

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 45/MP/2021**

**Coram:**

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

**Date of Order: 18<sup>th</sup> January 2024**

**In the matter of:**

Petition under Section 79 of the Electricity Act, 2003 read with CERC (Sharing of Transmission Charges) Regulations, 2010, CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter- State Transmission and related matters) Regulations, 2009, and CERC (Regulation of Power Supply) Regulations 2010 seeking quashing demand of approximately Rs. 39.23 Crore as transmission charges (under Non-PoC mechanism) by Power Grid Corporation of India Ltd. vide letter dated 21.09.2020 and seeking to restrain PGCIL from curtailing open access/regulation of power pursuant to Regulation Notice dated 26.11.2020.

**And in the matter of:**

GMR Kamalanga Energy Limited,  
New Shakti Bhawan, Building No. 302- New Uddan Bawan,  
Opposite Terminal- 3, Indira Gandhi International Airport,  
New Delhi- 110037

.....Petitioner

**Versus**

1. Power Grid Corporation in India Limited,  
“Saudamini”, Plot No. 2, Sector-29,  
Gurgaon-122001

.....Respondent  
No.1

2. Eastern Regional Load Despatch Centre  
POSOCO, 14, Golf Club Road, Tollygunge,  
Kolkata – 700033

.....Respondent No.2

3. Northern Region Load Despatch Centre,  
Grid Controller of India Limited (Grid-India)  
B-9, Qutub Institutional Area, 1st Floor,  
Katwaria Sarai, New Delhi -110016

.....Respondent No.3

4. National Load Despatch Centre,  
Grid Controller of India Limited (GRID-INDIA),  
Registered office: B-9, Qutub Institutional Area, 1st Floor,

**Parties Present:**

Shri Vishrov Mukerjee, Advocate, GMR  
Ms. Yashaswi Kant, Advocate, GMR  
Ms. Priyanka Vyas, Advocate, GMR  
Ms. Swapna Seshadri, Advocate, CUTIL/PGCIL  
Shri Utkarsh Singh, Advocate, CTUIL/PGCIL  
Shri Yogeshwar, CTUIL/PGCIL  
Ms. Chitikena Abhijith, CTUIL/PGCIL  
Shri Alok Mishra, NLDC

**ORDER**

GMR Kamalanga Energy Limited (GKEL) has filed the instant Petition under Section 79 of the Electricity Act, 2003 read with CERC (Sharing of Transmission Charges) Regulations, 2010, CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter- State Transmission and related matters) Regulations, 2009, and CERC (Regulation of Power Supply) Regulations 2010 seeking quashing of demand for approximately Rs. 39.23 Crore as transmission charges (under Non-PoC mechanism) by Power Grid Corporation of India Limited vide letter dated 21.09.2020 and to restrain PGCIL from curtailing open access/regulation of power pursuant to Regulation Notice dated 26.11.2020.

The Petitioner has made the following prayers in the instant petition:

- (a) Set aside the invoices raised by PGCIL (communicated through Demand letter dated 21.09.2020) and direct refund of the excess amount paid by GKEL along with interest;*
- (b) Set aside Regulation of Power/Open Access Notice dated 26.11.2020 issued by PGCIL;*
- (c) Pass ad-interim directions restraining PGCIL from taking any coercive action against GKEL including regulation / reduction of open access and transmission pursuant to Regulation Notice dated 26.11.2020 during the pendency of this Petition.*
- (d) Pass any such other and further reliefs as this Hon'ble Commission deems just and proper in the nature and circumstances of the present case.*

**Submissions of the Petitioner:**

1. The Petitioner has made the following submissions:

- (a) The Petitioner, GKEL, is a generating company which has developed a coal based thermal power plant with an installed capacity of 1050 MW in District Dhenkanal in the State of Odisha. The Project comprises three units of 350 MW each. It supplies power to the States of Odisha, Haryana and Bihar. The supply of power from GKEL is through the dedicated transmission line to the Angul Sub-station for onward supply through the ISTS Network to the beneficiaries.
- (b) For the supply of power from seven IPPs in Odisha, PGCIL as CTU envisaged the High Capacity Power Transmission Corridor-I (Phase-I IPPs in Odisha). Under the Transmission System for Phase-I Generation Projects in Orissa-Part-A in Eastern Region, a total of 9 transmission assets were to be constructed by PGCIL, and granted LTA to seven generating companies on this transmission system, with projects from (a) to (e) connected at Angul Pooling Sub-station and projects at (f) and (g) connected at Jharsuguda Pooling Sub-station. The assets were also divided into two groups for each of the sub-stations details are as under:
- a) JITPL (1044MW),
  - b) Navbharat Power Pvt. Ltd (720MW)
  - c) Monnet Power Company Ltd (900MW),
  - d) Lanco Babandh Power Ltd (800 MW),
  - e) GKEL (800MW),
  - f) IBEUL (616MW),
  - g) Sterlite Energy Ltd. (400MW)
- (c) For each of the generating stations, the Dedicated Transmission Line up to the sub-stations (i.e. Angul and Jharsuguda) was to be constructed by the respective generating company.
- (d) GKEL was granted connectivity at Angul sub-station station, out of the 9 assets, only 4 are relevant as under: -
- (a)**Asset I**- LILO of Meramundali-Jeypore 400 kV S/C line at Angul Pooling Station.
  - (b)**Asset II**- One no. of 125 MVAR Reactor (1st) and associated bays at Angul Sub-station
  - (c)**Asset-III** - One no. of 125 MVAR Reactor (2nd) and associated bays at Angul Sub-station.
  - (d)**Asset-IV** - One no. of 125 MVAR Reactor (3rd) and associated bays at

Angul Sub-station.

- (e) Regulation 18 of the CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter- State Transmission and related matters) Regulations, 2009, notified on 10.08.2009, provides that generating companies which default/exit/abandon then PGCIL is entitled to claim charges only from such companies.
- (f) PGCIL executed the Bulk Power Transmission Agreement (“BPTA”) dated 24.02.2010 with GKEL, Monnet Power Co. Ltd., Lanco Babandh Power Ltd. and Ind-Bharat Energy (Utkal) Ltd. for evacuation of power on Long Term basis. The BPTA also provided for inter-alia, the payment of transmission charges as under: -

*“E)Each of the project developers i.e. the Long term transmission customer has agreed to share and bear the applicable transmission charges as decided by Central Electricity Regulatory Commission of the total transmission scheme as per Annexure-3 from the scheduled date of commissioning of respective generating units, corresponding to the capacity of power contracted from the said generation project through open access as indicated at Annexure-1 irrespective of their actual date of commissioning. The sharing mechanism for these transmission charges has been agreed to be as per Annexure- 4 of this agreement.*

[...]

2.0

*(a)Long term transmission customer shall share and pay the transmission charges in accordance with the regulatory/tariff order issued by CERC from time to time of POWERGRID transmission system of concerned applicable Region i.e. Northern Region/Western Region/Eastern Region including charges for inter regional links/ULDC/NLDC charges and any additions thereof. These charges would be applicable corresponding to the capacity of power contracted from the said generation project through open access from the scheduled date of commissioning of generating projects as indicated at Annexure-I irrespective of their actual date of commissioning.*

[...]

*5.0 The Long term transmission customer shall not relinquish or transfer its rights and obligations specified in the Bulk Power Transmission Agreement, without prior approval of POWERGRID and CERC and subject to payment of compensation in accordance with the CERC Regulations issued from time to time.*

6.0

*(a)In case any of the developers fail to construct the generating station /dedicated transmission system or makes an exit or abandon its project, POWERGRID shall have the right to collect the transmission charges and/ or damages as the case may be in accordance with the notification/regulation issued by CERC from time to time. The developer shall furnish a Bank guarantee from a nationalized bank for any amount which shall be equivalent to Rs. 5 (five) Lakh/MW to compensate such damages. [...]*

*(b) This bank guarantee would be initially valid for a period upto six months after the expected date of commissioning schedule of generating unit(s) mentioned at Annexure-I ... .. The bank guarantee would be encashed by POWERGRID in case of adverse progress of individual generating unit(s) assessed during coordination meeting as per para 7 below. However, the validity should be extended by concerned Long Term transmission customer(s) as per the requirement to be indicated during co-ordination meeting. [...]*

#### ANNEXURE 4

[...]

*In the event of default by any developer under Clause 5 and 6 of this Agreement, the transmission charges for the system mentioned at Annexure-3 would be shared by balance developers. However, the damages collected (if any) from the defaulting developer(s) under clause 5 & 6 of this agreement shall be adjusted for the purpose of claiming transmission charges from the balance (remaining) developers.”*

CERC (Sharing of Transmission Charges) Regulations, 2010 inter-alia provides for the sharing of transmission charges determined/adopted for ISTS. Regulation 8 provides for the determination of specific transmission charges applicable for a Designated ISTS Customer.

(g) PGCIL filed a petition 112/TT/2013 for the determination of tariff for the 9 transmission assets for the tariff period 2009-2014. The 9 assets were divided into groups based on the sub-station. Asset I-IV was for the Angul sub-station while Asset VI-IX was for Jharsuguda. Asset V was not included as the same was not commissioned during FY 2013-14. Vide Order dated 07.10.2015 Commission determined the transmission charges and held that:

*(a) There was delay on behalf of generating companies in construction of the Dedicated Transmission Line whereas PGCIL has commissioned the transmission system.*

*(b) As GKEL, did not perform its part of the BPTA, hence it is liable to bear transmission charges as per Clause 2.0(a) and 2.0(c) of the BPTA.*

*(c) As transmission system set up by PGCIL was not serving intended purpose, and in consideration of BPTA and Sharing Regulations, tariff for the transmission system shall be borne by generating companies till operationalisation of their Long-Term Access (“LTA”).*

(h) PGCIL filed Review Petition No. 24/RP/2015 against the order dated 07.10.2015 in 112/TT/2013. On 16.02.2017, this Commission dismissed the Review Petition No. 24/RP/2015. On 22.08.2017, PGCIL raised Bill No. 92300553 for Rs 9.5 Crore on GKEL claiming charges under the Non-POC mechanism as per the Order dated 7.10.2015 in Petition No. 112/TT/2013. GKEL filed Appeal No. 57 of 2018 before the Tribunal challenging Order dated

7.10.2015 in Petition No. 112/TT/2013 and the Order dated 16.02.2017 in Petition No. 24/RP/2015 passed by the Commission.

(i) PGCIL filed Petition No. 73/MP/2017, in which vide Order dated 21.02.2018, this Commission inter-alia held that:

*(a) In case where the generating stations have not achieved COD but the transmission systems have achieved COD, Regulation 8(6) of the Sharing Regulations clearly provides that the transmission charges shall be calculated at the drawl nodes of the LTTCS customer availing power from such ISTS generating station after their commercial operation.*

*(b) Transmission tariff in respect of Asset I, II, III and IV shall be borne by JITPL and GKEL till 01.06.2014 and 21.12.2014 in the ratio of their operationalised LTA post which their share of transmission charges for Asset-I, II, III and IV shall be completely included in PoC mechanism for sharing of transmission charges.*

*(c) The charges recovered, if any, from balance generating companies /defaulting generating companies connected/ to be connected at Angul pooling station till their dedicated line is commissioned shall be adjusted to JITPL & GMRKEL accordingly. Thus, if there is default/ abandonment by other generating companies, remaining generating companies to pay to PGCIL which will be refunded once PGCIL recovers charges from defaulting generating companies.*

(j) GKEL filed Appeal No. 160 of 2018 before the Tribunal impugning the 73/MP/2017 Order inter-alia on the ground that the Sharing Regulations do not provide for recovery of transmission charges under Non-POC Mechanism. On 01.09.2020, the Tribunal issued a common Judgment in a batch of appeals challenging the Orders in Petition No. 112/TT/2013, 24/RP/2015 and 73/MP/2017 and held that:

*(a) The generating stations were not commissioned in their entirety because of non-completion of the dedicated transmission lines, which were an integral part of the generating stations.*

*(b) Sharing Regulations are clear that sharing mechanism as per Annexure I of the Sharing Regulations shall be effective only after commercial operation of the generating station and till then, it shall be the responsibility of the generating company to pay transmission charges.*

On 21.09.2020, PGCIL, while referring to previous bills, demanded a sum of Rs. 39.23 Crores referring to APTEL Judgment dated 01.09.2020

(k) GKEL filed Civil Appeal No. 3331 of 2020 impugning Judgment dated 01.09.2020 of this Tribunal before Hon'ble Supreme Court. Vide Order dated 16.10.2020, Hon'ble Supreme Court dismissed Civil Appeal No. 3331 of 2020 and upheld Judgment dated 01.09.2020.

(l) On 26.11.2020, PGCIL issued the Regulation Notice to GKEL stating GKEL's

default of non-payment of transmission charges.

- (m) On 03.12.2020, GKEL submitted that the Non-PoC Charges payable by GKEL in terms of Orders of this Commission and the Sharing Regulations is Rs.7.38 Crore which it paid on 03.12.2020.
- (n) On 04.12.2020, GKEL filed an Original Application having DFR No. 440 of 2020 before the Tribunal.
- (o) On 07.12.2020, pursuant to a request for a meeting by PGCIL, GKEL and PGCIL convened a meeting for settlement of issues. PGCIL refused to withdraw the Regulation Notice unless the entire amount is paid. GKEL was constrained to approach the Delhi High Court seeking relief. On 11.12.2020, the Delhi High Court granted relief subject to payment of Rs. 7.5 Crore by GKEL. The same was paid by GKEL. Also, the Tribunal on 15.12.2020 in DFR No. 440 of 2020 directed PGCIL not to implement the Regulation Notice till the next date of hearing.
- (p) The amount claimed by PGCIL is contrary to applicable regulations, and that GKEL cannot be made to bear the liability of other generating companies who have since relinquished/ abandoned capacity in the ISTS system
- (q) In terms of the BPTA dated 24.02.2010, the transmission charges are payable in accordance with regulations/ notifications issued by this Commission. The transmission charges/ damages correspond to the capacity of power contracted through the generation project. It is submitted that the liability of payment of transmission charges of each generating company is that of such company only. The liability of transmission charges is to be determined/ computed based on the methodology specified under the Sharing Regulations. In terms of the same, the transmission charges are qua the Long-Term Capacity allocated/requisitioned by the defaulting generating company.
- (r) The BPTA was entered into before the notification of the Sharing Regulations. In terms of the BPTA dated 24.02.2010 and the regulatory approval, it was made clear that the transmission charges and their sharing by the constituents will be determined in accordance with the applicable regulations on such terms and conditions of the tariff as specified from time to time. The Demand Letter

dated 21.09.2020 is contrary to the provisions of the BPTA, the Sharing Regulations and the Connectivity Regulations notified by this Commission. The Sharing and Connectivity Regulations were passed subsequently, the Regulations will override Annexure 4 of the BPTA. In view of the foregoing, no reliance can be placed on Annexure 4 of the BPTA to claim amounts from GKEL.

- (s) The amount claimed by PGCIL is in the nature of compensation payable by generating companies who have relinquished/abandoned their LTA. Accordingly, GKEL cannot be made responsible to make good the loss allegedly suffered by PGCIL due to other generating companies. Any purported coercive step, including regulation of power in connection with this illegal demand for payment, is also untenable and ought to be set aside. PGCIL has neither pursued recovery of the amount from these generating companies nor taken any steps regarding the same. PGCIL, which has failed to take steps to recover amounts allegedly due to it, cannot be permitted to recover the same from GKEL.
- (t) The Non-PoC charges payable by GKEL are approximately Rs. 7.38 Crore. This is based on the correct application of the applicable regulations, and the charges are proportionate to the quantum of LTA contracted by GKEL. As per this, the share of GKEL in the charges for the assets is approximately between 20-24%. However, the amount claimed by PGCIL affixes GKEL's share at 87.20%. This will result in an absurdity since an 87.20% share of the charges will have to be included in the PoC pool once GKEL commissions its dedicated transmission line. Therefore, all beneficiaries will be burdened with the share of charges of generating companies who have abandoned/relinquished capacity.
- (u) In terms of the Order in Petition No. 73/MP/2017 (confirmed by Tribunal in terms of Judgment dated 01.09.2020), GKEL is liable to pay charges under the Non-PoC Mechanism from the date of commissioning of transmission assets to the date of commissioning of the dedicated transmission line by GKEL.
- (v) The period of liability is 01.04.2013 to 21.12.2014, as GKEL commissioned its dedicated transmission line on 21.12.2014. GKEL's liability for payment of



charges under the Non-PoC Mechanism from 01.04.2013 to 21.12.2014 is Rs. 7.38 by considering GKEL LTA as 800 MW as against a total LTA of 4067 MW. GKEL has paid Rs. 7.38 Crore to PGCIL and, thus, discharged its liability in terms of the Order in Petition No. 73/MP2017. However, in terms of the Bill dated 22.08.2017, PGCIL has calculated GKEL's liability till 15.12.2015. The same is contrary to the directions of this Tribunal.

- (w) In terms of the Order dated 7.10.2015 in Petition No. 112/TT/2013, this Commission determined the transmission charges for 9 Nos. of transmission assets set up by PGCIL for the evacuation of power in Odisha.
- (x) There was a change in status, and several IPPs relinquished LTA capacities (either complete or partial) allocated to them by PGCIL. The capacities relinquished have been permitted by this Commission only upon payment of relinquishment charges as determined by PGCIL in accordance with this Commission's Order dated 08.03.2019 in Petition No. 92/MP/2015.
- (y) BPTA affixes two different and separate liabilities namely, transmission charges and damages/compensation in case of default by a generating company (abandon, relinquish capacity, etc.).
- (z) PGCIL has raised 2 separate sets of demands, the first one being an invoice dated 22.08.2017 for transmission charges of Rs. 9.5 Crores. The second demand, raised on 24.04.2018, 05.02.2019 and 15.12.2019, is primarily towards amounts that other generating companies, which were parties to the BPTA, would have paid had they not abandoned/relinquished capacity. PGCIL has neither raised any demand nor taken any steps to recover the said charges from such generating companies.
- (aa) PGCIL is now attempting to recover these amounts from GKEL, wherein the entire capacity of the transmission system has been considered for computing liability. This is impermissible and contrary to the various relinquishment orders passed by this Commission and the Order dated 08.10.2020 passed by the Tribunal in Appeal no. 251 of 2019. Post relinquishment of capacity, PGCIL cannot claim compensation qua the said capacity from the remaining generating companies. PGCIL has included the said capacity to determine the amount payable by GKEL. Once capacity has been relinquished, the same capacity cannot form part of bills raised on GKEL. It is a trite law that what cannot be done directly cannot be done indirectly. Being a statutory body,

PGCIL as CTU, by claiming charges for capacity including relinquished capacity, is trying to do indirectly what cannot be done directly.

- (bb) PGCIL cannot be permitted to claim amounts from GKEL for capacity which has been relinquished by other generating companies. GKEL's liability under the Non-PoC Mechanism as per the allocated LTA is Rs. 7.38 Crore, which has been paid by GKEL. GKEL has paid (without prejudice to its rights) an additional amount of Rs. 7.5 Crore on 11.12.2020 (upon direction by Delhi High Court).
- (cc) Regulation 4 of the RPS Regulations, which provides the procedure for regulation of power, states that a generating company or a transmission licensee may serve a notice for regulation of power supply'. The proviso to Regulation 4 makes it clear that curtailment is linked to the supply of power to the Regulated Entity. Since there is no supply to the generating company, a generating company does not fall within the scope of Regulation 4 of the RPS Regulations. Since RPS Regulations do not apply to generating companies, the Regulation Notice being issued under the RPS Regulations is contrary to law.
- (dd) That recourse can be had to RPS Regulations only in case of monthly dues and transmission charges or due to non-maintenance of letter of credit as per Payment Security Mechanism. GKEL has complied with the said requirements and has opened a Letter of Credit of Rs. 28.93 Crore as per the Payment Security Mechanism. It is submitted that GKEL has been regular in making payment of transmission charges to PGCIL. The present amounts claimed by PGCIL are in the nature of loss/damages and are over and above GKEL's obligation of payment of transmission charges. Pertinently, the Letter of Credit is required qua payment of transmission charges under the POC Mechanism and does not cover Non-PoC Charges.
- (ee) The Commission, while issuing the Orders in Petition Nos 112/TT/2013 and 73/MP/2017 did not adjudicate upon the issue whether the charges payable by GKEL for the period of COD of transmission assets to 21.12.2014 (commissioning of Dedicated Transmission Line by GKEL) also has to include capacity originally allocated to other generating companies.
- (ff) The tribunal upheld Orders passed by this Commission on the grounds that there was a delay in the commissioning of the Project due to delay in the

commissioning of the Dedicated Transmission Line. The Tribunal did not go into the question of the charges payable by the generating company upon relinquishment of capacity by other generating companies. The Tribunal could not have directed for recovery of charges from GKEL of capacity which has been relinquished as the same would have been contrary to directions of the Tribunal in terms of Order dated 08.10.2020.

**Hearing dated 12.10.2021:**

2. The Petition was admitted on 12.10.2021, and the Commission directed the Petitioner to submit the status of Appeal No. 2 of 2021 filed by it before the Appellate Tribunal for Electricity.

**Submission of Respondents:**

3. Respondent No.1 Power Grid Corporation of India Limited on 08.11.2021 has mainly submitted as under:

a) POWERGRID had undertaken and completed the part of the transmission assets given under the scope of its work as per Annexure 3 to the BPTA and was ready to provide for the evacuation of power from the generators connected with the Project, including GKEL, with effect from the commercial operation date of the assets established by POWERGRID. The scheduled commercial operation date and the actual commercial operation date with respect of the various assets forming part of the scope of the work undertaken by POWERGRID is as under:

S. No.	Name of the Asset	Scheduled COD	Actual COD	Delay
1	Asset-I: LILO of Meramundali-Jeypore 400 kV S/C line at Angul Sub-station		1.4.2013	No delay
2	Asset-II: one no. of 125 MVAR Reactor (1 <sup>st</sup> ) and associated bays at Angul Sub-station		1.11.2013	7 months
3	Asset-III: one no. of 125 MVAR Reactor (2nd) and associated bays at Angul Sub-station		1.6.2013	2 months

4	Asset-IV: one no. of 125 MVAR Reactor (3rd) and associated bays at Angul Sub-station	1.4.2013	1.5.2013	1 month
5	Asset-V LILO of one Ckt. Talcher-Meramundali 400 kV D/C line at Angul Sub-station		1.4.2013	12 months
6	Asset-VI: LILO-I (Ckt-III) of Rourkela-Raigarh 400 kV D/C line at Jharsuguda Sub-station		1.4.2013	No delay
7	Asset-VII: LILO-I (Ckt-I) of Rourkela-Raigarh 400 kV D/C line at Jharsuguda Sub-station		1.6.2013	2 months
8	Asset-VIII: one no. of 125 MVAR Reactor (1 <sup>st</sup> ) and associated bays at Jharsuguda Sub-station		1.5.2013	1 month
9	Asset-IX: one no. of 125 MVAR Reactor (2nd) and associated bays at Jharsuguda Sub-station		1.6.2013	2 months

b) On 15.05.2015, POWERGRID filed a Petition being No. 112/TT/2013 before this Commission for determination of transmission tariff of the above-mentioned nine number of assets under the subject transmission system. By Order dated 07.10.2015 passed in the said Petition, this Commission proceeded to determine the transmission charges payable to POWERGRID by Order dated 16.02.2017. On a Review Petition filed by POWERGRID being No. 24/RP/2015, for review of the Order dated 07.10.2015, the Central Commission rejected the Review Petition. In pursuance to the liberty given in the above review order, POWERGRID filed Petition No. 73/MP/2017 before this Commission, inter-alia, providing the information relating to the status of construction of dedicated transmission lines by different generators as sought by this Commission.

c) It has been clearly held by this Commission that the transmission tariff with respect to Asset-I, II, III and IV shall be borne by Jindal India Thermal Power Limited till 01.06.2014 and GKEL till 21.12.2014 in the ratio of their respective operationalised LTA and after such period, their share of the transmission charges will be completely included in the POC mechanism for sharing of transmission charges. In the order dated 21.02.2018, this Commission, for the

third time, reiterated that transmission charges in the present case have to be raised on a bilateral basis for the period till 21.12.2014, in the case of GKEL. If there was any dispute on the computation of the transmission charges, GKEL had adequate occasions to raise the same since it was party to Petition No. 112/TT/2013, 24/RP/2015 and 73/MP/2017 before this Commission.

- d) On the liability of GKEL to pay the transmission charges, GKEL filed Appeal No. 57 of 2018 challenging the Orders dated 07.10.2015 and 16.02.2017 (passed in Petition No's 112/TT/2013 and 24/RP/2015 respectively) and Appeal No. 160 of 2018 impugning the Order dated 21.02.2018 passed in Petition No. 73/MP/2017 inter-alia on the ground that the 2010 Sharing Regulations do not provide for recovery of transmission charges under non-PoC mechanism. Similar Appeals were filed by two other generators. Even at the stage when the Appeals were filed, POWERGRID had already issued bill no. 92300553 dated 22.08.2017 on GKEL calculating the transmission charges payable by it. GKEL never objected to the amount computed by POWERGRID or raised any issues on the computation before the Appellate Tribunal. The Appellate Tribunal, vide the common Judgment dated 01.09.2020 passed in a batch of appeals challenging the decision of this Commission in 112/TT/2013, 24/RP/2015, and 73/MP/2017, was pleased to reject the claim of GKEL and other generators.
- e) GKEL filed Civil Appeal No. 3331 of 2020 before the Hon'ble Supreme Court impugning the Judgment dated 01.09.2020 of the Appellate Tribunal. The Supreme Court, vide Order dated 16.10.2020, was pleased to dismiss Civil Appeal No. 3331 of 2020 and upheld Judgment dated 01.09.2020.
- f) The liability for transmission charges pertains to the period where the POWERGRID had duly commissioned and declared commercial operation of the assets (Assets I to IV of the Pet 112/TT/2013) under its scope but GKEL (and JITPL) had not completed its scope of work, and the system could not be put to regular service, whereupon the transmission charges payable shall be included in the PoC mechanism.
- g) The designated ISTS customer or DIC under the 2010 Sharing Regulations include generators such as GKEL and JITPL. The BPTA entered into by POWERGRID with generators, including GKEL, provides for the sharing of transmission charges of the transmission system in accordance with the sharing mechanism by long term transmission users from the date of the

commissioning of the system by POWERGRID.

- h) The scheme is clear that the generators who continued to maintain the contracted capacity in the transmission system being constructed by POWERGRID, namely, in the present case, the assets I, II, III and IV- JITPL and GKEL are required to bear the entire transmission charges before it is included in the PoC Mechanism for sharing, notwithstanding that some of the other generators have relinquished or have defaulted in undertaking their respective works.
- i) The charges, if any, recovered from the balance generators / defaulting generators are to be adjusted in favour of GKEL and JITPL accordingly. The recovery of such charges and adjustments is on a contingent basis and does not affect the liability of GKEL and JITPL to pay the entire transmission charges due to POWERGRID for the present.
- j) Liability to pay of GKEL and JITPL is not after prior adjustment of or accounting for any recovery from other generators. The liability of GKEL and JITPL to pay is absolute and cannot be deferred. It is only post-payment and discharge of such liability, and in the contingency of any amount being recovered from other generators, such amount is to be adjusted in favour of GKEL and JITPL.
- k) The contention raised by GKEL that there can be no regulation of power supply under the CERC (Regulation of power supply) Regulations, 2010, when the entity to be regulated is a generating company, is completely frivolous and against the plain language of the RPS Regulations. It is clear that any defaulting entity which is not either paying the bills of a transmission company/not establishing the payment security mechanism is liable for regulation of power supply or denial of open access.
- l) No fresh bills have been raised by POWERGRID on GKEL. The letter dated 21.09.2020 of POWERGRID only referred to its previous bills dated 22.08.2017, 24.04.2018, 05.02.2019 and 15.09.2020, along with the applicable Late Payment Surcharge, which brought the total outstanding amount to Rs. 39.23 crores. Even at this stage, GKEL did not contest the bills raised by POWERGRID and was taking a chance since its second Appeal was likely to be listed before the Supreme Court. Upon dismissal of its second Appeal on 16.10.2020 and the issuance of Regulation Notice by POWERGRID on 26.11.2020, for the first time on 03.12.2020, GKEL alleged certain discrepancies in the bills of POWERGRID. This is clearly an afterthought and

after having lost its Appeal before the Appellate Tribunal and second Appeal before the Supreme Court.

m) The conduct of GKEL is so perverse that it sought to delay the regulation of power supply by having meetings with the officers of POWERGRID from 04.12.2020 to 10.12.2020. In these meetings, GKEL requested time to make payment and clandestinely filed a Writ Petition before the High Court of Delhi, which was listed on 11.12.2020. There is a requirement for mandatory prior service for getting Writ Petitions listed before the High Court of Delhi. However, GKEL served the Writ Petition only on 11.12.2020, because of which there was a delay in issuing instructions to the counsel for POWERGRID. When the counsel pointed this out to the High Court of Delhi, the High Court of Delhi was pleased to direct GKEL to deposit a further amount of Rs. 7.5 crores on the very same date. Thereafter, GKEL moved its Original Petition before the Appellate Tribunal, which was filed on 04.12.2020 (DFR No. 440/2020). On 15.12.2020, the Appellate Tribunal directed POWERGRID not to implement the Regulation notice till the next date of hearing. The above Interim Order was continued on various dates till 15.01.2021, when the Original Petition had to be dismissed following the order dated 29.01.2021 passed by the Supreme Court in Civil Appeal No's 226-227 of 2021.

#### **Submissions of Petitioner**

4. The Petitioner vide its affidavit dated 10.11.2021 had filed a rejoinder to the reply of the Respondent No.1 PGCIL dated 08.11.2021 and has mainly submitted as under:

- a) On 17.08.2021, PGCIL wrote to IDBI Bank and sought invocation of the Bank Guarantee dated 18.02.2021 submitted by GKEL for Rs. 22.5 Crore. On 17.08.2021, GKEL wrote to IDBI Bank and PGCIL stating that invocation of the BG is incorrect as the said BG was provided as security for construction of the power plant and dedicated transmission line, which was to be undertaken by GKEL.
- b) PGCIL refused to withdraw its invocation of the BG. GKEL was constrained to make payment of the remaining amount wrongly claimed by PGCIL vide its letter dated 21.09.2020, under protest and subject to the outcome of the present petition. On 18.08.2021, GKEL wrote to PGCIL stating that it had

made a payment of Rs. 23.75 Crore in protest and subject to the outcome of the present Petition and thus requested PGCIL to not go forward with the invocation of the Bank Guarantee.

- c) The bar under Order II Rule 2 of CPC is not applicable to the present case. By way of the present Petition, the issue before this Commission is inter alia whether the amount claimed by PGCIL vide its Demand Letter dated 21.09.2020 is contrary to law in as much as GKEL is being made to bear the liability of those generating companies which have relinquished the LTA originally granted by PGCIL.
- d) The only issue in earlier proceedings was a liability of generators whose Scheduled Commissioning Date (SCOD) was delayed, and therefore principles of constructive Res judicata/order II Rule 2, CPC will not apply. Accordingly, PGCIL has erred in relying upon Order II, Rule 2 of the CPC, as the earlier appeals by GKEL were not filed challenging the computation of the transmission charges or the so-called adjustment to be given with regard to the relinquishment charges of other generation beneficiaries, as wrongly assumed by the PGCIL
- e) It is a settled law that the provisions of a Statutory Act override the existing contractual relationship between the parties. In view of the foregoing, statutory duty was cast on PGCIL/CTU to provide non-discriminatory open access and to levy transmission charges on the Designated ISTS Customer. Further, if an asset is not sufficiently utilized, in the present case, relinquishment of LTA by other generators, it was incumbent upon PGCIL/CTU to take steps for optimum utilization of such unutilized assets.
- f) The CERC (Sharing of Transmission Charges) Regulations, 2010 were notified by this Commission on 15.06.2010, while the BPTA was executed on 10.02.2010. The Sharing Regulations provide the methodology for the sharing of transmission charges payable. In terms of the Sharing Regulations, in case there is any delay in the construction of the Project by generator, the transmission charges are to be paid by such generator only. It is settled law that Regulations will override concluded contracts. It is trite law that Regulations framed by this Commission are binding on the parties and partake the nature of delegated legislation and are binding even on this Commission. Since the Sharing and Connectivity Regulations were passed



subsequently, the Regulations will override Annexure 4 of the BPTA. In view of the foregoing, no reliance can be placed on Annexure 4 of the BPTA to claim amounts from GKEL

- g) There is no provision under the Sharing and Connectivity Regulations notified by this Commission which permits the liability of one generator to be paid by another generator. Further, in view of the Appellate Tribunal staying recovery of charges on capacity which has been relinquished and in the absence of conclusive determination of stranded capacity, GKEL cannot be fastened with liability of amount due from other generators. It is pertinent to state that in case of failure to assess/determine the stranded capacity, GKEL would have no mechanism for recovery of the amount being demanded from GKEL by PGCIL, on account of such defaulting generating companies, who have relinquished the LTA. Further, there can be no difference in the proportion of non-POC charges attributable prior to and subsequent to commissioning.
- h) In case of relinquishment of capacity by a generator, Regulation 18 of the Connectivity Regulations will be applicable for determining charges payable by said generator. Accordingly, Annexure 4 of the BPTA is inconsistent with the Sharing Regulations and the Connectivity Regulations notified by this Commission. It is submitted that as per Clause 3.0 of the BPTA, in case of inconsistency between the provisions of the BPTA and inter-alia regulations notified by this Commission, the later will prevail.
- i) PGCIL had initially raised a claim of Rs. 9.5 Crore on GKEL. However, GKEL's obligation, which was to be computed till December 2014 (commissioning of Dedicated Transmission Line) was Rs. 7.38 Crore, which was deposited by GKEL with PGCIL. Subsequently, GKEL has paid (without prejudice to its rights) an additional amount of Rs. 7.5 Crore on 11.12.2020 (upon direction by Delhi High Court). and Rs. 23.75 Crore on 18.08.2021, in protest of being constrained by PGCIL's wrongful invocation of GKEL's BG.
- j) Only the issue of liability has been decided. However, whether GKEL is liable to bear transmission charges for capacity which has been abandoned/relinquished was not considered by this Commission, the Tribunal or the Supreme Court. Accordingly, it is submitted that GKEL is not

re-agitating decided issues as contended by PGCIL

- k) This Commission, in terms of the Order in petition No. 92/MP/2015, has laid down the mechanism for computation of said relinquishment charges. Relinquishment charges are compensation/ damages payable for the relinquished capacity. In the normal course, Lanco Babandh Power Ltd. and Ind-Bharat Energy (Utkal) Ltd., which are the generators that are abandoned and relinquished, would have paid this amount.
- l) The Tribunal in several Orders, including Order dated 08.10.2020 in Appeal No. 251 of 2019 titled M/s SKS Power Generation (Chhattisgarh) Ltd. vs. PGCIL & Ors. ("Order dated 08.10.2020") has directed PGCIL to not recover charges payable upon relinquishment of capacity.
- m) In terms of invoices raised by PGCIL claiming amounts from GKEL, the entire capacity of the transmission system, including that of capacity which is not related to GKEL and has already relinquished has been considered for computing liability. This is impermissible and contrary to the various relinquishment orders passed by this Commission and the Order dated 08.10.2020 passed by the Hon'ble Tribunal.
- n) Amount claimed by PGCIL is contrary to the Revised Tariff Policy as such apportionment is clearly discriminatory and arbitrary and against the very essence of the admitted objective of the National Tariff Policy that the transmission charges should be worked out on the basis of utilization of the transmission system by an entity on the basis of the distance, direction and quantum of the flow of electricity.
- o) The Regulation Notice dated 26.11.2020 is no longer valid given that the CERC (Regulation of Power Supply) Regulations 2010 have been repealed by this Commission vide Notification dated 26.10.2021. Further, since no plan under the Regulation Notice is in implementation by the NLDC, PGCIL cannot rely on the Regulation Notice. That PGCIL has merely stated that GKEL is covered as a beneficiary under the RPS Regulations

**Hearing dated 10.05.2023:**

5. Petition was reserved for order on hearing held on 10.05.2023, and Petitioner

was directed to provide the details of calculation and the basis for arriving at the amount of ₹738 lakh and CTUIL to provide the details of calculation and the basis for arriving at ₹950 lakh and of ₹3923 lakh claimed by CTUIL, along with the separate details of transmission charges claimed and LPS.

**Submission of Respondents:**

6. Respondent PGCIL on 02.06.2023 vide affidavit submitted the basis for arriving at Rs 950 Lakh and of Rs 3923 lakh claimed by CTUIL along with the LPS claimed is below:

Sr. No.	Bill date	Bill amount (in INR)	Remarks
1	22/08/17	9,51,20,152	Billing as per 112/TT/2013
2	24/04/18	16,80,79,906	Differential billing as per 73/MP/2017
3	05/02/19	1,48,44,786	Diff billing as per True up 2009-14 & Final 14-19 under 263/TT/2017 dtd 31.07.2018
4	15/09/20	11.43,39,854	Surcharge till 31.08.2020 period
<b>Total</b>		<b>39,23,84,698</b>	

**Calculation of Bill dated: 22.08.2017 for an amount of Rs.951.20 Lakhs**

S. No	Asset Name	DOCO	Tariff Approved by CERC for FY 2013-14	YTC (Rs. in Lakhs)	Tariff payable for no. of Days till 30.11.2013	Tariff payable till Nov'13	Tariff payable from Dec'13 to Mar'14 (121 days)	Tariff payable from Apr'14 till 15.12.2015 (624 days)	Total tariff to be shared by Generators
1	<b>Asset I:</b> LILO of 400KV S/C Meramundali-Jeypore line at Angul & associated bays at Angul S/Stn.	1/04/13	1210.06	1210.06	244	808.917	401.14	2068.71	3278.77
2	<b>Asset II:</b> One on 125 MVAR Reactor (1 <sup>st</sup> ) & associated bays at Angul S/Stn	01/11/13	87.26	209.42	30	17.213	69.43	358.03	444.67
3	<b>Asset III:</b> One no 125 MVAR Reactor (2 <sup>nd</sup> ) & associated bays at	01/06/13	168.66	202.39	183	101.473	67.09	346.01	514.57

	Angul S/Stn.								
4	<b>Asset IV:</b> One no 125MVAR Reactor (3 <sup>rd</sup> ) & associated bays at Angul S/Stn.	01/05/13	182.10	198.65	214	116.47 1	65.86	339.62	521.94
						<b>1044.07</b>	<b>603.52</b>	<b>3112.36</b>	<b>4759.95</b>

S. No.	Generator	Total installed capacity	Commissioning as per BPTA	LTA	Percentage of charges as per LTA			Tariff as per LTA percentage (Rs.in Lakhs)			
					From Doco to Nov'13	From Dec'13 to Mar'14	From Apr'14 to 15.12.2015	From Apr'13 to Nov'13	From Dec'13 to Mar'13	From Apr'14 to 15.12.2015	Total
1	GMR Kamalanga Energy Ltd (3x350MW)	1050	Unit-I (350MW): Nov'11 Unit-II (350MW): Jan'12 Unit III (350 MW): Mar'12	800	23.09	20.70	18.76	241.13	124.95	583.93	<b>950.01</b>
2	Navabharat Power Pvt. Ltd (3x 350 MW)	1050	Unit-I (350MW): Mar'12 Unit-II (350MW): Jul'12 Unit III (350 MW): Dec'12	720	20.79	18.63	16.89	217.01	112.46	525.54	<b>855.01</b>
3	Jindal India Thermal Power Ltd (2x 600MW)	1200	Unit-I(600MW):Mar'12 Unit-II(600MW):Jun'12	1044	30.14	27.02	24.48	314.67	163.06	762.03	<b>1239.76</b>
4	Monnet Power Company Ltd	1050	Unit-I(525 MW): Jun'12 Unit-II(525 MW):Sep'12	900	25.98	23.29	21.11	271.27	140.57	656.92	<b>1068.76</b>
5	Lanco Babandh Power Pvt Ltd(4x660 MW)	Apr'13 to Dec'13 - Nil Dec'13 to Apr'14 - 660 MW Apr'14 to Dec'15 - 1320 MW	Unit-I(660 MW): Dec'12  Unit-II(660 MW): Apr'14	400  400	0.00	10.35	18.76	0.00	62.48	583.93	<b>646.41</b>
			<b>Total LTA till Nov'13</b>	3464	100	100	100	1044.07	603.52	3112.36	4759.95
			<b>Total LTA from Dec'13 to Mar'14</b>	3864							
			<b>Total LTA from Apr'14 to 15.12.2015</b>	4264							

Generator	Tr. Charges (in Lacs)	Petition filing fee/ Publication expenses (in Lacs)	Total billed (in Lacs)	Remarks
GMRKEL	950.01	1.19146	951.20152	Bill dtd 22.08.2017 as per 112-TT-2013

**Calculation of Bill dtd 24.04.2018 for an amount of Rs. 1680.80 Lakhs**

S. No	Asset Name	DOCO	Tariff Approved by CERC for FY 2013-14	Tariff payable for no. of days	Tariff payable till Mar'14 inclusive of incentive	Tariff payable from 01.04.2014 to 31.05.2014 (61 days) inclusive of incentive	Tariff payable from 01.06.2014 to 20.12.2014 (203 days) inclusive of incentive	Total tariff to be shared by Generators (in Lacs)
1	<b>Asset I:</b> LILO of 400KV S/C Meramundali-Jeypore line at Angul & associated bays at Angul S/Stn.	1/04/13	1210.06	365	1233.30	204.80	681.45	2119.55
2	<b>Asset II:</b> One on 125 MVAR Reactor (1 <sup>st</sup> ) & associated bays at Angul S/Stn	01/11/13	87.26	151	88.98	35.44	117.94	242.36
3	<b>Asset III:</b> One no 125 MVAR Reactor (2 <sup>nd</sup> ) & associated bays at Angul S/Stn.	01/06/13	168.66	304	171.87	34.25	113.98	320.12
4	<b>Asset IV:</b> One no 125MVAR Reactor (3 <sup>rd</sup> ) & associated bays at Angul S/Stn.	01/05/13	182.10	335	185.59	33.62	111.87	331.08
					<b>1679.74</b>	<b>308.11</b>	<b>1025.24</b>	<b>3013.11</b>

S. No.	Generator	Total installed capacity	Commissioning as per BPTA	LTA	Percentage of charges as per LTA		Tariff as per LTA percentage (Rs.in Lakhs)			Already billed as per 112/TT/2013	Differential
					From DOCO to 31.05.2014	From 01.06.2014 to 20.12.2014	From DOCO to 31.05.2014	From 01.06.2014 to 20.12.2014	Total		
1	GMR Kamalanga Energy Ltd (3x350MW)	1050	Unit-I (350MW): Nov'11 Unit-II (350MW): Jan'12 Unit III (350 MW): Mar'12	647	87.20	87.20	1733.34	893.98	<b>2627.3242</b>	950.01006	<b>1677.31415</b>
2	Navabharat Power Pvt. Ltd (3x 350 MW)	1050	Unit-I (350MW): Mar'12 Unit-II (350MW): Jul'12 Unit III (350 MW): Dec'12	0	0.00	0.00	0.00	0.00	<b>0.00000</b>	855.00905	<b>- 855.00905</b>
3	Jindal India Thermal Power Ltd (2x 600MW)	1200	Unit-I(600MW): Mar'12 Unit-	95	12.80	0.00	254.51	0.00	<b>254.50965</b>	1239.76312	<b>- 985.25347</b>

			II(600MW): Jun'12									
4	Monnet Power Company Ltd	1050	Unit-I(525 MW): Jun'12 Unit-II(525 MW):Sep'12	0	0.00	0.00	0.00	0.00	0.00	0.00000	1068.76131	- 1068.76131
5	Lanco Babandh Power Pvt Ltd(4x660 MW)	Apr'13 to Dec'13 - Nil Dec'13 to Apr'14 - 660 MW Apr'14 to Dec'15 - 1320 MW	Unit-I(660 MW): Dec'12  Unit-II (660 MW): Apr'14	0	0.00	0.00	0.00	0.00	0.00	0.00000	646.40830	- 646.40830
			<b>Total LTA till Nov'13</b>	<b>742</b>	<b>100.00</b>	<b>87.20</b>	<b>1987.85</b>	<b>893.98</b>	<b>2881.83</b>	<b>4759.95</b>	<b>-1878.12</b>	

Generator	Tr. Charges	Petition filing fee/Publication expenses	Total billed	Remarks
GMRKEL	1677.31	3.48	1680.79906	Bill dtd 24.04.2018 as per 73-MP-2017

### Calculation of Bill dtd 05.02.2019 for an amount of Rs.148.45 Lakhs

S. No.	Asset Name	DOCO	Tariff Approved by CERC for FY 2013-14	Tariff payable for no.of days	Tariff payable till Mar'14 inclusive of incentive	Tariff payable from 01.04.2014 to 31.05.2014 (61 days) inclusive of incentive	Tariff payable from 01.06.2014 to 20.12.2014 (203 days) inclusive of incentive	Total tariff to be shared by Generators
1	<b>Asset I:</b> LILO of 400KV S/C Meramundali-Jeypore line at Angul & associated bays at Angul S/Stn.	1/04/13	1146.51	365	1168.53	273.57	910.29	2352.38
2	<b>Asset II:</b> One on 125 MVAR Reactor (1 <sup>st</sup> ) & associated bays at Angul S/Stn	01/11/13	90.59	151	92.38	28.39	94.46	215.23
3	<b>Asset III:</b> One no 125 MVAR Reactor (2 <sup>nd</sup> ) & associated bays at Angul S/Stn.	01/06/13	174.86	304	178.19	28.49	94.81	301.50
4	<b>Asset IV:</b> One no 125MVAR Reactor (3 <sup>rd</sup> ) & associated bays at Angul S/Stn.	01/05/13	187.44	335	191.03	28.47	94.74	314.24
					<b>1630.13</b>	<b>358.92</b>	<b>1194.30</b>	<b>3183.35</b>

S. No.	Generator	Total installed capacity	Commissioning as per BPTA	LTA	Percentage of charges as per LTA		Tariff as per LTA percentage (Rs.in Lakhs)			Already billed as per 112/TT/2013	Differential
					From DOCO to 31.05.2014	From 01.06.2014 to 20.12.2014	From DOCO to 31.05.2014	From 01.06.2014 to 20.12.2014	Total		
1	GMR Kamalanga Energy Ltd (3x350MW)	1050	Unit-I (350MW): Nov'11 Unit-II (350MW): Jan'12 Unit III (350 MW): Mar'12	647	87.20%	87.20 %	1734.38	1041.39	<b>2775.77206</b>	2627.32420	<b>148.44785</b>
2	Navabharat Power Pvt. Ltd (3x 350 MW)	1050	Unit-I (350MW): Mar'12 Unit-II (350MW): Jul'12 Unit III (350 MW): Dec'12	0	0.00%	0.00 %	0.00	0.00	<b>0.00000</b>	0.00000	<b>0.00000</b>
3	Jindal India Thermal Power Ltd (2x 600MW)	1200	Unit-I(600MW): Mar'12 Unit-II(600MW): Jun'12	95	12.80%	0.00 %	254.66	0.00	<b>254.66214</b>	254.50965	<b>0.15248</b>
4	Monnet Power Company Ltd	1050	Unit-I(525 MW): Jun'12 Unit-II(525 MW): Sep'12	0	0.00%	0.00 %	0.00	0.00	<b>0.00000</b>	0.00000	<b>0.00000</b>
5	Lanco Babandh Power Pvt Ltd(4x660 MW)	Apr'13 to Dec'13 - Nil Dec'13 to Apr'14 - 660 MW Apr'14 to Dec'15 - 1320 MW	Unit-I(660 MW): Dec'12  Unit-II(660 MW): Apr'14	0  0	0.00%	0.00 %	0.00	0.00	0.00000	0.00000	<b>0.00000</b>
			<b>Total LTA till Nov'13</b>	<b>742</b>	<b>100.00%</b>	<b>87.20 %</b>	<b>1989.05</b>	<b>1041.39</b>	<b>3030.43</b>	<b>2881.83</b>	<b>148.60</b>

Generator	Billed amount	Remarks
GMRKEL	148.44785	Bill dtd 15.02.2019 as per 263-TT-2017

**Surcharge Calculation for the Period from Bill Date to 31.08.2020**  
(Bill dtd 15.09.2020)

Sr. No	Description	Bill Details			Surcharge Calculation Details						
		Bill No.	Bill Date	Bill Amount	FY 2017-18	FY 2018-19	FY 2019-20		FY 2020-21		Total (Rs.)
					161 Days	365 Days	358 Days	8 Days	90 Days	61 Days	
1	CERC has approved the Transmission Charges for the 9 nos of assets under the Transmission System for Phase I Generation Projects in Orissa-Part-A in Eastern Region for tariff period 2009-14, wherein the associated generators are to be billed till the operationalization of LTA in the ratio of their respective LTA MW injection as agreed in LTAA	Sup-227	22/08/17	9500 1006	7542 820	1710 0181	1677 2232	2498 66	2810 989	285783 8	<b>4,73,33,926</b>
2	Publication charges and Petition filing fees towards petition no. : 112/TT/2013 on 9nos of assets under Transmission System for Phase I Generation Projects in Orissa-Part-A in Eastern Region for tariff period 2009- 14, wherein the associated generators are to be billed till the operationalization of LTA in the ratio of their respective LTA MW injection as agreed in LTAA	Sup-227A	22/08/17	1191 46	9460	2144 6	2103 5	313	3525	3584	<b>59,364</b>
3	CERC has approved the Transmission Charges for the 9nos of assets under Transmission System for Phase I Generation Projects in Orissa-Part-A in Eastern Region for tariff period 2009-14, wherein the associated generators are to be billed till the operationalization of LTA in the ratio of their respective LTA MW injection as agreed in LTAA. CERC Petition no 73/MP/2017 Dated 21.02.18 & 15.03.18	Sup-234	24/04/18	1677 3141 5	0	2324 3438	2961 2637	4411 57	4963 012	504572 9	<b>63305972</b>
4	Publication charges and Petition filing fees towards petition no. : 112/TT/2013 on 9nos of assets under Transmission System for Phase I Generation Projects in Orissa-Part-A in Eastern Region for tariff period 2009- 14, wherein the associated generators are to be billed till the operationalization of LTA in the ratio of their respective LTA MW injection as	Sup-234A	24/04/18	3484 91	0	4829 2	6152 5	917	1031 2	10483	<b>131529</b>



	agreed in LTAA.CERC Petition no 73/MP/2017 Dated 21.02.18 & 15.03.18										
5.	CERC has approved the Transmission Charge for the 9 nos. of assets under Transmission System for Phase-I Generation Projects in Orissa-Part-A in Eastern Region for Tariff Period 2009-14, wherein the associated generators are to be billed till 31/07/2014 (for Jharsuguda S/stn) & 21/12/14 (for Angul S/Stn) of LTA in the ratio of their respective LTA MW injection as agreed in LTAA CERC Petition no 73/MP/2017 dated 15.03.2017.	Sup-235	05/02/19	1484 4786. 00	0	0	2584 213	3904 4	4392 43	446564	<b>3509063</b>
<b>Total Amount (Rs)</b>				<b>2780 4484 4</b>	<b>7552 279</b>	<b>4041 3358</b>	<b>4905 1642</b>	<b>7312 96</b>	<b>8227 080</b>	<b>836419 8</b>	<b>114339854</b>

### Submission of Petitioner

7. Petitioner on 13.06.2023 has summarized the Petition and has reiterated the submissions previously made. Petitioner also provided the additional details of the computation of transmission charges of Rs. 7.38 crores as under:

### **Total tariff from DOCOs to 21/12/2014 to be billed to Generators associated with Phase-I in Orissa (Orissa part A)**

S.No	Asset Name	DOCO	Days of tariff (2013-14)	Non PoC with Incentives For FY 2013-14 (A)	Non PoC with Incentives from 1-Apr-13 till 30-Nov-13 (Part of -A)	Non Poc Charge s with Incentiv e from Dec'13 till Mar'14 (Part of -A)	Days of tariff (2014-15)	Non PoC with Incentives for FY 2014-15 (from 1-Apr-14 till 21-Dec-2014) (B)	Total Rs.In Lakhs (A+B)	Remarks
1	<b>Asset I:</b> LILO of 400KV S/C Meramundali-Jeypore line at Angul & associated bays at Angul S/Stn.	01/04/2013	365	1168.52	781.15	387.37	264	1183.85	2352.37	As per Annex-6 of Bill dt.5.02.2019
2	<b>Asset II:</b> One on 125 MVAR Reactor (1 <sup>st</sup> ) & associated bays at Angul S/Stn	1/11/2013	151	92.37	18.35	74.02	264	122.85	215.22	
3	<b>Asset III:</b> One no 125 MVAR Reactor (2 <sup>nd</sup> ) & associated bays at Angul S/Stn.	1/06/2013	304	178.19	107.27	70.92	264	123.29	301.48	

4	<b>Asset IV:</b> One no 125MVAR Reactor (3 <sup>rd</sup> ) & associated bays at Angul S/Stn.	01/05/2013	335	191.02	122.02	69.00	264	123.21	314.23
<b>Total amount to be recovered against these 4 Assets under Non PoC</b>				<b>1630.1</b>	<b>1028.79</b>	<b>601.31</b>		<b>1553.2</b>	<b>3183.3</b>
				(‘C)	(‘D)		(‘E)		

#### Calculation of LTA percentage and Proportionate Charges

Time Period	Available LTA MW ON Anugul (As per PGCIL Bills)	GKE L LTA Qty.	LTA% Calculation	GKEL Contribution from 1.4.2013 till Nov’13	GKEL Contribution from Nov’13 till Mar’14	GKEL Contribution from Apr’14 till 21.12.2014	Total in Lakhs Rs.
	<b>(B)</b>	<b>(A)</b>	<b>G=(A/B)</b>	<b>(G*C)</b>	<b>(G*D)</b>	<b>(G*E)</b>	
1.4.2013 Till Nov’13	3464	800	23.09%	237.60			238
1.12.2013 TILL Mar 14	3864		20.70%		124.49		124
1.4.2014 till 21.12.2014	3315		24.13%			374.83	375
<b>Total</b>							<b>737</b>
<b>CERC Publication and Petition Filing charges</b>							<b>1</b>
<b>Final Payable by GKEL</b>							<b>738</b>

#### Analysis and Decision

8. CTUIL had granted LTA to the generation projects, namely JITPL (1044MW), Navbharat Power Pvt. Ltd (720MW), Monnet Power Company Ltd (900MW), Lanco Babandh Power Ltd (800MW) and GKEL (800MW) connected at Angul Pooling Sub-station and IBEUL (616MW) & Sterlite Energy Ltd. (400MW) connected at Jharsuguda Pooling Sub-station. These generating stations were required to construct dedicated line up to the sub-stations (i.e. Angul and Jharsuguda). The transmission assets pursuant to such LTA were under the scope of PGCIL.

9. The transmission tariff for the assets at Angul sub-station and Jharsuguda sub-station (9 assets in total) was determined by the Commission in Order dated 07.10.2015 in Petition No. 112/TT/2013, wherein the Commission observed that the generators had not constructed the dedicated transmission lines, whereas PGCIL had achieved COD. Accordingly, it was directed that the transmission tariff of these assets would be excluded from the PoC and recovered from the generators. The relevant extracts of the order are as under:

*“60... In the instant case, the petitioner has commissioned the transmission system and the generator has not performed its part of the BPTA and hence the generator has to bear the transmission charges as provided in clause 2.0(a) and 2.0 (c) of the BPTA. Further, as per Regulation 8(5) and 8(6) of the 2010 Sharing Regulations, the generators having long term access are liable to bear the charges for the transmission system till they achieve "commercial operation". However, the generators under the instant petition do not have an arrangement with identified beneficiaries for long term supply of power. Taking into consideration the provisions of the BPTA signed by generators and the 2010 Sharing Regulations, we are of the considered view that the generators are liable to bear the Yearly Transmission Charges (YTC) of transmission system till the date their LTA is operationalised post which generators shall be charged as per prevailing Regulations. The tariff for such lines shall be excluded from PoC, till LTA for the generators are operationalised. However, the transmission assets shall be considered in base case for calculation of PoC rates at "Zero Cost". On operationalisation of LTA for the generators covered under the instant petition, the transmission assets covered under the petition shall be considered under PoC pool.*

*66... Since the generation developers have failed to construct the dedicated transmission lines due to which assets created by the petitioner covered under the present petition are not serving the intended purpose, we are of the view, that the tariff for these assets shall be borne by the generators till operationalisation of their LTA as required under Regulation 8(5) of the 2010 Sharing Regulations as stated in para 60 herein. Till such time, the tariff for the assets shall be excluded from PoC pool.*

10. PGCIL filed a Review Petition No. 24/RP/2015 in Petition No. 112/TT/2013 against the sharing of the transmission charges as directed vide Order dated 7.10.2015 in Petition No. 112/TT/2013, praying recovery of the transmission charges may be considered under PoC mechanism. The Commission, vide Order dated 16.02.2017 in Review Petition No. 24/RP/2015, did not find any error apparent in the order dated 7.10.2015 and accordingly, dismissed the Review Petition. The Commission also sought the following certain additional details vide the said Order dated 16.02.2017 in Petition No. 24/RP/2015:

*14. In the impugned order, it was observed that since the generators connected to the Angul and Jharsuguda Pooling Stations have not commissioned dedicated lines due to which assets created by the petitioner are not serving their intended purpose and hence the transmission charges would be borne by the generators. From the review petition, it is observed that as on the date of issue of the impugned order, dedicated lines of some of the generators have been commissioned during the course of hearing of the main petition and the information in this regard was not made available to the Commission. This is an important factor affecting the liability of the parties for payment of transmission charges. Accordingly, we direct the review petitioner to file an application within one month from the date of issue of this order giving the following information:-*

- a. Details of the generators whose dedicated transmission lines in the corridor have been commissioned.*
- b. Details of the generators whose dedicated transmission lines have not been commissioned and the timeline for commissioning of the same.*

- c. Details of the generators whose LTA has been operationalised.
  - d. Whether all LILOs by the generators have been replaced as per the directions in order dated 7.10.2015 in Petition No.112/TT/2013 and if so, the details and if not, the timeline finalized for replacement of these LILOs.
  - e. The supporting documents in the form of minutes of Standing Committee Meetings and RPC meetings.
- The review petitioner shall implead all the concerned generators and the constituents of the Eastern Region as the parties to the application/petition”.

11. POWERGRID vide invoice dated 22.08.2017 raised a bill of about Rs. 9.51 crore for the period from 2013-14 and 2014-15 (up to December 2015) on all the five generators planned to be connected at Angul sub-station in terms of tariff determined in Order dated 7.10.2015 in Petition No. 112/TT/2013.
12. PGCIL filed Petition No. 73/MP/2017 wherein the information sought by the Commission in Order dated 16.2.2017 in Review Petition No. 24/RP/2015 were submitted. As per the information submitted, out of the five generators viz. JITPL, NPPL, MPCL, Lanco Babandh, and GKEL, connected at Angul Pooling Sub-station, JITPL and GKEL have been put under commercial operation, and JITPL & GKEL have commissioned their dedicated transmission lines on 1.6.2014 and 21.12.2014 respectively.
13. The Commission, after considering the submissions of the parties. vide order dated 21.02.2018 in Petition No. 73/MP/2017 had observed as under:

*“24 (c) We are of the view that the transmission tariff in respect of Asset-I, II, III and IV shall be borne by JITPL and GMRKEL till 1.6.2014 and 21.12.2014 in the ratio of their operationalized LTA post which their share of transmission charges for Asset-I, II, III and IV shall be completely included in PoC mechanism for sharing of transmission charges.*

*(d) The charges recovered, if any, from balance generators/defaulting generator connected/to be connected at Angul pooling station till their dedicated line is commissioned shall be adjusted to JITPL & GMRKEL accordingly.”*

As per the above findings, it was decided that the transmission tariff for Assets-I to IV shall be borne by JITPL & GKEL till 1.6.2014 and 21.12.2014, respectively, in the ratio of their operationalized LTA post, which shall be completely included in the PoC mechanism for sharing of the transmission charges.

14. Pursuant to the Order dated 21.02.2018 in Petition No, 73/MP/2017, PGCIL raised the differential bill to the Petitioner on 24.04.2018 for Rs 16.8 crore, towards the amount that other generating companies, which were parties to the BPTA, would have paid had they not abandoned/relinquished capacity.

Powergrid also raised bills dated 05.02.2019 and 15.12.2019 to the Petitioner towards the true up charges and surcharge payable on the unpaid amount.

15. The orders dated 07.10.2015, 16.02.2017 and 21.02.2018 in Petitions No 112/TL/2013, 24/RP/2015 and 73/MP/2017 respectively were challenged by the petitioner in Appellate Tribunal for Electricity (APTEL) vide Appeal No. 160 of 2018 with IA Nos 753 of 2018, 1664 of 2019, & 765 of 2018 *inter alia* observing that the Commission has erred in excluding the assets of the Appellant from the PoC mechanism when the asset has already achieved the commercial operation. The APTEL, vide its order dated 01.09.2020 in Appeal No. 160 of 2018 & Batch dismissed the said Appeal. The relevant extracts of the said order are as under:

*“we are of the considered opinion that pending COD of their entire generating stations (generating units & dedicated transmission lines), the Appellant generators are liable to bear the transmission charges for the completed assets of the second Respondent till the commissioning of their dedicated transmission lines. Hence, the appeals are liable to be dismissed.*

#### **ORDER**

*we are of the considered view that the issues raised in the instant appeals being Appeal Nos. 51 of 2018, 159 of 2018, 160 of 2018, 275 of 2018, 52 of 2018, 53 of 2018 and 57 of 2018 are devoid of merits. Hence, appeals are dismissed.*

***The impugned orders dated 07.10.2015, 21.02.2017 and the review order dated 16.02.2017 passed by Central Electricity Regulatory Commission are hereby upheld.”***

16. Aggrieved by the decision of the APTEL, the Petitioner filed a Civil Appeal in Hon'ble Supreme Court. Vide judgment dated 16.10.2020 in Appeal No. 3331-3331 of 2020, the Hon'ble Supreme Court dismissed the Appeal filed by the Petitioner. The relevant extract of the judgment of the Hon'ble Supreme Court is as under:

*“We see no reason to interfere with the impugned order(s). The appeals are, accordingly, dismissed.”*

17. The Petitioner, in the instant Petition has submitted that GKEL has paid the transmission charges under protest, and its liability to pay the transmission charges against the assets at the Angul sub-station is limited to the proportion of its LTA out of the total LTA granted at Angul sub-station including LTA granted to the defaulting generators, whereas revised bills have fixed 100% liability of transmission charges only on JITPL (12.80%) and GKEL(87.20%), and accordingly prayed to refund of the excess amount.

18. We have perused the submissions of the Petitioner and Respondents and have also carefully perused all relevant documents available on the record. The only contention raised by the Petitioner for seeking the quashing of the demand of approximately Rs. 39.23 crore raised by PGCIL/CTUIL towards the transmission charges for Asset-I, Asset-II, Asset-III and Asset-IV is that these assets having been implemented for 5 Nos. of generators, they are ought to be shared among all the 5 generators instead of the 2 generators (i.e. GKEL and JITPL), despite the fact that rest of the 3 generators have abandoned their Projects. We observe that the exact issue of the liability of the transmission charges for these Assets has already been decided by the Commission in its Order dated 21.02.2018 in Petition No. 73/MP/2017, as quoted above, wherein the Commission has categorically held that the transmission tariff for these Assets shall be borne by JITPL and GKEL till 1.6.2014 and 21.12.2014 in the ratio of their operationalized LTA, post which it shall be completely included in the PoC mechanism for sharing of the transmission charges. Pertinently, the Petitioner had also challenged the said Order of the Commission before APTEL in Appeal No.160 of 2018, wherein the APTEL, by its judgment dated 1.9.2020, rejected the said Appeal and upheld the Commission's order dated 21.02.2018. The said judgment of the APTEL was also carried to the second appeal before the Hon'ble Supreme Court in Civil Appeal Nos. 3331-3331 of 2020, which, as already noted above, came to be dismissed by Order dated 16.10.2020. Hence, the issue of the liability of the payment of the transmission charges in connection with the above Assets has already been conclusively decided against the Petitioner herein. The Petitioner cannot, under the guise of the present Petition, seek to challenge the findings rendered in the Order dated 21.2.2018 or to re-agitate the same issue(s), which have already attained the finality.

19. In view of the above, Petition No. 45/MP/2021 cannot be entertained and is accordingly, disposed of.

Sd/  
**(P. K. Singh)**  
Member

Sd/  
**(Arun Goyal)**  
Member

Sd/  
**(I. S. Jha)**  
Member

Sd/  
**(Jishnu Barua)**  
Chairperson