily basis, to each of its procurers under the respective PPAs.

(r) In view of the above, WRLDC has sought to wilfully create hindrances for the Petitioner in fulfilment of its obligations under its respective PPAs. Further, this is despite the same position being prevalent prior to January 2020 when STOA was granted to the Petitioner. There being no change in circumstances, there was no occasion for the Respondents to take a contrary view to the prejudice of the Petitioner.

(s) In absence of STOA, the Petitioner had to resort to alternate power supply to meet the PPA requirements to avoid penalties for short supply. This leads to breach of PPA obligations as well as financial implication of penalty charges to the extent of short supply. Since this has resulted solely on account of the Respondents, they are liable to compensate the Petitioner for such losses. The Commission has taken the consistent view that the defaulting party is liable to compensate the other party for any losses that has resulted. This is also in relation to the losses claimed by PGCIL on account of any action of STU etc. The same principle is applicable in the present case.

6. In the above background, the Petitioner has filed the present petition under Sections 79(1)(c) and 79(1)(f) of the 2003 Act, seeking directions on the Respondents for wrongful rejection of its STOA application.

Hearing dated 23.7.2020

7. The petition along with IA was heard on 23.7.2020. During the hearing, the learned counsel for the Petitioner mainly reiterated the submissions made in the petition. The learned counsel, however, added that WRLDC has no locus to open contractual issues between the Petitioner and its beneficiaries under various PPAs and also has no authority to restrict open access, except for reasons of capacity constraints in the transmission infrastructure, etc., as provided in the STOA



Regulations. In reply, the representative on behalf of the Respondents, WRLDC and SRLDC, made detailed submissions in the matter. The Commission after hearing the parties admitted the petition and directed the Respondents to file their replies to the petition and the IA and the Petitioner to file its rejoinder. The Commission also directed the Respondents to place on record the documents pertaining to the grant of 98 MW STOA to the Petitioner. In response, the Respondents have filed their reply to the Petition and the IA vide their common affidavit dated 30.7.2020 and the Petitioner has filed its rejoinder to the same vide affidavit dated 4.8.2020.

Reply of the Respondents WRLDC and SRLDC in Petition & IA

8. The Respondents vide their common reply affidavit dated 30.7.2020 in the Petition and IA have submitted the following:

a) Connectivity agreement was signed between the Petitioner and PGCIL/CTU on 23.8.2012. As on date, three units of the Project of the Petitioner have been declared under commercial operation, with a net installed capacity of 1800 MW having ex-bus injection capability of 1680 MW (i.e. after deducting auxiliary consumption of 120 MW). Against a net exportable generation capacity of 1680 MW, the Petitioner has net operationalized LTA of 1982 MW viz. 1000 MW LTA to the UP Discoms (in NR), 500 MW LTA to TANGEDCO (in SR), 82 MW LTA to Chhattisgarh (LTA availed by CSPTCL for its home State allocation) and 400 MW target LTA to WR (i.e. LTA without any firm beneficiary). The remaining untied (merchant) capacity available with the Petitioner was 98 MW only (exportable capacity minus tied up capacity with long term access i.e. 1680 MW-1582 MW). Thus, the maximum capacity for which the Petitioner could have applied for STOA (under Advance reservation and/or FCFS category) was 98 MW.

b) After expiry of MTOA under which power was being supplied to the AP Discoms, the Petitioner applied to SRLDC for selling around 392 MW of power to the AP Discoms under STOA in '*Advance reservation*' and/or '*First-come-*



first-served (FCFS)' category from June 2019 to January 2020. WRLDC being the nodal RLDC in this case, inadvertently consented to SRLDC for STOA for sale of power in the range of 38.5 MW to 361.5 MW to the AP Discoms which should have been restricted to a maximum of 98 MW as per Regulation 8(3)(a) of the STOA Regulations.

c) The apparent slip occurred on part of WRLDC because of the expired MTOA of 400 MW that was with the same beneficiary (i.e. the AP Discoms) which prevailed for six long years (2013 to 2019). Further, the Petitioner is the only IPP (Independent Power Producer) in the Western Region that had net contracted capacity i.e. (LTA+MTOA) in MW = 1900 (LTA) + 400 (MTOA) = 2300 MW, which was in excess of the net exportable generation (1680 MW) declared under commercial operation (COD). This being first such case encountered, STOA was inadvertently allowed during the period from June 2019 to January 2020.

d) In the last week of January 2020, during internal audit of STOA approvals at WRLDC, the above inadvertent slip was noticed. It was noted that the Petitioner was left with an untied merchant capacity of only 98 MW, with no access (i.e. neither LTA nor MTOA), after expiry of the 400 MW MTOA with the AP Discoms. Thus, WRLDC and SRLDC were obligated to facilitate 'Advance Reservation' and/or 'First-cum-First-serve ('FCFS') STOA to the Petitioner only up to a maximum quantum of 98 MW as per STOA Regulations. Therefore, WRLDC vide email dated 30.1.2020 sought clarification from the Petitioner as to the basis for STOA application under FCFS for 392 MW, when it was only left with a merchant capacity of 98 MW.

e) The rejection of consent by WRLDC on 31.1.2020 was on account of imposition of 'Regulation of Power Supply' (in short 'RPS') by PGCIL on account of the non-payment of transmission charges by the Petitioner. RPS was imposed from 1.2.2020 as per an earlier RPS notice dated 3.1.2020 and subsequent confirmation from PGCIL on 31.1.2020. The implementation plan for this RPS on the Petitioner was uploaded on the website of WRLDC on 31.1.2020 and the e-mail communication to the Petitioner in this regard have



been attached as Annexures-2A & 2B respectively.

f) As per directions of the Commission in order dated 2.9.2015 in Petition No 142/MP/2012, the Respondent WRLDC is obliged to stop STOA to a regulated entity, such as the Petitioner, under Regulation 25A of the STOA Regulations, whenever RPS is imposed by a transmission licensee.

g) The Petitioner was well aware of imposition of RPS from 1.2.2020 till 18.2.2020 which was the primary reason behind denial of STOA. The communication issued by WRLDC as to the reason behind denial of consent for FCFS-STOA application of the Petitioner proposed to commence from 1.2.2020 was made through WRLDC's STOA web-portal which was always accessible to the Petitioner through the log-in access provided to the Petitioner by WRLDC. A copy of the 'Consent Rejected Application Details' to be seen by any STOA applicant on the STOA web-portal of WRLDC is enclosed as Annexure-3. It can be seen from this document that the reason for rejection of consent is mentioned as '*RPS implemented by PGCIL wef 01.02.20*'.

h) The Petitioner has not come with clean hands before the Commission and has also not disclosed the fact that its generating station has defaulted in the payment of transmission charges leading to imposition of RPS by PGCIL. Similarly, there were multiple days during the said period (February 2020 to July 2020) when STOA was denied to the Petitioner on account of imposition of RPS by PGCIL. The table below summarizes all such cases during the disputed period (from February 2020 to July 2020):

Regulating Entity	Regulated Entity	Start Date of RPS	End Date of RPS	Remarks
PGCIL	Petitioner	1.2.2020	18.2.2020	No STOA allowed under Regulation 25A of the STOA Regulations as per CERC order in Petition No. 142/MP/2012.
PGCIL	Petitioner	18.6.2020	In force as on date	No STOA allowed under Regulation 25A of the STOA as per CERC order in Petition No. 142/MP/2012.

i) Barring the initial inadvertent slip (from June 2019 to January 2020), there



has been a consistent approach by the Respondents in ensuring strict compliance to the STOA regulations, other applicable regulations, orders of the Commission and directives from Ministry of Power, GOI. The processing of STOA applications by WRLDC and SRLDC during the period from June 2019 to July 2020 are summarized below:

From Date	To Date	Remarks / Activity
16-06-2019	14-09-2019	STOA applications approved as per applied quantum
15-09-2019	01-10-2019	Regulation of STOA under Ministry of Power order on Payment Security Mechanism
02-10-2019	02-10-2019	No STOA applied by KSK Mahanadi
03-10-2019	31-01-2020	STOA applications approved as per applied quantum
01-02-2020	18-02-2020	Regulation of Power Supply imposed by PGCIL
19-02-2020	31-03-2020	No STOA applied by KSK Mahanadi
01-04-2020	24-06-2020	STOA applications approved as per applied quantum (applied quantum was not more than 98 MW)
18-06-2020	Till date	Regulation of Power Supply imposed by PGCIL

j) On 27.1.2020, SRLDC reportedly received application for STOA under FCFS category for sale of 392 MW from the Petitioner to the AP Discoms over WR-SR inter-regional link for the period from 1.2.2020 to 8.2.2020. SRLDC was the nodal RLDC for granting STOA approval as per the STOA Regulations. SRLDC, prior to granting approval, sought consent from WRLDC as per the Detailed Procedure for scheduling STOA (Bilateral & Collective) transactions dated 30.6.2011 (in short, 'the STOA Procedure'). WRLDC, after receipt of such request is mandated under the STOA Procedure to convey its concurrence or denial with reason for the same to SRLDC. While granting consent for STOA under 'Advance reservation' or 'FCFS' category, RLDCs are mandated to ensure two aspects as per the 2nd amendment to the STOA Regulations, namely, (i) there must not be any other contract existing for the same power and (ii) there must be adequate margin in the transmission system.

k) There cannot be another parallel contract (of the same generator with another buyer) for the same power applied to be processed by RLDCs under STOA advance reservation/ FCFS category. In the instant case, since the Petitioner had already tied up contracts of 1582 MW with the UP Discoms, TANGEDCO and Chhattisgarh, there was an untied (merchant) capacity of only 98 MW and, therefore, STOA for more than 98 MW under 'Advance



Reservation' and/or 'FCFS' category could not be approved as per Regulation 8(3)[a] of the STOA Regulations.

l) The Petitioner could have applied for selling power to AP Discoms under STOA in 'Day-ahead' or 'Intra-Day contingency' category. The Petitioner has already been granted liberty by Commission's order dated 19.6.2019 in Petition No. 162/MP/2017 to schedule and reschedule power amongst its tied-up LTA and MTOA beneficiaries, on day-ahead basis. Unlike the Advance Reservation/FCFS STOA application, the Petitioner is not obliged to submit any such affidavit/ undertaking as to the non-existence of a parallel contract for the same power, in case of Day-Ahead or Intra-Day contingency STOA applications. In fact, the Petitioner has many a times applied to sell power under Day-ahead STOA to the AP Discoms, which was granted by the Respondents during the period from February 2020 to June 2020.

m) The Commission's order dated 19.6.2019 in Petition No.162/MP/2017 was issued in an entirely different context and is not applicable to the present case. The relief granted to the Petitioner in the said order was with reference to the existing LTA and MTOA contracts (and not for STOA). The Commission had directed as to how to deal with a situation when net operationalized LTA+MTOA becomes more than the commissioned capacity of a generator, while the generator wants to schedule power to a new LTA beneficiary, without consent from existing LTA beneficiaries.

n) The Commission's direction in order dated 19.6.2019 being applicable to LTA and MTOA transactions only, there is no scope for advance submission of month-ahead requisition by procurers in STOA transactions. The STOA Regulations do not have any provision for day-ahead declaration of 'allocation' followed by 'requisition submission' by beneficiaries. In fact, the terms like 'allocation', 'requisition' etc. have no mention in the STOA Regulations. Such terms are applicable only for LTA and MTOA transactions and, hence, the Commission has specifically mentioned 'LTA & MTOA capacity' in the said order. Such day-ahead declaration by generator and submission of requisition by the beneficiaries are allowed under the Grid Code only for LTA and MTOA



transactions. STOA transactions are scheduled as they are approved by RLDCs, with no scope for allocation declaration and requisition submission on day-ahead basis. Further, paragraph 48 of the said order dated 19.6.2019 also clarifies the point that the said order was meant for LTA and MTOA transactions only.

o) The Petitioner is erroneously seeking to extend the scope of the order dated 19.6.2019 to STOA, though there is no mention of STOA in the said order. The Petitioner is wrongly interpreting the said order to seek extension of the liberty granted for changing LTA/MTOA schedules on day-ahead basis, amongst its beneficiaries. The Petitioner is basically seeking to first sell power under Advance Reservation/ FCFS STOA and then change it on a day-ahead basis, similar to LTA/MTOA schedules. This is erroneous and is entirely against the letter and spirit of the STOA Regulations. The processing of LTA and MTOA applications and processing of STOA applications are governed by two entirely different sets of Regulations and two entirely different procedures, approved separately by the Commission.

p) The key difference between the two distinct categories of access (LTA and MTOA vis-à-vis STOA) as per the extant regulations of the Commission are as under:

(i) LTA and MTOA are granted by the Central Transmission Utility (CTU) under the CERC (Grant of Connectivity, LTA and MTOA in inter-State Transmission and related matters) Regulations, 2009 (in short, 'the Connectivity Regulations'), whereas STOA is granted by the nodal RLDC (i.e. RLDC of the region where the buying entity is located) as per the STOA Regulations;

(ii) Grant of LTA and MTOA is done by CTU as per detailed procedure on grant of connectivity (LTA & MTOA) dated 31.12.2009 (in short, 'the Connectivity Procedure'), whereas the STOA is facilitated by the nodal RLDC as per the STOA Procedure;

(iii) Grant of LTA often necessitates the expansion of existing transmission system or development of new transmission system. The grant of STOA doesn't require any system strengthening unlike LTA and it is granted by utilizing the remaining margin available in the existing transmission system;



(iv) The Point of Connection (POC) transmission rates are computed and applied differently in each categories of access (i.e. LTA & MTOA vs STOA) under the CERC (Sharing of Inter-state Transmission Charges and Losses) Regulations, 2010. For firm LTA & MTOA transactions, POC charges are borne by the drawee entity while for STOA transactions, PoC charges are borne by both, the injecting entity and the drawee entity. POC rates are also different for LTA and STOA transactions;

(v) LTA and MTOA are given higher priority in scheduling over STOA. STOA approvals are processed by RLDCs by utilizing the balance margin available in the transmission system, only after consumption of the transfer capability by the approved LTA & MTOA transactions. In case of any transmission constraint or congestion in network, the STOA transactions are curtailed first followed by MTOA and then LTA at the last;

(vi) As per the Grid Code, a schedule under LTA and MTOA can be revised any number of times within the day of operation, with an advance notice of 7/8 time blocks from the generator/ beneficiary to the concerned RLDC. However, the normal revision of STOA (under Advanced & FCFS category) is allowed with an advance notice of two days from the applicant wherein, the STOA applicant remains liable to pay transmission & operating charges for at least two days. The revision of STOA on the day of operation is allowed only once per day and only under the specific case of generating unit tripping causing generation loss of 100 MW or more.

q) It is clear from the above that the relief granted by the Commission in Petition No. 162/MP/2017 with regard to the scheduling of LTA and MTOA transactions cannot be extended to Advance reservation/ FCFS STOA transactions as wrongly interpreted by the Petitioner.

r) When the Petitioner submitted an application of 392 MW in STOA (FCFS category) in January 2020, WRLDC advised the Petitioner to submit an affidavit/ undertaking in Format-XI (ref. Annexure-4) as per Regulation 8(3)[a] of the STOA Regulations, clearly mentioning that there were no parallel contracts for the same power being applied under FCFS category. The Petitioner never submitted the affidavit required under the STOA Regulations since it was well aware that there existed LTA contracts with other Discoms (i.e. Uttar Pradesh, Tamil Nadu and Chhattisgarh) for the same power.



s) All such communications were promptly made (on 31.1.2020, 3.2.2020, 17.2.2020 and 18.2.2020) as soon as the request for STOA consent was received. Copy of all such communications made by WRLDC to the Petitioner is attached as Annexure 5. However, the Petitioner never submitted the affidavit mandated under Regulation 8(3)[a], but has selectively disclosed only a single e-mail communication dated 31.1.2020.

t) The non-grant of consent for STOA on 31.1.2020 was purely on account of implementation of RPS by PGCIL from 1.2.2020 to 18.2.2020 for non-payment of transmission charges by the Petitioner. The rejection message communicated to the Petitioner (Annexure-3) has clearly mentioned this as '*Rejection Reason: RPS implemented by PGCIL w.e.f 01.02.20*'.

u) After utilising all options under LTA and MTOA contracts, the generator is free to sell the surplus power available in the short-term market under day-ahead/ intra-day contingency STOA, subject to network margin. However, for allowing STOA in Advance Reservation/ FCFS category, Regulation 8(3)[a] mandates that there must not be a parallel contract for the applied quantum. This was precisely the reason why the Respondents (WRLDC and SRLDC) were mandated to restrict the approval to 98 MW only which was the eligible quantum.

v) Clause 5.3.2 of PPA provides that whenever the declared capacity of the power station is less than the sum of all contracted capacities, the Petitioner is required to schedule proportionate quantum of the 'available capacity' among its existing procurers. Accordingly, all the procurers have the right to avail their proportionate share in the 'station availability' in the same timeline. As per methodology specified in paragraph 54 of the order dated 19.6.2019 in Petition No.162/MP/2017, the generator needs to declare allocation under different PPAs up to the capacity limited to installed generation capacity, on day-ahead basis.

w) While declaring PPA-wise allocations on a day-ahead basis, in compliance to the order dated 19.6.2019 in Petition No.162/MP/2017, the Petitioner is required to allocate the 'available capacity' among all the four beneficiaries on



pro rata basis, as per clause 5.3.2 of the PPA. If the Petitioner's claim for FCFS or advance reservation STOA of 392 MW to AP Discoms is allowed by WRLDC and, if they get approval from SRLDC to sell power under this STOA, only to one beneficiary (i.e. the AP Discoms) at its full contracted capacity of 392 MW (400 MW less PoC loss for STOA at Regional periphery), the Petitioner will be directly violating the said clause 5.3.2 of the PPA, when all the 3 units (1800 MW) are in service. Since advance reservation or FCFS category of STOA are approved well in advance (i.e. 3 months to 4 days in advance), it will get scheduled first and subsequently, when the Petitioner declares PPA-wise allocation on day ahead basis in line with the Commission's order as above, there won't be any scope for a *pro rata* allocation among the beneficiaries, since one beneficiary (the AP Discoms) has been scheduled in advance, under STOA.

x) Regulation 16B of the 2009 Connectivity Regulations, mandates that if an LTA/MTOA customer consistently under-utilizes its granted capacity for more than five days, RLDCs are required to issue notices to such customers seeking reasons for such under-utilization. The transfer capability likely to remain under-utilized, as confirmed by LTA and MTOA customer, in response to the said notice from RLDC, needs to be released for STOA transactions. Subsequent to the order dated 19.6.2019 in Petition No. 162/MP/2017, the Petitioner was given liberty to decide among its LTA and MTOA procurers on day-ahead basis. Thus, WRLDC could not issue notice to the Petitioner for furnishing the reason for under-utilization of LTA of the tune of 302 MW, which could have been released for MTOA/ STOA.

y) Having a target LTA of 400 MW does not entitle the Petitioner to any advantage in getting STOA approval (in advance reservation/ FCFS category). STOA is always granted on a non-discriminatory manner for all applicants, subject to fulfillment of the minimum requirements under the STOA Regulations. Thus, the claim of the Petitioner that it is not being allowed STOA despite having a target LTA is incorrect and misleading.

z) As per the 2009 Connectivity Regulations and the Detailed Procedure made thereunder, the Petitioner has the liberty to relinquish LTA in case it



desires not to have the target LTA. Whenever a generator avails LTA on a target region basis (i.e. without an identified beneficiary), it is obliged under the regulations, to pay the applicable transmission charges. The only advantage to the entity holding a target LTA is that it is allowed to offset the transmission charges paid towards the STOA transaction against its LTA charges payable, limited to LTA quantum.

aa) The claim of alleged revenue loss to the Petitioner on account of non-grant of STOA is flawed and utterly misconceived in light of the STOA Regulations. Further, RPS has been imposed by PGCIL on the Petitioner's generating station since 18.6.2020, which continues to be in force, leading to the denial of STOA by Respondents WRLDC and SRLDC, as per the Commission's order dated 20.9.2015 in Petition No. 142/MP/2012.

For the above said reasons, the Respondents have prayed that the prayers of the Petitioner in the Petition and the IA may be rejected.

Rejoinder of the Petitioner

9. The Petitioner vide rejoinder affidavit dated 4.8.2020 has submitted as under:

(a) The Respondents have proceeded with a flawed understanding of the Regulations of the Commission and also the order of the Commission dated 19.6.2019 in Petition No. 162/MP/2017. The Commission may take note of the position taken by the Respondents with regard to the approval of STOA for the period from June 2019 to January 2020. While the applications were duly processed during the said time, the Respondents have now conveniently stated that approvals were inadvertently given, which is an afterthought.

(b) It is wrong and denied that STOA ought to have been restricted to 98 MW as per Regulation 8(3)[a] of the STOA Regulations. The reason given by the Respondents for rejection of the STOA application, on account of imposition of RPS, is an afterthought. While the STOA application was made by the Petitioner to SRLDC on 27.1.2020, WRLDC, on 30.1.2020 had communicated to the Petitioner objecting to give consent for the reason that the Petitioner already had LTA contracts with the UP Discoms, TANGEDCO and CSPDCL for



a total of 1582 MW. Therefore, while the maximum schedule from the Petitioners' plant is 1680 MW capacity [1800MW –120 MW (Aux)], WRLDC sought to enquire from the Petitioner, the basis for STOA for a quantum more than its installed capacity. While the Respondents may change their stand now and state that the rejection was due to RPS, the apprehension of the Respondents is very clear from the above communication dated 30.1.2020.

(c) While the Petitioner informed WRLDC regarding the Commission's order dated 19.6.2019 in Petition No. 162/MP/2017, WRLDC, vide its email dated 31.1.2020 imposed further conditions for issuance of NOC. While the said communication was sent to the Petitioner at 13:18 hours on 31.1.2020, immediately without even waiting for a response, the Petitioner received another communication at 18:28 hours from SRLDC, stating that the application for STOA was rejected due to rejection of consent by WRLDC. The reasons for rejection of the STOA application are evident from the communications enclosed at Annexures-H and 'I' of the Petition.

(d) The 'Consent Rejected application details' available on the STOA web-portal of WRLDC and placed on record by Respondents, mentions the reason for rejection of consent as 'RPS' implemented by PGCIL w.e.f. 1.2.2020. The point of contact for STOA applications for the Petitioner is SRLDC and in terms of the STOA Procedure, the nodal RLDC (in this case is SRLDC), which in turn is to take the consent of WRLDC for granting STOA. Accordingly, the application was made to SRLDC and the rejection was given by SRLDC stating that WRLDC had rejected consent. This may be seen in the context of the communication earlier received from WRLDC seeking to curtail STOA to the installed capacity of the plant. Therefore, the reliance on the STOA web-portal of WRLDC is misconceived.

(e) For the purpose of STOA, the Petitioner applies only to SRLDC. The only reason communicated by WRLDC was on the 'capacity issue' and there was no communication on the issue of imposition of RPS. In fact, WRLDC has misled the Petitioner on the issue, and is seeking to take a different stand as an afterthought, at this stage.



(f) Even assuming that the present rejection of STOA application is on account of imposition of RPS, the regulation is primarily on account of the failure of the beneficiary States to pay the transmission charges, and the consequences of such regulation would, therefore, be on the States. The transmission charges applicable to the Petitioner are to the account of the beneficiaries. In fact, for the PPA with TANGEDCO, the transmission charges are paid directly by the beneficiary. The Petitioner is only an intermediary in regard to the payment of transmission charges. When there is regulation of power supply due to non-payment of dues by the beneficiaries, the Petitioner is also entitled to the fixed charges due to inability to supply power.

(g) If rejection of STOA application is on account of RPS, the issue would still arise as to whether the Respondents can cite the issue of capacity of the generating station. In the present case, it is evident that even if there was no RPS, the Respondent would not grant STOA beyond the installed capacity of the generating station.

(h) The Commission had laid down the principles in its order dated 19.6.2019 in Petition No. 162/MP/2017 filed by the Petitioner against WRLDC for curtailing open access on the basis that the Petitioner did not have sufficient installed capacity to supply as per PPAs entered into by it. On this issue, the Respondents have stated that the order of the Commission was only with relation to LTA and MTOA and does not cover STOA transactions.

(i) The second proviso to Regulation 8(3)(a) of the STOA Regulations deals with a situation where a generator is seeking to sell power for which it already has another contract for sale. It does not apply to the present case. The Respondents have confused the above Regulation to mean that compliance of the provisions of the PPAs entered into by each ISGS (inter-State generating station) is to be ensured by RLDC, to the extent that the Petitioner is to supply to full capacity of its generating station under all the PPAs at all points of time. This is contrary to the principle laid down by the Commission in its order dated 19.6.2019 in Petition No. 162/MP/2017. In the present case, all the pre-existing PPAs are long term in nature and have been performed by the Petitioner all



these years. Since the PPA with the AP Discoms is expiring next year, the present supply is through STOA.

(j) Presently, the ex-bus generation capacity of the Petitioner is 1680 MW and the total contracted capacity is 1982 MW, for which LTA has been operationalized as under:

PPA	Quantum (in MW)
Uttar Pradesh (State Discoms)	1000
Tamil Nadu (TANGEDCO)	500
Chhattisgarh (CSPT radeco)	82
Andhra Pradesh	400
Total	1982

(k) While the Petitioner is in the process of completing other units of the Project, at present, if the Petitioner for a particular month seeks to supply full quantum to a particular beneficiary, it cannot be said that the Petitioner has a contract for sale of the same power to other beneficiaries.

(l) The Petitioner is only seeking to service its obligations under the pre-existing PPAs and there is no question of any wrongful gain. The Petitioner is rather trying to avoid being penalized for short supply, which would occur due to such illegal curtailment of STOA.

(m) The contention of the Respondents that the Petitioner could have applied for selling this power to the AP Discoms under STOA in 'Day-ahead or Intra-Day Contingency' category is without any basis. The Commission in its order dated 19.6.2019 in Petition No. 162/MP/2017 has recognized that the Petitioner ought to be given the freedom/ flexibility to schedule power to its beneficiaries as per its requirements from time to time. In any case, at any point of time, the scheduled power from the Petitioners' plant cannot exceed the installed capacity. The only issue WRLDC is required to be concerned, is with regard to the transmission capacity and adequate margins being available.

(n) A short-term customer is eligible to avail STOA if there is sufficient margin available in ISTS. The grant of STOA is not dependent on the capacity of the applicant to utilize the open access, or even to cater to its other PPAs. The only relevant criterion is the capacity available on the network. Further, the



contention with regard to FCFS or day-ahead application is also contrary to WRLDC's own stand for the reason that if the objective of WRLDC is to ensure that the PPAs are not breached and that the Petitioner is to supply 100% capacity under other PPAs at all points of time, then how does it matter whether the application for STOA is applied under FCFS or day-ahead.

(o) The role of WRLDC is inter-se with SRLDC only in terms of the STOA Procedure dated 30.6.2011, which is to ensure margins in ISTS. The STOA Procedure does not entitle WRLDC to go into the issue of installed capacity and tied-up capacity of the generator.

(p) Liberty which has been granted to the Petitioner by the Commission in order dated 19.6.2019 in Petition No. 162/MP/2017 to schedule and reschedule power is not amongst only its tied-up LTA and MTOA beneficiaries on day-ahead basis, but also STOA. On the contrary, the Commission while holding that WRLDC had not followed the Regulations in true spirit, had upheld the principle that WRLDC cannot interfere in the commercial affairs of the Petitioner. The supply and inter-se rights and obligations under the PPAs of the Petitioner are between the Petitioner and its Procurers, and are of no concern to WRLDC.

(q) The directions given by the Commission in its order dated 19.6.2019 was only to ensure smooth operation of the system and the same can be applied to STOA as well. Even if there is no day-ahead allocation and requisition under STOA, the transactions are approved based on the approved quantum. Further, under the other PPAs of the Petitioner, power would be scheduled and requisitioned on a day-ahead basis. Therefore, at all times, WRLDC would be aware of the total power that would be scheduled on day-ahead basis from the Petitioners' plant. This is even when there is no day-ahead allocation and requisitioning under STOA. Therefore, even technically there is no issue that would arise in scheduling power as sought to be suggested by the Respondents.

(r) The obligation to supply power under long term PPAs of the Petitioner is similar in all three (3) PPAs entered into under competitive bidding process i.e.



with the UP Discoms, TANGEDCO and the AP Discoms. Article 5.3.2 of the PPA takes into account a situation wherein the contracted capacity is more than the available capacity. It is not for WRLDC to then sit over the PPA and decide to whom the Petitioner will supply and to whom the Petitioner will not supply. Further, there are other mitigating provisions in the PPAs, including that of alternate supply in certain situations. In any event, the actual supply and the inter-se rights and obligations under the PPA are between the Petitioner and its procurers, and are of no concern to WRLDC. Whether or not the Petitioner would be in breach of the said PPAs cannot be a factor for the Respondents to consider while giving consent for STOA application.

Hearing dated 11.8.2020

10. During the Video Conferencing hearing held on 11.8.2020, the learned counsel for the Petitioner and the representative appearing on behalf of the Respondents, advanced extensive arguments referring to the Commission's order dated 19.6.2019 in Petition No.162/MP/2017, the correspondence exchanged between the parties and the provisions of the STOA Regulations in support of their contentions and reiterated the submissions made in their respective pleadings. After hearing the learned counsel for the Petitioner and the representative of the Respondents, the Commission reserved order in the matter.

11. The Respondents, however, in response to certain submissions of the Petitioner in its rejoinder dated 4.8.2020, has by affidavit dated 16.9.2020, made the following submissions:

- (a) Few time-stamped screenshots taken from SRLDC STOA web-portal clearly mention that the reason for rejection of STOA application as imposition of RPS by PGCIL w.e.f. 1.2.2020.
- (b) The Commission's order dated 2.9.2015 in Petition No.142/MP/2012 was complied with while denying STOA to the Petitioner on 31.1.2020 and on all occasions.



(c) WRLDC facilitated the implementation of RPS as per paragraph 3 of the directions of the Commission vide RoP of hearing dated 21.1.2020 in Petition no. 113/MP/2020 (*KSK Mahanadi vs PGCIL and Others*) and subsequent notices from PGCIL.

(d) The Commission, in paragraph 23 of the order dated 29.11.2017 in Petition No. 231/MP/2015, had given directions as to 'what is the scope of functions and responsibilities of RLDCs with regard to scheduling of power from a generating station for supply to the licensees in terms of Section 28 of the Act, Grid Code and the PPA'.

(e) In terms of Regulation 6.5 of the Grid Code, in so far as they are applicable to coal based ISGS (inter-State generating stations) and Section 28 of the 2003 Act, RLDCs shall decide and convey the ex-power plant "dispatch schedule" to each ISGS and the "net drawl schedule" to each regional entity, in MW for different time block, for the next day. Subject to modifications that may be required in the dispatch schedule of ISGS and net drawl 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 drawl of electricity from ISGS shall be carried out on day-ahead basis.

Issues for consideration

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

Issue No.A: *Whether the action of the Respondents (SRLDC and WRLDC) leading to rejection of the FCFS STOA application of the Petitioner for 392 MW was consistent with the provisions of STOA Regulations and Procedure there under?*

Issue No.B: *What corrective advice the Commission can issue in the matter?*

We now examine these issues.

Analysis and Decision

Issue No.A: *Whether the action of the Respondents (SRLDC and WRLDC) leading to rejection of the FCFS STOA application of the Petitioner for 392 MW*



was consistent with the provisions of STOA regulations and Procedure there under?

13. The Respondents have submitted that the rejection of Petitioner's STOA application on 31.1.2020 was primarily on account of imposition of RPS by PGCIL, due to the non-payment of transmission charges by the Petitioner. The Respondents have stated that the reason for rejection of application for STOA which was to commence from 1.2.2020 was made through WRLDC's STOA web portal, which was always accessible to the Petitioner though the login access provided by WRLDC. In this regard, the Respondents have relied upon the documents enclosed as Annexures-2A & 2B and Annexure-3 respectively. Per contra, the Petitioner while stating that the submission of the Respondents is an afterthought, has pointed out that reason for rejection of STOA application by WRLDC, was only on the 'capacity issue' and there was no communication on the issue of imposition of RPS. Relying on the documents attached as Annexures-G, H & I to the petition, the Petitioner has submitted that even if there was no imposition of RPS by PGCIL, the Respondents would not have granted STOA beyond the installed capacity of the Project.

14. We have considered the submissions. We observe that in response to the Petitioner's STOA application dated 27.1.2020 under FCFS category to SRLDC of 392 MW for supply of power to the AP Discoms for the period from 1.2.2020 to 8.2.2020, WRLDC vide its communication dated 30.1.2020, had pointed out that the maximum schedule from the generating station of the Petitioner was only 1680 MW and accordingly, sought to enquire from the Petitioner, the basis upon which the application for 392 MW was made. The relevant extracts from the said communication are as under:



*"From,
WRLDC STOA
Sent: 30 January 2020 12.51
To: KSKHO Scheduling Team*

Sir,

SRLDC is asking consent for Feb month 'FCFS application no xxxx for 392 MW

At present KSK have 1582 MW LTA contracts

xxxxx

But Max. Schedule from KSK is 1680 MW (Capacity 1800-Aux 120) after aux.

Please give the region in what basis you have punched 392 MW STOA application."

15. The Petitioner, in response to the above communication, vide its communication dated 30.1.2020, had stated that open access is to be granted based on the capacity available in the transmission system and not on the basis of the installed capacity of the generating company. Referring to the decision of the Commission in order dated 19.6.2019 in Petition No. 162/MP/2017, the Petitioner submitted that the issue of generation capacity not being available or the generator not being able to schedule the full quantum in terms of its PPA, is a matter relating to the commercial mechanism under the PPA and open access is to be granted based on the capacity available in the transmission system and not on the basis of the installed capacity of the generating company. Accordingly, the Petitioner requested WRLDC for grant of open access as sought for in its application. The relevant extracts from the said communication are as under:

*"From,
Prabhjit Singh Samra
Sent: 30 January 2020 14:55
To: WRLDC STOA*

*Dear Sir,
xxxxx*

We are quite surprised of the WRLDC raising the same issue over and over again, despite the specific decision of the CERC in this regard. The open access is to be granted based on the capacity available in the transmission system and not on the basis of the installed capacity of the generating company. It is up to the generator to declare availability and supply electricity in terms of the PPAs with the procurers.



This precise issue has been decided by the Hon'ble CERC vide order dated 19.6.2019 in Petition No. 162/MP/2017, which petition was filed on the refusal of WRLDC to operationalize the open access on the ground that plant capacity is not available after considering 100% supply to the other procurers under PPA.....

xxxxxxxxxx

The present query raised by you has already been decided by the Hon'ble CERC in the above order and any such restraint placed on the open access to be granted and operationalized would be against the order of Hon'ble Commission.

In view of the above, you are requested to kindly grant and operationalize the open access as sought for. Further, we ensure that in any event, the total availability declared and scheduling of power on a daily basis cannot and will not exceed the total installed capacity of the generating station."

16. The Commission observes that as per the RPS notice dated 3.1.2020, RPS was to be imposed on the generating station from 23.1.2020. However, the petitioner filed Petition No. 113/MP/2020 and sought relief of 7 days from commission to pay the charges but eventually did not pay. It led to notice to dated 31.1.2020 by PGCIL, whereby RPS was to be imposed on the generating station of the Petitioner from 1.2.2020. The Implementation Plan pursuant to notice dated 31.1.2020 was uploaded on the website of WRLDC on 31.1.2020 at 1149 hrs, followed by an e-mail communication to the Petitioner. The relevant extracts of the said e-mail communication by WRLDC is as under:

"Implementation plan of Regulation of Power Supply on KSK Mahanadi to UPPCL by PGCIL from 1.2.2020

WRLDC Final Scheduling

Sent: 31 January 2020 11:49

To: WRLDC STOA, KSK In-charge, xxxxxxxxxx

xxxxxxxxxxxxxx

Dear Sir,

Please find the attached Implementation plan of Regulation of Power Supply on KSK Mahanadi Power to UPPCL as per RPS notice issued by PGCIL dated 3.1.2020.

The RPS will be effective from 00:00 hrs of 1.2.2020. The Implementation plan is also available on the website www.wrldc.org & www.wrldc.in."

17. The Commission observes that even after receiving the above communication from PGCIL regarding RPS, WRLDC vide its communication dated 31.1.2020 at



1318 hrs to the Petitioner sought to impose additional conditions for issuance of NOC. The relevant extracts of the said communication are as under:

*“From: WRLDC STOA
Sent: 31 January 2020 13.18
To: Prabhijit Singh Samra*

Subject: RE; 392 MW FCFS STOA Application punched by KSK Mahanadi from KSK Mahanadi to AP for month of Feb 2020.

“Followings are to be done for issuance of NOC-

- 1) ISGS will trade only the URS power of LTA/Beneficiary;*
- 2) Total schedule quantum will not increase total capacity after aux. consumption (Ex-pp).*
- 3) Before contracting any trade ISGS to ensure that no PPAs are being breached;*
- 4) In accordance to the IEGC Regulation (Fifth Amendment) 6.5.4.C of Part 6 quoted below:*

xxxx

“4(c) The ISGS shall not sell the power of any beneficiary in the market without its express consent.

Please find attached standard affidavit formats.

You are requested to draft affidavit first including above and accordingly for processing.”

18. The Commission observes that subsequently, the Respondent SRLDC on 31.1.2020 at 18.28 hrs informed the Petitioner that its STOA application for 392 MW (for the period from 1.2.2020 to 8.2.2020) has been rejected, due to rejection of consent by the Respondent WRLDC. The extracts of the said communication are as under:

*“From: STOA SRLDC
Sent: 31 January 2020 18:28
To: KSKHO Scheduling Team*

Subject: RE: KMPCL#AP#STOA applied through FCFS 3862 for the period of 1.2.2020-8.2.2020

Dear Sir,

The application with TRID 3862 is rejected due to rejection of consent by WRLDC - This is for your kind information.”

19. The Commission also observes that the communication dated 31.1.2020 of the Respondent SRLDC referred to in paragraph 18 above does not mention the reason



for rejection of consent to STOA as imposition of RPS, whereas the website of WRLDC displays the reason of rejection of consent to STOA application of the Petitioner as imposition of RPS. This is evident from following three screen shots submitted by the Petitioner.

Snapshot 1: View visible to STOA applicant on SRLDC Portal

7/23/2020

Application pending consents

ANNEXURE-1

CONSENT REJECTED APPLICATION DETAILS

Trid : 3862
 Application No : KSK/19-20/STOA/62
 Applicant Name : KSK MAHANADI POWER COMPANY LIMITED
 Application Date : 27-Jan-2020 16:03
 Application Type : FIRSTCOMEFIRSTSERVE
 Name of injecting entity : KSK MAHANADI POWER COMPANY LIMITED
 SLDC Name : Chattisgarh SLDC
 Point Of Injection : 765-400KV POOLING SUB-STATION TAGA JANJGIR-CHAMPA
 SLDC Internalised : Y
 STU Internalised : Y
 Name of drawee entity : Andhra Pradesh Power Co-Ordination Committee
 SLDC Name : Andhra Pradesh SLDC
 Point Of Injection : APTRANSCO
 SLDC Internalised : N
 STU Internalised : N
 Route : WR-SR
 Alternate Route1 : WR-ER-SR
 Alternate Route2 : WR-NR-ER-SR
 Rejected Route : WR-SR
 Rejection Reason : RPS implemented by PGCIL wef 01.02.20

Open access scheduling requested

Date		Time		Requested	
From	To	From	To	Mw	Mw-Hr
01-Feb-2020	08-Feb-2020	00:00	24:00	392.000	75264.000
Total Mw-Hrs					75264.000



Snapshot 2: Communication from WRLDC to SRLDC rejecting the consent

Query Result: x

SQL | All Rows Fetched: 1 in 0.031 seconds

CONSENT_ID	TRID	ROUTE_ID	CONSENT_STATUS	RLDC_SLDC_ID	RLDC_SLDC_FLAG	CONSENT_BY	RECEIVED_DATE	REMARKS
1	3183	3862	46 Consent Rejected	339 RLDC	WR		31-JAN-20	RPS implemented by PCIL wef 01.02.20

Snapshot 3: Audit Trail Report with date and time stamping



VIEW AUDIT TRAIL REPORT

Show 10 entries Search:

Trid	Processing Date and Time	Process Name	Corporate Name
3862	31-01-2020 18:17:05:0 PM	Application rejected	SRLDC
3862	31-01-2020 17:50:30:0 PM	Received Rejected Consent	WRLDC
3862	27-01-2020 17:46:36:0 PM	Application sent for consent successfully	SRLDC
3862	27-01-2020 16:03:45:0 PM	Application received successfully	KSK MAHANADI POWER COMPANY LIMITED

Showing 1 to 4 of 4 entries

20. The Commission observes that as RPS was to be implemented with effect from 1.2.2020 in terms of the RPS notice dated 31.1.2020, there was no need for the Respondent WRLDC to communicate with the Petitioner, through communications dated 31.1.2020 (referred to in paragraph 17 above) regarding imposition of



additional conditions for the issuance of NOC, including a direction to the Petitioner to submit affidavits as per formats.

21. We, therefore, consider it necessary to examine the issues raised by the Petitioner and Respondents in greater details in the subsequent paragraphs.

(a) Regulation 8(3)(a) of the STOA Regulations

22. The Respondents have submitted that the nodal RLDC for granting STOA approval as per the STOA Regulations (SRLDC in the instant case), prior to the grant of approval seeks consent from other concerned RLDCs (WRLDC in the instant case) as per the STOA Procedure. The concerned RLDC, after receipt of such request of consent from the nodal RLDC is mandated under the STOA Procedure to convey its consent or denial with reason for the same to the nodal RLDC. The Respondents have submitted that while granting consent for STOA under Advance Reservation or FCFS category, the RLDCs are mandated in terms of the second proviso to Regulation 8(3)(a) of the STOA Regulations, as amended, to ensure that (i) there is a valid contract with the concerned persons for sale or purchase, as the case may be, of power, under the proposed transaction for which concurrence applied for and (ii) there is no other contract for sale or purchase, as the case may be, of the same power as mentioned in (i) above. According to the Respondents, there cannot be another parallel contract (of the same generator with another buyer) for the same power applied to be processed by RLDCs under Advance reservation/ FCFS categories of STOA. The Respondents have argued that since the Petitioner had already tied up contracts of 1582 MW under long-term PPAs with other beneficiaries (the UP Discoms, TANGEDCO and Chhattisgarh), it cannot



apply for that capacity under STOA (in advance reservation/ FCFS category) in terms of the second proviso to Regulation 8(3)(a) of the STOA Regulations.

23. In response, the Petitioner has stated that interpretation of the said proviso to Regulation 8(3)(a) by the Respondents is erroneous as the same deals with a situation where a generator is seeking to sell power for which it already has another contract for sale. The Petitioner, while pointing out that the said proviso apply in cases where the generator diverts the existing PPA to third parties, has submitted that in the present case, all PPAs are pre-existing which are long term in nature and have been performing all these years. The Petitioner has clarified that since the PPA with the AP Discoms is expiring next year, the present power supply is through STOA. The Petitioner has contended that in terms of Regulation 3(2) of the STOA Regulations, a short term customer is eligible to avail open access if there is sufficient margin available in the inter-State network and that the grant of STOA is not dependent on the capacity of the applicant to utilize the open access, or even to cater to its other PPAs. It has stated that the only relevant criterion is the capacity available on the network. The Petitioner has further submitted that the STOA Procedure requires the Petitioner to apply to SRLDC for STOA permission and the concurrence required under the second proviso to Regulation 8(3)(a) is of the APSLDC, which had been obtained by the Petitioner. The Petitioner has submitted that the role of WRLDC is inter-se with SRLDC, which is to ensure that margins on the transmission network exist. Accordingly, the Petitioner has argued that WRLDC being a statutory authority has gone beyond its role as a Load Despatch Centre.

24. We have examined the submissions. Some of the provisions of the STOA Regulations, as amended from time to time, are extracted hereunder:



Definitions

“2(1)(b); 'Bilateral Transaction' means a transaction for exchange of energy (MWh) between a specified buyer and a specified seller, directly or through a trading licensee or discovered at power exchange through anonymous bidding, from a specified point of injection to a specified point of drawl for a fixed or varying quantum of power (MW) for any time period during a month;

2(1)(c): 'Collective Transaction' means a set of transactions discovered in power exchange through anonymous, simultaneous competitive bidding by buyers and sellers;

Scope

3(2): The short-term customer shall be eligible for short-term open access over the surplus capacity available on the inter-State transmission system after use by the long-term customer and the medium-term customer, by virtue of-

- (a) Inherent design margins;
- (b) Margins available due to variation in power flows; and
- (c) Margins available due to in-built spare transmission capacity created to cater to future load growth or generation addition.”

Nodal Agency

5. The nodal agency for bilateral transactions shall be the Regional Load Despatch Centre of the region where point of drawal of electricity is situated and in case of the collective transactions, the nodal agency shall be the National Load Despatch Centre.

Submission of Short-term Open Access Application

6(1) An short-term customer or the power exchange (on behalf of buyers and sellers) intending to avail off short-term open access for use of the transmission lines or associated facilities for such lines on the inter-State transmission system, shall make an application to the nodal agency in accordance with these regulations.

Xxxx
xxxx

Concurrence of State Load Despatch Centre for bilateral and collective transactions

8(1) Wherever the proposed bilateral transaction has a State utility or an intra-State entity as a buyer or a seller, 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.

Xxxxx
xxxxxx

8(3)(a): For obtaining concurrence or 'no objection' or prior standing clearance an application shall be made before the State Load Despatch Centre who shall, acknowledge receipt of the application, either by e-mail or fax, or any other usually recognised mode of communication, within twenty four hours from the time of receipt of the application:



Provided that where the application has been submitted in person, the acknowledgement shall be provided at the time of submission of the application.

Provided further that while making application to RLDC/SLDC for obtaining concurrence for bilateral transactions (except for intra-day transaction/contingency transactions), an affidavit in the format prescribed in the Detailed Procedure, duly notarized, shall be submitted, along with the application declaring that:

(i) there is a valid contract with the concerned persons for sale or purchase, as the case may be, of power under the proposed transaction for which concurrence is applied for;

(ii) There is no other contract for sale or purchase, as the case may be, of the same power as mentioned in (i) above.

Xxxx”

25. Relevant extracts of the STOA Procedure (Bilateral & Collective) dated 30.6.2011 provide for the following:

“4. CONCURRENCE OF REGIONAL LOAD DESPATCH CENTRE

4.1. Wherever the proposed Bilateral Transaction has a State Utility or an intra-State Entity as a Buyer or a Seller in other region, the Nodal RLDC shall obtain concurrence of the concerned Regional Load Despatch Centre(s). The concurrence of the Regional Load Despatch Centre shall be as per enclosed format [FORMAT-III: “Request/Concurrence from RLDCs”].

4.2. RLDC shall first consider the Applications received by them, as nodal Agency, before giving concurrence / indicating constraint, to other RLDCs, for the Applications received, by the later.

4.3. In case of denial of access, the RLDC concerned shall furnish reasons for the same, in writing.”

26. Thus, we note that in terms of the ‘scope’ of Regulation 3(2) of the STOA Regulations (refer paragraph 24 above) a short term customer shall be eligible to avail open access if there is sufficient margin available in the inter-State network. As per Regulation 5 of the STOA Regulations, the Nodal Agency for bilateral transactions shall be the Regional Load Despatch Centre (RLDC) of the region where the point of drawl of electricity is situated, which in the present case is SRLDC since the AP Discoms are located in the Southern Region. According to Regulation 8(3)(a) of the STOA Regulations, for obtaining concurrence or no-objection or prior standing clearance, an application is required to be made by the Petitioner before SLDC.



27. In the instant matter, admittedly, the Petitioner, in terms of this regulation, has obtained NOC from APSLDC. However, WRLDC while pointing out that SRLDC is the nodal agency for granting STOA approval for the Petitioner as per STOA Regulations, has submitted that while granting consent for STOA, the RLDCs are mandated in terms of the second proviso to Regulation 8(3)(a) of the STOA Regulations, as amended, to ensure that (i) there is a valid contract with the concerned persons for sale or purchase, as the case may be, of power, under the proposed transaction for which concurrence applied for and (ii) there is no other contract for sale or purchase, as the case may be, of the same power as mentioned in (i) above.

28. We note that in terms of clause 4.1 of the STOA Procedure (quoted above), SRLDC is required to obtain concurrence of STOA from WRLDC as per Format-III therein and in turn, WRLDC is required to issue concurrence or in case of rejection of STOA, the reasons thereof. Contrary to this, we notice from records that the Respondent WRLDC (in response to SRLDC seeking consent) has been exchanging communication with the Petitioner and placing additional conditions for issuance of NOC with regard to the STOA application. In our view, the role of WRLDC is *inter se* with SRLDC and WRLDC cannot go beyond its role as a Load Despatch Centre, in terms of the said procedure and seek information from the Petitioner. Any communication of WRLDC with the Petitioner is not envisaged in any provisions of the STOA Regulations or the STOA Procedure. In our view, this was unwarranted.

29. We note that WRLDC has submitted that it has been mandated in terms of the second proviso to Regulation 8(3)(a) to ensure that (i) there is a valid contract with the concerned persons for sale or purchase, as the case may be, of power, under



the proposed transaction for which concurrence applied for and that (ii) there is no other contract for sale or purchase, as the case may be, of the same power as mentioned in (i) above. In our view, this understanding of WRLDC is misconceived. We observe that Regulation 8(3)(a) of the STOA Regulations provides that '*For obtaining concurrence or 'no objection' or prior standing clearance an application shall be made before the State Load Despatch Centre -----*'. However, second proviso to Regulation 8(3)(a) of the STOA Regulations provides that '*while making application to RLDC/SLDC for obtaining concurrence for bilateral transactions (except for intra-day transaction/contingency transactions), an affidavit in the format prescribed in the Detailed Procedure----*'. Thus, the aforesaid second proviso provides for a role for RLDCs and mandates submission of affidavit as per format only in case *an application is made to such RLDC for obtaining 'concurrence' or 'no objection' or 'prior standing clearance'*.

30. In the instant case, the application of the Petitioner for grant of STOA under FCFS category was made to SRLDC, the Nodal Agency and NOC was obtained from APSLDC, the concerned SLDC. Thus, any role envisaged under Regulation 8(3)(a) of the STOA Regulations is applicable to SRLDC (as the nodal RLDC) and WRLDC had no role to play.

31. Thus, we are of the view that in the instant case WRLDC was not authorized to call for submission of affidavits from the Petitioner in terms of the second proviso to Regulation 8(3)(a) of the STOA Regulations.

(b) Order of the Commission dated 19.6.2019 in Petition No.162/MP/2017

32. The Respondents have submitted that the decision of the Commission dated 19.6.2019 in Petition No. 162/MP/2017 (KSKMPCL V WRLDC & anr) is not



applicable to the present case, as the same was issued in an entirely different context. The Respondents have submitted that the relief granted to the Petitioner in the said order was with reference to the existing LTA and MTOA, and not for STOA. The Respondents have further submitted that the Commission in the said order had directed as to how to deal with a situation when the net operationalized LTA+MTOA becomes more than the commissioned capacity of a generator, while the generator wants to schedule power to a new LTA beneficiary without consent from existing LTA beneficiaries. While stating that the STOA Regulations do not have such provision for day-ahead declaration of 'allocation' followed by 'requisition submission' by beneficiaries, the Respondents have submitted that STOA transactions are scheduled as they are approved by RLDCs with no scope for allocation declaration and requisition submission on day-ahead basis. The Respondents while pointing out that there are key differences in scheduling LTA & MTOA vis-à-vis STOA transactions, have contended that the Petitioner cannot be permitted to seek extension of the Commission's order dated 19.6.20 19 to STOA, in the present case.

33. In response, the Petitioner has submitted that the Commission in the said order had upheld the principle that WRLDC cannot interfere in the commercial affairs of the Petitioner and that the supply and inter-se rights and obligations under the PPAs of the Petitioner are between the Petitioner and the procurers and is of no concern to WRLDC. The Petitioner, while pointing out that there was no problem in scheduling STOA of the Petitioner by the Respondents from June 2019 to January 2020, has submitted that the Commission in its order dated 19.6.2019 in Petition No. 162/MP/2017 had decided the principle as to whether the Respondents can restrict open access relating it to the installed capacity of the generator and hence the same may be extended to the present case.



34. We have examined the submissions. The question for consideration is whether the principle decided in the Commission's order dated 19.6.2019 is applicable to the present case. Petition No. 162/MP/2017 was filed by the Petitioner seeking directions against the Respondents in relation to MTOA for transfer of power from Western Region and Northern Region. In the said case, the Petitioner was 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 the UP Discoms, as against 505 MW MTOA and 1000 MW LTA operationalized by PGCIL. One of the prayer of the Petitioner in the said case was for a direction upon WRLDC to allow for scheduling of quantum as would be intimated by PGCIL for the present and such further capacity as available in future, without any restriction based on the plant capacity available. The Petitioner had contended that the quantum of capacity to be scheduled in favour of the procurers is a bilateral matter under the PPA, with consequences provided thereunder and the role of RLDC was only to schedule the power as per indications given by the generator. To this, the Respondent WRLDC had submitted, amongst others, that with the grant of 505 MW of MTOA to the UP Discoms, the total approved/ operationalized LTA+MTOA quantum for the Petitioner became 1366.5 MW and since the ex-bus capacity of the station was 1120 MW, the capacity fell short by 246.5 MW. It was also contended by WRLDC that in case where the ex-bus capacity itself is not adequate to honour all three contracts, it was difficult to arrive at any mutually agreed schedule. Examining the submissions of the parties, the Commission in its order dated 19.6.2019 had observed that RLDC as system operator, instead of limiting the scheduling to 258.5 MW MTOA and 770 MW LTA, was required to schedule power as per access granted by CTU and in terms of the PPA. Holding that WRLDC had not followed the provisions of the prevailing



regulations, the Grid code, Connectivity Regulations and the PPA, the Commission had observed that WRLDC can restrict the export schedules only for reasons of transmission constraints and not otherwise. The Commission also observed that the total schedule from the generating station of the Petitioner for all its procurers cannot exceed the total available capacity. The relevant portion containing the submissions of the parties and the observations of the Commission are extracted hereunder:

“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:

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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.

XXXX

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.”

35. Accordingly, the Commission while rejecting the action of WRLDC in limiting the schedule for export of power to the UP Discoms, had granted relief to the Petitioner in the said case. In order to ensure smooth operation of the system, in such cases where the capacity (LTA + MTOA) under different PPAs taken together was more than the installed capacity, the Commission in the said order had directed RLDCs to adopt the following procedure:

- (a) The concerned generating station shall declare the allocation under different PPAs up to 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.

36. Thus, the present Petitioner, in the Petition No. 162/MP/2017, had questioned the role of WRLDC in restricting open access and, as the same issue has been raised by the Petitioner in the present petition, we are of the view that the decision in the order of the Commission dated 19.6.2019 in Petition No.162/MP/2017 is applicable in the instant case as well.

(c) Provisions of the PPA

37. The Respondents have submitted that in terms of Article 5.3.2 of the PPA, whenever the declared capacity of the power station is less than the sum of all contracted capacities, the Petitioner is required to schedule proportionate quantum of the ‘available capacity’ among its existing procurers. Accordingly, the Respondents have submitted that all the procurers have the right to avail their proportionate share in ‘station availability’ in the same time line. Referring to the



methodology laid down in Commission's order dated 19.6.2019 in Petition No.162/MP/2017, the Respondents have submitted that the Petitioner is required to allocate the 'available capacity' among all four beneficiaries on pro rate basis as per Article 5.3.2 of the PPA.

38. Per contra, the Petitioner has stated that Article 5.3.2 of the PPA takes into account a situation where the contracted capacity is more than the available capacity and it is not for WRLDC to sit over the PPA and decide as to whom the Petitioner will supply or not supply power. It has also submitted that there are other mitigating provisions in the PPA, including that of alternate supply in certain situations and the actual supply and inter-se rights and obligations under the PPA are between the Petitioner and its procurers and is of no concern to WRLDC. The Petitioner has further stated that whether or not the Petitioner would be in breach of the said PPA cannot be a factor for the Respondents to consider while giving consent for STOA.

39. The Commission has considered the submissions. As per the provisions of Section 28 of the Electricity Act, 2003, 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, 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.

40. Article 5.3.2 of the PPA provides for the following:

“5.3.2. In case the aggregate contracted capacity is a part of the power station’s Net Capacity; in the event of declared capacity being less than the sum total of all contracted capacities of the power station having duration of contracts more than one year, the available capacity to the procurer(s) for despatch shall be reduced proportionately. However, if the despatched capacity exceeds the sum total of all contracted capacities of the power station having duration of contract in excess of one year, the excess capacity will be at the disposal of the Seller”

41. As per Article 4.4 of the PPA, the Seller (the Petitioner herein) has undertaken to sell power to the procurers while the procurers have undertaken to pay the tariff to the Seller subject to the terms of the PPA. 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. Article 4.8 of the PPA provides that in case of failure to commence supply or achieve the required availability, the Seller would be liable to pay liquidated damages to the procurers. Also, as stated by the Petitioner, there are mitigating provisions in the PPA including that of alternate supply in certain situations.

42. We are of the view that in terms of provisions of the 2003 Act and the Grid Code, though WRLDC has the power to look into provisions of the PPAs and ask for parties for compliance in matters relating to grid operation and optimum scheduling and dispatch of power, it is not required to get involved as to how the provisions of PPA has be enforced between the seller (in this case the Petitioner) and the



procurers. The inter-se rights and obligations under the PPA between the seller and the procurers cannot be a factor for the Respondents to consider while granting consent for STOA. Therefore, the Commission is of the view that the reliance placed by the Respondents on the provisions of the PPA is misplaced.

(d) Other issues

43. The Respondents have suggested that the Petitioner could have applied for selling power to the AP Discoms under STOA in day-ahead or Intra-day contingency category. The Respondents have also submitted that the Petitioner had already been granted liberty by Commission's order dated 19.6.2019 in Petition No. 162/MP/2017 to schedule and reschedule power amongst its tied up LTA and MTOA beneficiaries on day-ahead basis. The Respondents have further submitted that the Petitioner could have sold the unutilized power under STOA in day-ahead/ intra-day contingency category to the AP Discoms since there is no obligation to submit any affidavit/ undertaking or prove non-existence of any parallel contract for the same power in case of day-ahead or intra-day contingency applications, in contrast to such requirements in case of application for advance reservation/ FCFS STOA.

44. The Petitioner has contended that the suggestion of the Respondents with regard to FCFS or day-ahead is contrary to its own stand for the reason that if the objective of WRLDC is to ensure that the PPAs are not breached and that the Petitioner is to supply 100% capacity under the PPAs at all points of time, then it does not matter whether the application for STOA is applied under FCFS category or day-ahead/ intra-day category.



45. We have considered the submissions. The suggestions made by the Respondents are of no relevance. RLDCs have been vested with the responsibilities for optimum scheduling and dispatch of electricity within the region in accordance with the contract entered into between the distribution licensees/buying entities and generating companies operating in the region. The generating stations have the freedom/flexibility to schedule power to its beneficiaries as per their requirements, with rights and obligations flowing from the relevant contract. We are of the view that it is not the mandate of RLDCs to get into the commercial domain of the contract.

46. The Respondents have referred to incorporation of Regulation 16B via the 6th amendment to the 2009 Connectivity Regulations (which empowers RLDCs to seek explanation from entities for under-utilisation of LTA and MTOA granted and further declaration on the likely period of under-utilisation) and has submitted that it could not issue notice to the Petitioner for under-utilisation of LTA to the tune of 302 MW which could have been released for MTOA or short term market. It has, therefore, prayed that the Commission may issue suitable directions and/or guidelines as to how to implement Regulation 16B of the 2009 Connectivity Regulations while honouring the direction in Commission's order dated 19.6.2019 in Petition No.162/MP/2017. In response, the Petitioner has submitted that the issue raised is irrelevant as regards this petition.

47. In our view, the subject matter of the present petition relates to rejection of the Petitioner's FCFS STOA application for 392 MW by the Respondents. We note that the Respondents have raised the issue of difficulty in implementation of certain provisions of the 2009 Connectivity Regulations on account of decision of the Commission in order dated 19.6.2019 in Petition No. 162/MP/2017. We are of the



view that the Respondents could have approached the Commission for a clarification through filing a petition in this regard after order was issued in the stated petition, instead of raising the issue in the instant petition.

48. The Respondents have termed their action of granting STOA to the Petitioner from June 2019 to January 2020 as inadvertent. We note that the Petitioner was granted STOA by the Respondents for sale of power in the range of 38.5 MW to 361.5 MW to the AP Discoms, for the period from June 2019 to January 2020. However, we do not intend to go into the issue of inadvertent error on its part in granting NOC for STOA to the Petitioner.

49. Based on the discussions in the preceding paragraphs and screen shots submitted by the Respondents (Para 19), we hold that even though STOA application of the Petitioner for 392 MW for the period from 1.2.2020 to 8.2.2020 was finally rejected on account of RPS, the procedure followed by the Respondent WRLDC in processing the STOA application (for the period from 1.2.2020 to 8.2.2020) was not in accordance with the provisions of STOA Regulations.

50. Issue No. A is decided accordingly.

Issue No.B: *What corrective advice the Commission can issue in the matter?*

51. The Petitioner has submitted that as a consequence of non-grant of open access by the Respondents, the Petitioner has been put to substantial financial loss and prejudice and that the Respondents are liable to compensate the Petitioner for such losses. The Petitioner has further submitted that the Commission had taken a consistent view that the defaulting party is liable to compensate the other party for any losses that has resulted.



52. Per contra, the Respondents have submitted that the claim of the Petitioner for alleged revenue loss to the Petitioner on account of non-grant of STOA is flawed and misconceived in the light of the extant regulatory provisions of STOA and, therefore, deserves to be rejected.

53. While deciding on Issue A, we have held that STOA application of the Petitioner for 392 MW for the period from 1.2.2020 to 8.2.2020 was finally rejected on account of RPS. We, therefore, do not find any reason for ordering any compensation payable by the Respondents to the Petitioner in this case.

54. We have also observed that the procedure adopted by WRLDC in processing the STOA application of the Petitioner (for the period from 1.2.2020 to 8.2.2020) was not in accordance with the provisions of STOA Regulations. We recognize that the Respondents are statutory authorities performing functions under Section 28 of the 2003 Act. We also recognize that often the interplay of provisions of the Act, provisions of Regulations of the Commission and various orders of the Commission relating to such provisions get complex. And even statutory authorities often tend to miss the true intent and spirit of the regulatory provisions governing the subject matter, including the orders of this Commission. May be the instant case is one of such cases, where the WRLDC has missed the true intent and spirit of the regulatory provisions, while processing STOA application of the Petitioner. We are of the view that processing of Petitioner's STOA application by the Respondent was based on misunderstood and misconceived interpretation of the regulatory provisions. However, the Commission makes it clear that RLDCs, including WRLDC, are advised to perform their role and functions strictly in terms of various sections of the 2003 Act, the regulatory provisions and the orders of the Commission.



56. Issue No. B is decided accordingly.

57. In view of above decisions, the other prayers of the Petitioner are rendered inconsequential and are, therefore, not being considered. The Commission also notes that the PPA of the Petitioner has expired on 31.3.2021.

58. Petition No.530/MP/2020 along with IA No. 45/2020 stand disposed of in terms of the above discussions and findings.

Sd/-
(Arun Goyal)
Member

Sd/-
(I.S. Jha)
Member

Sd/-
(P.K. Pujari)
Chairperson

