

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 492/MP/2020

Coram:

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

Date of Order: 15th December 2022

In the matter of:

Petition under Section 79 (1) (c), 79 (1)(d), 79 (1)(f) and 79 (1)(k) of the Electricity Act, 2003, for adjudication of dispute arising out of the action of Power Grid Corporation of India in relation to Bill-3 raised in contravention of Regulation 11 of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulation, 2010 read with Billing, Collection, Disbursement (BCD) Procedure and interalia, seeking declaration that the Petitioner is entitled for complete offset of charges billed in Bill-1 as well as Bill-3, in the event the quantum of transmission corridor availed by the Petitioner in any region is, for the corresponding period, equal to or more than the target region LTA quantum and for refund of monthly POC charges paid under Bill-3.

And

In the matter of:

DB Power Limited, Office Block 1A, 5th Floor,
Corporate Block, DB City Park,
DB City, Arera Hills,
Opposite MP Nagar, Zone-1, Bhopal-461016

...Petitioner

Versus

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

...Respondents

Parties present:

Shri Sanjay Sen, Sr. Advocate, DBPL
Shri Hemant Singh, Advocate, DBPL
Shri Lakshyajit Singh Bagdwal, Advocate, DBPL
Ms. Supriya Rastogi, Advocate, DBPL
Ms. Suparna Srivastava, Advocate, PGCIL
Shri Tushar Mathur, Advocate, PGCIL
Ms. Soumya Singh, Advocate, PGCIL

ORDER

DB Power Limited (hereinafter to be referred as Petitioner) has filed the present Petition under Section 79 (1) (c), 79 (1)(d), 79 (1)(f) and 79 (1)(k) of the Electricity Act, 2003, for adjudication of dispute arising out of the action of Power Grid Corporation of India in relation to Bill-3 raised in contravention of Regulation 11 of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulation, 2010 read with Billing, Collection, Disbursement (BCD) Procedure and inter alia, seeking declaration that the Petitioner is entitled for complete offset of charges billed in Bill-1 as well as Bill-3, in the event the quantum of transmission corridor availed by the Petitioner in any region is, for the corresponding period, equal to or more than the target region LTA quantum and for refund of monthly POC charges paid under Bill-3.

2. The Petitioner has made the following prayers:

- a) *Hold and declare that the Petitioner is entitled for complete offset of charges billed in Bill-1 as well as Bill-3, in the event the quantum of transmission corridor availed by the Petitioner in any region is, for the corresponding period, equal to or more than the target region LTA quantum;*
- b) *Direct the Respondent to refund a sum of Rs 28,94,28,814/- (Rupees Twenty Eight crores Ninety Four lakhs Twenty Eight Thousand Eight Hundred and Fourteen only) being the amount paid under bill-3 since 1st October 2017 up to March 2020, along with interest;*
- c) *Pass any other order as this Hon'ble Commission may deem fit in the facts and circumstances of the present case and in the interest of justice.*

Submissions of the Petitioner

3. The Petitioner vide its Petition has mainly submitted as under:

- a. The Petitioner, vide letter no. C/ENG/SEF/TAW/09/003 dated 01.10.2009, was granted LTA for 705 MW, with Northern Region as target beneficiary for 175 MW, and remaining 530 MW with Western Region as target beneficiary. That, the Petitioner executed a Bulk Power Transmission Agreement (BPTA) dated 24.02.2010 with the Respondent for above referred 705 MW Long Term Open Access on target basis.
- b. Subsequently the LTA was firmed up with beneficiaries on signing of PPAs. The Petitioner started the supply of power for the quantum of 208 MW to Tamil Nadu, 311 MW to Rajasthan, and the LTA of 186 MW continued to remain in Western region being the target region.
- c. As per the Clause 2.1.3 of BCD Procedure, and Regulation 11 of the CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010, the CTU/ Respondent is responsible to bill the Petitioner for the usage of the grid as ISTS customer. The Petitioner being part owner of the Inter-State capacity, gets the refund or rebate out of the Respondent's revenue (i) from other users for STOA and IEX sale (ii) any additional use by the Petitioner; (iii) MTOA revenue; and (iv) revenue from over injection and overdrawal by the DIC's.
- d. Regulation 11(4) of the CERC Sharing Regulations 2010 refer to Bill-1, which is raised monthly and provides for methodology for computing the POC charge, Reliability support charge and HVDC charge. Any additional charges in the form of variation, rescheduling or arrears recoverable pursuant to the Commission's order is included in the third bill and is raised on quarterly basis. However, charges raised under both these bills are subject to complete offset to be provided to a DIC as stipulated in Regulation 11(10).
- e. In view of Regulation 11(4) of the CERC Sharing Regulations, 2010, the Respondent has been raising monthly invoices upon the Petitioner since 01.10.2017 under POC Bill-1 for the quantum of 247/186 MW, as the case may be, depending on target region quantum and accordingly, credits the STOA charges for the previous month in the next monthly bill, to the Petitioner.

- f. The third part of the POC bill, Bill-3, is raised on quarterly basis to adjust any variation in interest rates, FERV, adjustment for rescheduling of commissioning of transmission assets, etc. as approved by the Hon'ble Commission by subsequent orders.
- g. However, in contravention of the aforesaid Regulations, no offset is given to the generator for target region supply in bill-3, though this bill is also for the charges stipulated in Regulation 11. Thus, the generator with target beneficiary, in spite of being entitled to complete offset, ends up paying POC bill-3 which is not included in credit amount in monthly POC bill 1.
- h. As per the regulations, in order to avoid duplication of recovery of POC charges, a generator who pays POC charges for target region quantum is supposed to get credit of entire POC charges, if equal to or excess quantum in short term or exchange is supplied in the corresponding month to any region. However, this offset is allowed by PGCIL only in POC bill-1 but not in the POC bill-3, though POC bill-3 also includes components of transmission cost not recovered in POC bill -1.
- i. That the act of the Respondent in raising such arbitrary bills (Bill 3) upon the Petitioner, for which no refund/ credit adjustment of the charges is provided to the Petitioner, is unlawful and arbitrary in the eyes of law. As per Sections 38 (2)(c) and Section 61 of the Electricity Act, 2003, the transmission of electricity has to be conducted on commercial principles. As such, the Respondent cannot indulge in over or double recovery of transmission charges from the Petitioner.
- j. Being aggrieved by such unlawful action of the Respondent, the Petitioner, while pointing out the discrepancy in the billing methodology, requested the Respondent to provide an offset of the STOA charges availed by the Petitioner under Bill-3.
- k. Subsequent to the issuance of the aforesaid bills, a meeting was held on 11.03.2019, 12.03.2019 and 13.03.2019 in the presence of Respondent Company's Senior General Manager, Chief General Manager and the

Petitioner, wherein the Petitioner, while pointing out the billing methodology, requested the Respondent to modify the bills raised under Bill-3 to provide for offset of LTA charges paid by the Petitioner. However, the Respondent rebutted the claim of the Petitioner on the grounds that the contested bills were raised according to the Sharing Regulations, 2010. Also, in the said meeting, though it was admitted by the Respondent that the Petitioner is adversely affected by the delay caused in passing the POC Order, and that due to the delay caused in passing the order, the Respondent is raising the bills, it expressed its helplessness. So also, if the POC rates increase, the difference payable by the DIC'S to the transmission licensee for the previous periods, is added in the Bill-3. Moreover, the said amount is not refundable in the present billing practice under BCD procedure and Sharing Regulations, 2010.

- i. However, the Respondent refused to accept the request of the Petitioner for refunding the Bill-3 charges which has been raised contrary to Regulation 11(6) of the Inter-State Sharing Regulations, 2010 read with BCD procedure.
- m. That the Petitioner, having left with no option, had to pay the disputed amount raised by the Respondent under Bill-3. Further, if the Regulation is silent about the monthly refunds under the Bill-3, it does not mean that the Respondent has liberty to raise Bills as per their own whims and fancies contrary to the mandate of Section 38 and 61 of the Electricity Act, 2003.
- n. Under Sections 79 (1) (c), 79 (1) (d), 79(1)(f) and 79 (1)(k) of the Electricity Act, 2003, this Commission has necessary jurisdiction to adjudicate the present petition and issue necessary direction to the Respondent to refund the amount paid since 1st October 2017 till Mar 2020 under Bill-3.

Hearing dated 30.07.2020

4. Commission vide RoP of hearing dated 30.07.2020 admitted the Petition and directed the Petitioner to issue notices.

Reply of PGCIL

5. PGCIL in its reply dated 21.08.2020 has mainly submitted as under:

- a. Petitioner was granted LTA for quantum of 705 MW, out of which 186 MW was granted on target region basis towards WR and 311 MW and 208 MW was to be supplied to beneficiaries in NR and SR as per the respective PPAs entered into that behalf.
- b. That as stated by the Petitioner in the present Petition, till the absence of firm PPAs, the Petitioner had supplied power generated from its project on short-term basis to various distribution licensees. Subsequent to the firming of beneficiaries and revision in LTA as aforesaid, the Petitioner started supply of power from Chhattisgarh for the quantum of 208 MW to Tamil Nadu, 311 MW to Rajasthan and the LTA of 186 MW continued to remain in WR being the target region. The Respondent accordingly raised the transmission charges bills upon the Petitioner for use of ISTS (i.e. Bill-1 and Bill-3) for the approved LTA quantum (including the untied capacity) in accordance with the provisions of the Sharing Regulations. Upon raising of the said bills, the Petitioner, vide letter dated 19.3.2019, requested the Respondent to withdraw Bill-3 dated 29.10.2018 and 31.12.2018 to provide for offset of STOA availed by it and stated as under:

“DBPL had approved LTA of 247MW from April to July, 2018 and 186MW thereafter till September, 2018 for Western Region. DBPL tries sale of adequate power from its station in STOA including Exchange sale, to get 100% credit of the monthly charges for this LTA capacity. However, in FY 2018-19, we note that PGCIL has billed 3.96 Cr & 4.81 Crore in Bill 3 for quarter 1 and 2.

DBPL has sold more than this approved LTA quantum in energy terms during each month of Q1 and Q2 for FY 19. This being the case, we should get 100% credit for the charges paid by DBPL for this capacity. We are unable to understand how PGCIL has billed the aforesaid amount in bill no.3 when we have fully utilized our LTA for western region. We could not understand, why the charges billed in Bill 3 were not allowed as credit in 6 (six) monthly bills during this period.

Since the full LTA allocated to DBPL has been utilized during quarter 1 and 2 of 2018 for short term sale by DBPL, we request you to kindly let us know the reason for Bill no. 3 and arrange to withdraw these bills.”

- c. That vide letter dated 25.3.2019, the Respondent refuted the above claim of the Petitioner by stating that Bill-3 raised by it was in line with the provisions in the Sharing Regulations and that the transmission charges corresponding to the LTA grant were to be borne by LTA customers having firm beneficiaries as well as DICs having LTA to target region.

It was thus communicated to the Petitioner that Bill-3 raised on it was in accordance with the extant regulatory provisions and as such, could not be withdrawn.

- d. That the Respondent submits that it is statutorily bound to raise the transmission charges bills for the open access granted as per the procedure prescribed by this Commission under the Sharing Regulations on the basis of the Regional Transmission Accounts (TRAs) prepared by the concerned Regional Power Committee (RPCs). The Sharing Regulations prescribe in Regulation 11 that the bill for ISTS charges for all DICs is to be raised by the Respondent in three parts. Insofar as the 1st bill (Bill-1) is concerned, a reading of clause (4) of Regulation 11 shows that the said bill is to “recover charges for use of transmission assets of the ISTS Licensees based on the Point of Connection methodology” and is to be raised every month based on the Point of Connection (PoC) rates, Reliability Support rate, HVDC Charge, Approved Withdrawal and Approved Injection for each DIC. Suffice it to say, Bill-1 is a transmission charges bill based on POC rates and approved injection/withdrawal to be raised on monthly basis for use of the ISTS. Clause (6) of Regulation 11 provides for raising of the 3rd Bill (Bill-3) which is used to adjust any variations in FERV, incentive, rescheduling of commissioning of transmission assets, arrears due to any revision Order etc. as allowed by this Hon’ble Commission for the ISTS transmission licensee and to be raised on quarterly basis.

The 3rd bill is thus to be raised on a quarterly basis and is of the nature of an adjustment bill, that is to say, one which makes adjustments at the end of the quarter to make up for the under-recovery or over-recovery during that period.

- e. In line with the Clause 1 (c) of Regulation 2 of the Sharing Regulation, the adjustment Bill-3 is required to be raised on quarterly basis to each DIC in proportion to its average Approved Injection or Approved Withdrawal charges over the relevant PoC application period (i.e. in proportion to average LTA POC charges for the quarter).
- f. That further, in the case of a DIC having LTA on a target region basis without identified beneficiaries and paying injection charges for LTA, avails STOA to any region, clause (9) of Regulation 11 becomes applicable. The said clause (9) has been inserted vide the Third Amendment to the Sharing Regulations making provision for offset for LTA for a DIC paying charges under the LTA.

Thus applying the clause in the instant case of the Petitioner to the extent of LTA on target region basis, the injection PoC charges and demand PoC charges paid for STOA to any region are to be adjusted in the following month against the monthly injection PoC charges for Approved Injection (i.e. LTA charges under Bill-1) and are required to pay PoC injection charge for the Approved Injection for the remaining quantum after offsetting the charges for STOA. In other words, the quantum of power for which the Petitioner has transacted under STOA is to be offset against the Approved Injection PoC charges (LTA charges) and the Bill-1 is to be raised for the LTA charges after giving offset to the quantum of transacted STOA.

- g. That it may be mentioned here that in the Statement of Reasons dated 26.10.2015 to the Third Amendment to the Sharing Regulations, it has been recorded as under:

“ 36.11 In regard to suggestions of CTU, we are of the view that with the changed methodology, Withdrawal DICs are now to pay withdrawal charges which includes charges attributable to ISGS. The injecting DIC having LTA to a target region shall pay Injection charges as per the revised methodology. Withdrawal DIC and injection DIC shall be given offset in Part-I of the bill.”

A perusal of the above makes it that the withdrawal and injection DIC is to be provided offset in the first part of the Bill. It is thus submitted that

Bill-3 raised by it on the DICs, including the present Petitioner completely conforms to the provisions of Regulation 11(6) of the Sharing Regulations. Further, the contention of the Petitioner to provide STOA offset in Bill-3 is illogical and devoid of any merit.

It is evident that such STOA offset can be provided only once and the Regulations envisage that such STOA offset is provided against the LTA charges under Bill-1 but cannot be under Bill-3 also. In case of firm LTA grant, the provision for offset is not available for being claimed under the Sharing Regulations.

- h. That in the entire scheme of the Sharing Regulations, it is nowhere contemplated that a DIC is entitled to off-setting of STOA charges both in Bill-1 and Bill-3. Thus, the reliefs sought by the Petitioner, if granted, would amount to a complete departure from the regulatory frame work prescribed by this Commission as regards billing and sharing of transmission charges. It is also submitted that there is no arbitrary or illegal raising of Bill-3 by the Respondent in contravention of Regulation 11 of the Sharing Regulation as has wrongly been alleged by the Petitioner. The said raising of Bill-3 has been in accordance with the provisions of the Sharing Regulations and as such the Petitioner's grievance is misplaced and untenable and the present Petition is completely devoid of any merits. The same is, therefore, liable to be dismissed by this Hon'ble Commission. It may be mentioned here that the Sharing Regulations are not under challenge in the present Petition or otherwise and therefore continue to be binding on the parties concerned.

Rejoinder of the Petitioner to the Reply of PGCIL

6. The Petitioner in its rejoinder dated 11.09.2020 to the reply filed by PGCIL has submitted as under:

- a. The philosophy of providing set-off of the Transmission charges, when a DIC avails short term open access (STOA), and at the same time also has a long-term access (LTA), is that the "quantum" of power transacted under STOA has to be set-off against the equal "quantum" under LTA. In

the event, the DIC avails STOA for a quantum greater than or equal to that granted under the LTA, then no charges, whatsoever, can be imposed upon the said DIC against its LTA. It is submitted that the purpose of offset is to avoid double charging.

- b. In terms of Regulation 11(4) of the Inter-State Sharing Regulations, 2010 raises monthly invoices upon the Petitioner under POC Bill-1 for LTA quantum based on target region, and thereafter, is mandated to offset and refund to the Petitioner the LTA charges paid for the previous month in the next monthly bill corresponding to STOA supply during the month, subject to maximum charges for LTA quantum of target region, as per Regulation 11 (10) of the Inter-State Sharing Regulations, 2010.
- c. As per the Sharing Regulations, the CTU/ Respondent was providing offset and refund of POC charges against STOA availed by the Petitioner upto charges raised for POC in Bill-1. However, the Respondent has not provided any refund for POC charges raised in Bill No. 3 corresponding to the STOA availed in the corresponding month. Thus, the entire purpose of considering the “quantum” of LTA and STOA (*i.e. the quantum of power transacted*) utilized by the DIC for a given period and avoiding duplication of charges has been disregarded by the Respondent.
- d. It is submitted that the Sharing Regulations nowhere limits the offset of transmission charges to Bill-1 only. Instead, the language of Regulation 10 of the Sharing Regulations is crystal clear, which provides that it is the “quantum” of STOA which has to be offset with the “quantum” of LTA (*i.e. the quantum of power transacted*), for the purpose of setting-off the transmission charges.
- e. It is further submitted that the averment of the Respondent in reply, that the aforesaid Regulations do not provide for any set-off with respect to Bill-3, is completely erroneous and misleading. It is stated that the Bill-3 is towards raising of any adjustment charges or arrears in respect of the same quantum covered in Bill-1. Therefore, in the event Bill-1 would have covered any such adjustment charges/ arrears, there being no need to issue a Bill-3, then the Petitioner, as per the argument of the

Respondent, would have been provided a complete set-off qua the “quantum” of STOA with the “quantum” of LTA, for the purpose of transmission charges.

- f. It is further submitted that the Respondent has miserably failed to take into account the intent of the Sharing Regulations, which provides that no transmission charges can be raised under LTA (including Bill-3) for the “quantum” of power transacted under STOA. If raising of Bill-3, in the manner as contended by the Respondent, is allowed, then the aforesaid philosophy of the Sharing Regulations which mandate that no transmission charges can be raised under LTA equivalent to the transmission charges paid for the “quantum” of STOA, will be defeated.

In fact, the liability of the Petitioner to pay transmission charges under LTA, is “discharged” to the extent of the “quantum” of STOA which was availed by the said Petitioner, in terms of Regulation 11 (10). Once the aforesaid liability is “discharged”, then there is no question of raising Bill 3 for the same “quantum” of LTA which was supposed to be entirely offset with STOA.

- g. It is submitted that Regulation 11 (10) of the Sharing Regulations does not create any distinction between Bill 1 or Bill-3, and that the said Regulation mandates that it is the “charges” for LTA, qua the same quantum for which STOA was availed, which are required to be offset. It does not matter as to when and how such charges (transmission) are raised, i.e. either Bill-1 or Bill-3. In other words, the transmission charges can be raised in any manner, divided in a single or various invoices, however, the philosophy of the Sharing Regulations ought to be considered such that it is the aforesaid “charges” that are required to be offset as provided in Regulation 11 (10).
- h. It is therefore submitted that the bills raised by the Respondent and payments made by the Petitioner since 01.10.2017 to the said Respondent/ PGCIL towards POC charges under Bill-3 are Rs 28,94,28,814/- (Rupees Twenty-Eight crores Ninety four lakhs Twenty Eight Thousand Eight Hundred and Fourteen only). This entire amount needs to be refunded with interest, or the entire amount along with

interest thereon needs to be adjusted against any future payments of transmission charges to be made by the Petitioner, on account of the fact that the “quantum” of power for which the aforesaid charges under Bill-3 were raised, was to be offset with the “quantum” of STOA availed from 01.10.2017 on a monthly basis.

- i. As regards the reason that Bill-3 is not raised for any transaction or “quantum” of power, different from such “quantum” for which Bill-1 was raised. In other words, Bill-3 is also towards “transmission charges” for the same LTA for which Bill-1 was raised, and therefore, squarely covered by the “charges” mentioned under Regulation 11 (10) of the Sharing Regulations.
- j. Similarly, there cannot at all be any reliance placed by the Respondent on the Statement of Reasons dated 26.10.2015. After the aforesaid Statement of Reasons, the regulations were amended by the 5th Amendment of the Sharing Regulations. Therefore, the averments made by the Respondent in the aforesaid para of its reply, are liable to be rejected.

Hearing dated 23.06.2022

7. During the course of hearing, learned senior counsel for the Petitioner and the learned counsel for the Respondent, PGCIL made detailed submissions in the matter and reiterated the submissions made in the pleadings.

8. Subject to the above, the Commission reserved the matter for order.

9. The Petitioner vide affidavit dated 18.07.2022 reiterated earlier submissions.

Analysis and Decision

10. After considering the submissions of the parties and perusal of documents available on record, the issue which arises for our consideration is “*Whether the Petitioner is entitled for complete offset of charges against STOA quantum in Bill-1 as well*”

as Bill-3”?

11. Petitioner has submitted that in view of Regulation 11(4) of the CERC Sharing Regulations, 2010, the Respondent has been raising monthly invoices upon the Petitioner since 01.10.2017 under POC Bill-1 for the quantum of 247/186 MW, as the case may be, depending on target region quantum and accordingly, credits the STOA charges for the previous month in the next monthly bill, to the Petitioner. The third part of the POC bill, Bill-3, is raised on quarterly basis to adjust any variation in interest rates, FERV, adjustment for rescheduling of commissioning of transmission assets, etc.. However, in contravention of the aforesaid Regulations, no offset is given to the generator for target region supply in bill-3, though this bill is also for the charges stipulated in Regulation 11. Thus, the generator with target beneficiary, in spite of being entitled to complete offset, ends up paying POC bill-3 which is not included in credit amount in monthly POC bill 1.

12. As per the regulations, in order to avoid duplication of recovery of POC charges, a generator who pays POC charges for target region quantum is supposed to get credit of entire POC charges, if equal to or excess quantum in short term or exchange is supplied in the corresponding month to any region. However, this offset is allowed by PGCIL only in POC bill-1 but not in the POC bill-3, though POC bill-3 also includes components of transmission cost not recovered in POC bill -1.

13. The Petitioner further stated that the Sharing Regulations nowhere limits the offset of transmission charges to Bill-1 only. Instead, the language of Regulation 10 of the Sharing Regulations is crystal clear, which provides that it is the “quantum” of STOA which has to be offset with the “quantum” of LTA (*i.e. the*

quantum of power transacted), for the purpose of setting-off the transmission charges.

14. The Respondent in his reply submitted that a combined reading of clauses (4), (6) and (9) of Regulation 11 makes it clear that the basis of levy of Bill-1 is the transmission charges payable by a DIC net of the STOA offset charges payable by the same DIC on a monthly basis, whereas the basis of Bill-3 is to make adjustment in FERV, incentive, rescheduling of commissioning of transmission assets, arrears due to any revision Order etc. into the already levied transmission bills of each quarter.

15. We have considered the rival submissions. . The provisions regarding offset for STOA for a DIC paying charges under LTA is covered under Clause (10) of Regulation 11 of Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulation, 2010 provides as under:

“(10)The offset for STOA for a DIC paying charges under LTA shall be as follows:

(a) *If a DIC, having LTA to a target region without identified beneficiaries and paying injection charges for Long Term Access, avails Short Term Open Access to any region:*

(i) *The charges for the quantum of Short-Term Open Access shall be adjusted in the following month against the charges for Long Term Access of such DIC limited to the granted quantum of Long Term Access.*

(ii) *This offset shall be limited to the extent of the quantum for which DIC has paid transmission charges towards long term access.*

(b) *The quantum of power for which a DIC is granted STOA shall be offset against the Approved withdrawal for which Withdrawal PoC charges are paid by the concerned DIC. This offset shall be limited to difference between Approved Withdrawal and Net withdrawal (load minus own injection) considered in base case, if Approved withdrawal is less than the Net Withdrawal:*

(c) *For Withdrawal DIC, this adjustment shall be given only for STOA transaction by DIC, and shall not be applicable to intra-State entities embedded in State network and availing STOA:*

(d) *The adjustment for STOA availed by a DIC having LTA to target region without identified beneficiaries shall also be applicable in case of collective transactions undertaken by concerned DIC. In such cases, Injection DICs shall be given adjustment corresponding to injection charges and withdrawal DICs shall be given adjustment corresponding to withdrawal charges:*

(e) *The adjustment of STOA against LTA shall not be applicable for collective transactions and bilateral transactions undertaken by a trading licensee, who has a portfolio of generators in a State for which LTA was obtained by the trading licensee to a target region."*

16. As per the submissions of the Petitioner and Respondent, there is no dispute on raising the first part of the Bill i.e. Bill 1 under Regulation 11 (4) read with Regulation 11 (10). However, the dispute is regarding raising of the Bill 3 under Regulation 11 (6) and offset of the charges towards quantum of STOA. The Regulations 11 (6) of Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulation, 2010 provides as follows:

"(6) The third part of the bill shall be used to adjust any variations in FERV, Incentive, rescheduling of commissioning of transmission assets, arrears due to any revision Order etc. as allowed by the Commission for any ISTS Transmission Licensee. Total amount to be recovered or reimbursed on account of such under-recovery or over-recovery shall be billed by the CTU to each DIC in proportion of its average Approved Injection or Approved Withdrawal Charges over the relevant PoC application period. This part of the bill shall be raised on first working day of September, December, March and June for the previous PoC application period."

17. The concept of offset for STOA to any region to a DIC with LTA to target region was amended vide fifth amendment to CERC (Sharing of inter-State Transmission Charges and Losses) Regulations 2010 whereby vide the Explanatory Memorandum, following explanation was given:

"5. The Regulations provides that a DIC with LTA to target region shall be given offset for STOA/MTOA to any region. However it is required that more clarity is required in the same to clarify following.

(1) The offset shall be provided for the quantum only. A DIC may be paying an injection POC rate under LTA to target region which may be different from POC rates paid by it under STOA/ MTOA. A DIC shall be provided offset in the LTA bill of next month for the quantum for which it has already paid under MTOA /STOA in previous month.

(2) Such an offset shall be provided only if DIC which is paying charges for LTA under target region does STOA/MTOA which effectively implies it has paid both for LTA and MTOA/STOA. In case a DIC (or a trader on its behalf) has not sought

STOA/MTOA and has not paid charges towards MTOA/STOA it shall not be given offset for same. Offset is to be provided only to entity which is paying charges for the same quantum twice.

(3) Accordingly draft amendments have been proposed to bring clarity in how the offset is to be provided. An example is provided below for clarity:

DIC "A" has LTA of 500 MW from WR to SR (Target Region). PoC Injection Rates (PoC + Rel. Supp. Charges + HVDC Charges) applicable to this DIC is Rs. 1,50,000/- Per MW per Month. DIC will pay Rs. 7,50,00,000/-. In case DIC identifies beneficiary through MTOA for 200 MW and withdrawal rate of beneficiary identified is Rs. 2,00,000/- Per MW per Month, then charges collected for MTOA of 200 MW from DIC is Rs. 4,00,00,000/-. In next month bill the DIC having LTA to target region have to pay PoC Charges for balance quantum of 300 MW after offsetting the quantum of MTOA of 200 MW @ Rs. 150000 / MW i.e. next month's bill under LTA will be Rs. 4,50,00,000/-."

Further vide Statement of Reasons issued vide No. L-1/44/2010-CERC Dated 15th December, 2017 for CERC (Sharing of inter-State Transmission Charges and Losses) Regulations (5th Amendment), 2017 provides as follows:

"7.4.3. We do not agree to suggestion of ESSAR Power, JITPL and SEL that offset should be on Rupee terms. The concept of offset has been introduced to make sure an entity is not billed twice for the same quantum of power. An MTOA transaction is with identified beneficiary for which Withdrawal PoC rates shall be applicable. A DIC with LTA to target region should be liable to pay Withdrawal charges in case it agrees into firm contract for part/full of its power with a firm beneficiary subject to terms of its contract with beneficiary related to liability of the charge. Hence for such a transaction LTA quantum to be billed should reduce by the quantum for which firm contract has been entered into. Hence offset shall be on quantum only."

18. As per above, it has been indicated that offset has been introduced to ensure that an entity is not billed twice for the same quantum of power. We observe that the rates for LTA to target region as well as STOA for a quarter are determined for same Monthly transmission charges. For example, if total monthly transmission charges are Rs 3000 Crore for all ISTS licensees, the POC rates for LTA, MTOA as well as STOA for that quarter are determined using same Rs 3000 Crore. Now suppose an entity 'A' has LTA to target region for 100 MW in January 2020, avails STOA in January 2020 for 50 MW, such an entity pays upfront for such STOA of 50 MW. Additionally, such an entity shall be billed for 100 MW in February 2020 for LTA to target region. Hence the entity would be required to pay for 150 MW effectively. To address this, Regulations provide that such an entity shall be billed for 50 MW in February towards LTA to target region since it paid for 50 MW in January itself. We observe that such offset is only for Bill1 and not for

Bill 3, since the LTA and STOA rates have been determined on same MTC. Bill-3 is generated subsequently and actually changes the MTC for that month, however no revision is done for STOA rates for the same month. Suppose Rs. 100 Crore is to be raised under Bill-3 for Month of January, it effectively makes MTC as 3100 Crore. This 100 Crore is recovered from all LTA/MTOA entities, but no revision is done in STOA rates. Hence the entity 'A' does not pay anything in STOA against such Rs 100 Crore towards STOA of 50 MW availed in January. Accordingly, it cannot seek offset for LTA charges against such Rs 100 Crore under Bill-3 because it never paid such an amount and hence there is no double billing towards the same.

19. Hence, in the instant case the Petitioner is entitled to an offset for quantum of STOA in the next month billing for the quantum of STOA availed during the previous month in Bill 1 only and not entitled for any offset against the same from the quarterly bills i.e. Bill 3 as the third part of the bill shall be used to adjust any variations in FERV, Incentive, rescheduling of commissioning of transmission assets, arrears due to any revision Order *etc.*

20. In view of the discussions aforesaid, we are not inclined to accept the plea of the petitioner. Accordingly, the prayers of the Petitioner are hereby disallowed.

21. Petition No. 492/MP/2020 is disposed of in terms of above.

Sd/
(P. K. Singh)
Member

Sd/
(Arun Goyal)
Member

Sd/
(I. S. Jha)
Member