

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

PER SHRI M. DEENA DAYALAN, MEMBER, CERC

ORDER

I have gone through the order of Dr. Pramod Deo, Chairperson and Shri V.S Verma, Member. With due regard to the analysis of the issues and findings in the said order, I am recording my dissent views in the matter pertaining to the charges leveled against LPL and WRLDC, the sustainability of the charges based on the material on record and the penalty if any, proposed to be imposed. To avoid repetition of the facts submitted by the respondents and proforma respondents, I base my findings on the facts as brought out in paragraphs 4 – 26 of the order of my learned colleagues.

BACKGROUND OF THE CASE

2. It came to the notice of the Commission that Unit 1 of the Lanco Amarkantak Thermal Power Station (300 MW) was synchronized on 1.5.2009 and achieved full load on 4.6.2009 but was not declared on Commercial Operation for more than a year and went on injecting the entire power into the grid as UI after rescinding the Power Purchase Agreement (PPA) with PTC who was under agreement to supply power from the unit to Madhya Pradesh. Similarly, power was being injected from Unit 2 of Lanco Amarkantak Thermal Power Generating Station (300 MW) from 25.3.2010 which was synchronized on 22.2.2010. After examining the issues in the light of the Central Electricity Regulatory Commission (Grid Connectivity, Medium Term Open Access and Long Term Open Access) Regulations, 2009 (hereinafter "Connectivity Regulations"), it



was concluded that *prima facie* a case existed for proceeding against M/s Lanco Power Limited (hereinafter M/s LPL) under Section 142 of Electricity Act, 2003. This was in the light of the fact that Regulation 8 (6) of Connectivity Regulations clearly provided that mere grant of connectivity shall not entitle the generators to interchange any power with the grid unless it obtains Long term Open Access, Medium Term Open Access or Short Term Open Access and Regulation 8 (7) provides for injections in to the grid without seeking any type of open access **for the purpose of testing only** but with the permission of concerned RLDC. The facts before the Commission clearly indicated that both units of the generating station have been synchronized and achieved full load after testing. However, for the reasons not known, the generating station did not declare commercial operation. Also, the generating station does not appear to have applied for and obtained any access and continued to inject full power from the generating station as Unscheduled Interchange (UI). Therefore, injection of power by the generating stations into the grid on continuous and regular basis after synchronization of the units of the generating station without seeking open access was in clear violation of the Connectivity Regulations. The Commission in its show cause notice dated 12.11.2010 directed M/s. LPL to explain the reasons for not seeking open access for injection of power into the grid and also to show cause as to why action under Section 142 of the Electricity Act, 2003 (hereinafter called "the Act") should not be taken against it for contravention of clauses (6) and (7) of Regulation 8 of Connectivity Regulations. WRLDC was also asked to explain the reasons for not preventing injection of power by the generating station into the grid without obtaining any type of access as per the relevant regulations of the Commission and also show cause as to why action under Section 142

of the Electricity Act, 2003, should not be taken against the Officer in charge for contravention of Clause (7) of Regulation 8 of the Connectivity Regulations.

3. Further, the matter has to be looked at in the background that M/s. LPL has entered into Power Purchase Agreements with PTC India Ltd (PTC) for their power plants Lanco Amarkantak Coal fired Thermal Stations (300 MW) Units 1 and 2. PTC in turn obtained long term open access and entered into Bulk Power Transmission Agreements (BPTA) with PGCIL and Power Sale Agreements with Madhya Pradesh State Electricity Board (MPSEB) and Haryana Power Generation Corporation Ltd. (HPGCL) for supply of power to States of Madhya Pradesh and Haryana. The agreed rates as per the PPAs were the capped rates levelised over the relevant tariff years, using a discount factor of 12% per annum were as under:

S. No.	Tariff Years	Capped Tariff rates for Unit 1 (₹/kWh)	Capped Tariff rates for Unit 2 (₹/kWh)
1.	1-12	2.18	--
2.	1-25	2.20	2.32

The Unit 1 power was meant for supply to MPSEB and Unit 2 power was meant for supply to HPGCL through PTC. The PPA with PTC for Unit 1 was terminated by M/s. LPL on 14.3.2008 due to non-fulfillment of certain conditions. There was no subsisting agreement with M/s LPL and hence there was no long term open access customer and hence connectivity cannot be given to M/s. LPL. M/s. LPL resorted to injecting power by obtaining permission from Western Regional Load Despatch Centre (WRLDC) as UI pool member and continued to inject infirm power from the date of synchronization till date of Commercial Operation. There is a clear difference between the rate at which the

power would have been sold by M/s. LPL to PTC and thereafter to the consumers and the rate at which it obtained from WRLDC under UI mechanism. This has resulted in an undue enrichment to the generator at the cost of consumers in both the states.

4. In the above background, the facts in brief are that the first unit of the generating station was synchronized to the Western Regional Grid on 1.5.2009 and achieved full load on 4.6.2009 and the second unit of the generating station was synchronized to the western regional grid on 22.2.2010 and capable of achieving full load 25.3.2010. However, without declaring the commercial operation, both Units of the generating station were injecting power into the grid as Unscheduled Interchange on regular and continuous basis without seeking any form of access. The main charge against M/s. LPL in the show cause notice under Section 142 of the Act is that even though both units of the generating station have been synchronized and achieved full load testing, the generating station has been injecting power into the grid as unscheduled interchange without availing long term access, medium term access or short term open access in violation of clauses (6) and (7) of Regulation 8 of Connectivity Regulations. The charge against WRLDC is that it has allowed M/s. LPL to inject power into the grid in violation of the Regulation 8 (7) of the Connectivity Regulations.

5. Clauses (6) and (7) of Regulation 8 of Connectivity Regulations are extracted as follows:

*“(6) The grant of connectivity **shall not entitle an applicant to interchange any power with the grid unless it obtains long-term access, medium-term open access or short-term open access.**”*

*“(7) A generating station, including captive generating plant which has been granted connectivity to the grid **shall be allowed to undertake testing including full load testing by injecting its infirm power into the grid before being put into commercial operation, even before availing**”*

any type of open access, after obtaining permission of the concerned Regional Load Despatch Centre, which shall keep grid security in view while granting such permission. This infirm power from a generating station or a unit thereof, other than those based on non-conventional energy sources, the tariff of which is determined by the Commission, will be governed by the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009. The power injected into the grid from other generating stations as a result of this testing shall also be charged at UI rates.” [(emphasis supplied)]

6. In response to the show cause notices, LPL and WRLDC have filed their submissions. Subsequently, CTU and PTC have also filed their submissions on specific queries of the Commission. The Commission has heard all the parties. The submissions of the parties through affidavits and during the hearings before the Commission have been recorded in paras 4 to 26 of the order of my learned colleagues which are not repeated for the sake of brevity. The following main issues have emerged in this penal proceeding against M/s. LPL and WRLDC for consideration:

- (a) Whether M/s LPL had connectivity to inject power into the grid?
- (b) Whether M/s LPL had long term access/medium term access/short term access permitting it to inject power into the grid on continuous basis?
- (c) Whether admission of M/s LPL as UI member by WRLDC is permissible under the regulation made under the Act?
- (d) Whether M/s LPL has a right to inject power under the UI?
- (e) Whether the charges against M/s LPL and WRLDC have been established and if so, what penal measures should be taken?

The answers to the above questions would be derived by examining the issues with reference to the following discussions.

Issue No.1: Connectivity

7. The Commission has been vested with the function under section 79 (1)(h) of the Act to specify the Grid Code having regard to the Grid Standards. In discharge of the said function, the Commission has specified the Indian Electricity Grid Code, 2006 which came into force with effect from 1.4.2006 and subsequently, Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 which came into force with effect from 3.5.2010 (hereinafter referred to as “2006 Grid Code” and “2010 Grid Code” respectively). In 2006 Grid Code, Chapter 4 is devoted to Connection Conditions. Clause 4.1 of the Grid Code which was introduced vide an amendment dated 30.3.2009 provides as follows:

“CTU and any agency connected to, or seeking connection to ISTS shall comply with Central Electricity Authority (Technical Standards for connectivity to the Grid) Regulations, 2007. The connection conditions given in the subsequent clauses of this chapter specify the minimum technical and design criteria which shall be complied with by CTU and any agency connected to or seeking connection to ISTS. They also set out the procedure by which CTU shall ensure compliance by any agency with the above criteria as pre-requisites for the establishment of an agreed connection.”

In the 2006 Grid Code, the term ‘agency’ has been defined as “a term used in various Sections of IEGC to refer to ISGS/Licensee that utilizes the ISTS”. Further, the term ‘ISGS’ has been defined as “a Central/other generating station in which two or more states have shares and whose scheduling is to be controlled by RLDC”. The term ‘share’ has been defined as ‘percentage share of a beneficiary in an ISGS notified by the Government of India or as agreed to in the agreement between ISGS and its beneficiaries.”

8. Clause 4.4 of the 2006 Grid Code provides for the procedure for connection as follows:

“ 4.4 Procedure for connection

(a) Prior to a agency being connected to the ISTS all necessary conditions outlined in the IEGC in addition to other mutually agreed requirements to be complied with, must be fulfilled by the agency. Any agency seeking to establish new or modified arrangement of connection to or for use of ISTS, shall submit an application on standard format to CTU along with the following details:-

- i) Report stating the purpose of the proposed connection and/or modification, transmission licensee to whose system connection is proposed connection point, description of apparatus to be connected or modification of the apparatus already connected and beneficiaries of the proposed connection.
- ii) Construction schedule and target completion date.
- iii) Confirmation that the agency shall abide by IEGC, Indian Electricity Rules and various standards including Grid Connectivity Standards made pursuant to the Act.

The CTU shall normally make a formal offer to the agency within a period of one month of the date of receipt of all details. Details of the requirements and procedures will be set out in the offer of a connection to the ISTS and the resulting Connection Agreement with the agency. Upon compliance, CTU shall notify the transmission licensee and the applicant agency that it can be connected to the ISTS.

(b) However in case of the existing connections between ISTS network and Regional Constituents/ISGS, a relaxation of one year in respect of the connection conditions is allowed so that the present arrangements may continue. The process of re-negotiation of the connection conditions with ISGS/regional constituents should be completed within a period of one year. In case it is determined that the compliance of connection conditions would be delayed further, the CERC may consider further relaxation for which a petition will have to be filed by the concerned constituent along with CTU's recommendation/comments. The cost of modification, if any, shall be borne by the concerned constituent.”

9. Chapter 4 of 2010 Grid Code which came into force from 3.5.2010 deals with the Connection Code. Clause 4.1 provides as follows:

“Introduction

CTU, STU and Users connected to, or seeking connection to ISTS shall comply with Central Electricity Authority (Technical Standards for connectivity to the Grid) Regulations, 2007 which specifies the minimum technical and design criteria and Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium term Open Access in inter-state Transmission and related matters) Regulations, 2009.”

The term “User” has been defined to mean “a person such as a Generating Company including Captive Generating Plant or Transmission Licensee (other than the Central Transmission Utility and State Transmission utility) or Distribution Licensee or Bulk Consumer, whose electrical plant is connected to the ISTS at a voltage level 33kV and

above.” Clause 4.4 of 2010 Grid Code provides for the procedure for connection as under:

“Procedure for Connection

“A User seeking to establish new or modified arrangement of connection to or for use of ISTS, shall submit an application on standard format to CTU in accordance with Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-state Transmission and related matters) Regulations, 2009.

The CTU shall process the application for grant of connectivity in accordance with these regulations.”

10. Regulation 6 (7) of Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007 which is applicable to all the users, requesters, Central Transmission Utility and State Transmission Utilities with effect from 21st February 2007 provides for the following:

“Every connection of a requester’s system to the grid shall be covered by a connection agreement between the requester (a) appropriate transmission utility in the case of connection to inter-state transmission system or intra-state transmission system as the case may be.”

11. As per clause 2 (1) (e) of the Connectivity Regulations, ‘Connectivity’ for a generating station, including a captive generating plant, a bulk consumer or an inter-State transmission licensee means “the state of getting connected to the inter-State transmission system”.

Chapter - 3 of Connectivity Regulations deals with the procedure for grant of connectivity to the inter-State transmission system. Clause (6) of Regulation 8 as extracted in para 5 above makes it amply clear that grant of connectivity itself is not sufficient to interchange any power into the grid and for injection of power, long term access or medium term open access or short term open access is also required. Clause

(7) makes an exception to clause (6) since it allows the generating stations including the captive generating plants to inject their infirm power into the grid during the **testing including full load testing**. Infirm power has been defined in Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 as “electricity injected into the grid prior to commercial operation of a unit or block of the generating station”. Thus, a generating station including a captive generating plant **who have been granted connectivity** to the grid can inject power during testing or full load testing before its commercial operation after obtaining the permission of concerned RLDC who shall be guided by the sole consideration of grid security while granting such permission.

12. It is clear without any ambiguity from the foregoing discussion that 2006 Grid Code contained the provision for fulfillment of connectivity condition by a generating station whose scheduling is to be controlled by RLDC. The Grid Code also casts a duty on the CTU to ensure compliance by any agency with the criteria of connection conditions as pre-requisite for establishment of an agreed connection. Even in case of the existing connections between the ISTS network and Regional constituents/ISGS, the Grid Code permitted a relaxation of one year with effect from 1.4.2006 in respect of the connection conditions to complete the process of renegotiation of the connection conditions. In cases of further delay, the concerned constituent was required to approach the Commission for relaxation of the time along with the recommendations/comments of the CTU.

13. Both CTU and WRLDC have argued that there was no separate provision for connectivity prior to the coming into force of Connectivity Regulations with effect from 1.1.2010. CTU in its affidavit dated 21.11.2011 has submitted that under the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2004 (Open Access Regulations), there was no separate provision of connectivity for generating station. However, before interconnection of Unit 1, the interconnection matter was deliberated between CTU and M/s. LPL. Subsequently, in the connectivity Regulations, the connectivity and long term access provisions were separated. On the request of CTU, M/s. LPL submitted the requisite details as per Format Con-4 as per Connectivity Regulations on 2.6.2010 and the CTU after processing the details has issued Format Con-5 on 24.11.2010. Signing of Connection Agreement between M/s. LPL and CTU as per Format Con-5 is under process. During the hearing of the matter on 28.11.2011, the representative of CTU submitted that connectivity was not given to any generator separately prior to 1.1.2010. LTOAs were being granted subject to certain conditions and these conditions were considered as connectivity. In case of Unit 1 of the generating station of M/s. LPL, the date of synchronization of the Unit from 1.5.2009 should be considered as deemed date of connectivity and the formal connectivity should be taken as November 2010 when Con-5 was issued. CTU has also submitted as below:

“All generators have signed connection agreement. In case of the generating stations of LPL, Con-V has been issued and formal connection agreement has been pending on account of certain information sought from the generator”.

14. The representative of WRLDC has submitted that prior to 1.1.2010, there was no concept of connectivity and those generators who had LTOA were granted connectivity. It was further clarified that in respect of those generating stations which were already connected to the grid, WRLDC is now insisting for connectivity. With reference to our query as to how and under what terms and conditions, M/s LPL was admitted as an UI member, **the representative of WRLDC clarified that generating station of M/s LPL is connected with the CTU and in accordance with control area of jurisdiction, WRLDC has admitted M/s. LPL as UI member.**

15. Shri S.K. Soonee, CEO, POSOCO submitted that connectivity agreement is concerned with the safety and security of the plant. He submitted that all generating stations who have got deemed connectivity prior to 1.1.2010, should be directed to sign the connectivity agreements by a cut-off date.

16. Prior to 1.1.2010, connectivity conditions were contained in 2006 Grid Code and LTOA was contained in Central Electricity Regulatory Commission (Open Access Inter-State Transmission) Regulations, 2004 (Open Access Regulations). After the Connectivity Regulations came into force with effect from 1.1.2010, separate provisions have been made for connectivity and long term access, and provisions related to procedure for connection has been deleted in the 2010 Grid Code. **I am not in agreement with CTU and WRLDC that there was no provision for connectivity prior to 1.1.2010.** In my view, CTU has failed in ensuring compliance with the connection conditions by the existing and new agencies in accordance with the Grid Code. I am also surprised at the statement of the representative of CTU that the permission for

synchronization granted by WRLDC with effect from 1.4.2009 in respect of Unit 1 of the generating station should be considered as deemed connectivity. When a role has been assigned to CTU under the statute, the said role cannot be expected to be performed by some other statutory agency. Further, in my view, connectivity and synchronization are two different aspects. While the former is a technical and legal requirement to be fulfilled, the latter is an operational requirement before a generator is connected to the grid. As the matter stands, Unit 1 which was synchronized to the grid with effect from 1.5.2009 was not granted permission for connection as per 2006 Grid Code and Unit 2 which was synchronized to the grid with effect from 22.2.2010 after the Connectivity Regulations came into force was not granted connectivity till November 2010.

17. Also, the connectivity agreement should be entered into between the requester that is the generator and the transmission utility, which is a must before injection of any sort of power as per the Central Electricity Authority (Technical Standard for Connectivity) Regulations, 2007.

Issue 2: Long Term Access

18. LPL has injected power under UI into the grid from 1.5.2009 to 9.4.2010 in respect of Unit 1 and from 22.2.2010 till 7.5.2011 in respect of Unit 2 of the generating station. The Connectivity Regulations came into force from 1.1.2010. M/s. LPL has advanced two reasons for injection of infirm power into the grid:

- firstly, long term open access has been granted by CTU for both units of the generating station prior to their synchronization and

- secondly specific permissions have been obtained from WRLDC before injecting power into the Western Regional grid.

WRLDC in its reply dated 12.2.2011 has submitted that prior to 1.1.2010 when the Connectivity Regulations came into force, LTOA implied connectivity as there was no separate regulations for connectivity. Since M/s. LPL had obtained LTOA from the CTU for Unit 1, the unit was allowed to get connected to the grid and inject infirm power.

19. As regards the LTOA for Unit 1 of the generating station, relevant portions of the Minutes of the Meeting of WR constituents regarding long term open access applications held on 30.9.2006 are extracted as under:

"PTC India

1. *PTC India has submitted application to POWERGRID vide letter dated 22.12.2005 for grant of "Long Term Open Access" for transfer of power from Pathadi (300 MW) generation project being developed by M/s Lanco Amarkantak to MPSEB. Expected date of commencement of above open access as per the application is by Sep., 2008.*
2. *POWERGRID informed that earlier, based on the application of M/s Lanco Amarkantak for open access in ISTS (as a long-term open access customer) for the same transaction of power, open access was provided to them in consultation with the constituents of WR in a meeting held on 26.9.2005 at WREB, Mumbai with following strengthening scheme to be built, owned, operated and maintained by M/s Lanco Amarkantak:*
 - *LILO of 400 kV Korba-Sipat S/c at Pathadi generation project*

It was also decided that M/s Lanco Amarkantak shall share the WR transmission charges (as per CERC norms) corresponding to entire generation capacity of 300 MW, for which BPTA need to be signed with POWERGRID.

However, PTC India have now applied for Long term Open access for same case i.e. transfer of power from the aforesaid generation project of M/s Lanco Amarkantak of 300 MW to the same beneficiary i.e. MPSEB.
3. *It was observed that from the technical view point, the transmission system strengthening already agreed will remain same as quantum of power and the destination points are the same. However, M/s PTC India may be considered as a new long-term open access applicant.*
4. *After deliberation, it was agreed that M/s PTC India be provided open access with reference to their long term open access application for 25 years for inter-State Tr. System of Western Region. Date of commencement of open access shall be from the date of commissioning of Pathadi (300 MW) generation project which is expected by Sept., 2008 and also availability of above identified Tr. strengthening scheme including signing of BPTA with POWERGRID by M/s PTC India for sharing of Western Regional transmission charges corresponding to entire 300 MW generation capacity. Further, earlier provided long-term open access to M/s Lanco Amarkantak for the same be withdrawn.*

It was also agreed that M/s PTC India shall sign BPTA with POWERGRID for sharing of WR transmission charges corresponding to entire 300 MW generation capacity and ensure availability of above identified system strengthening scheme at its cost before commencement of Long Term Open Access and shall also take necessary action to fulfill the terms and conditions of open access application."

20. It is crystal clear from the above minutes that the LTOA granted earlier to M/s LPL for Pathadi (300MW) was withdrawn and in its place, it was agreed to grant LTOA to PTC with reference to its application. PTC was granted LTOA by CTU for a period of 25 years vide its Reference No. C/ENG/SEF/W/06/PTC dated 8.11.2006. PTC as Long term Transmission Customer (LTTC) entered into a Bulk Power Transmission Agreement (BPTA) with Power Grid Corporation of India Limited on 5.3.2007. In the BPTA, PTC is the injecting utility and Madhya Pradesh State Electricity Board (MPSEB) is the drawee utility. The BPTA provides that commencement of open access shall be from the date of commissioning of Pathadi generation project. Para 1.0.(a) of BPTA provides that LTTC shall share and pay the transmission charges including FERV, incentive, taxes etc of POWERGRID transmission system of Western Region including charges for inter-regional links. Para 2.0 provides that POWERGRID agrees to provide LTOA required by LTTC as per the details in the agreement and in accordance with 2004 Open Access Regulations. **Para 4.0 of BPTA provides that LTTC (PTC) shall not relinquish or transfer its rights and obligations specified in the BPTA, without prior approval of POWERGRID and CERC and subject to payment of compensation as may be determined by CERC.** Thus, only PTC has the right under BPTA to approach for scheduling of power under LTOA. Similar provisions exist in respect of the LTOA and BPTA for Unit 2 of the generating station. CTU in its reply dated 21.11.2011 has submitted that as per the Open Access Regulations and Connectivity Regulations of the

Commission, a long term customer shall not transfer its rights and obligations specified in the BPTA without prior approval of the Commission and accordingly, LTOA granted by CTU to PTC for Unit 1 and Unit 2 for transfer of power on long term basis to its beneficiaries implies that PTC is a long term customer. As regards the validity of the LTOAs, CTU has submitted as under:

“.....LTOA was granted to PTC for Unit 1 from the date of commissioning of the generation project and also availability of transmission strengthening i.e. LILO of 400 kV Korba-Sipat S/c at generation switchyard including signing of BPTA with POWERGRID by PTC. In the above period, as LTOA conditions were fulfilled, LTOA for transfer of power to MPSEB for Unit -1 was valid. For Unit 2, date of commencement of Long term Open Access is from the availability of dedicated transmission system upto WR Pooling Station as well as other strengthening scheme and signing of BPTA. However, considering the time period for establishment of WR Pooling Station and commissioning schedule of Unit 2, as an interim arrangement, Unit 2 was allowed to interconnect at Unit-1 bus, which is already interconnected with WR grid by LILO of 400 kV Korba-Sipat S/c and power transfer from Unit-2 may be effected on short term basis depending upon transmission capacity availability. Since, WR Pooling Station, dedicated transmission system and other strengthening schemes for Unit-2 is not available, LTOA for Unit-2 is not valid.”

21. PTC in its reply has submitted that long term open access has been granted for both units of the generating station prior to synchronization. The LTOA for Unit 1 has been made operational with effect from the date of synchronization. As regards Unit 2, the LTOA would become operational after completion of the system strengthening scheme.

22. The submission of PTC that the LTOA for Unit 1 has become operational with effect from the date of synchronization is not correct since, as per the conditions of LTOA and BPTA, Long Term Open Access will be operational from the date of commissioning of the unit. Moreover, the LTOA was granted and BPTA was signed by PTC for off-taking the power from the generating station for supply to MPSEB. After the PPA was terminated, on 14.3.2008, the LTOA cannot be made operational without changing the terms and conditions of LTOA. As confirmed by the CTU, LTOA was granted to PTC

which is the Long Term Customer and the rights and obligations specified under the BPTA cannot be transferred without approval of the Commission. The right to schedule power from LPL vests with PTC and in the absence of any agreement between LPL and PTC consequent to termination of PPA, PTC cannot operationalise the LTOA unless the LTOA is assigned in favour of LPL. There is nothing on record to prove that PTC has relinquished or transferred its rights and obligations under the BPTA in favour of LPL. PTC has submitted that after the commercial operation of Unit 1, it is selling the power through short term open access while paying the LTOA charges as per BPTA. Therefore, prior to the commercial operation of Unit 1, the LTOA was not valid. As regards Unit 2, CTU has submitted that since WR Pooling Station, dedicated transmission system and other strengthening schemes for Unit 2 are not available, LTOA for Unit 2 is not valid. **In my view, M/s. LPL cannot take advantage of the LTOA granted to PTC in the absence of long term arrangement between M/s. LPL and PTC for evacuation of power in respect of Unit 1 and till the system strengthening is available for Unit 2. M/s LPL did not have LTOA and hence did not have connectivity.** Therefore, injection of regular power under the garb of infirm power is violative of the regulations and the generator in the normal course is not entitled to any payment other than cost of fuel.

23. The inference from the above discussions clearly answers the questions (a), (b) and (c) raised in para 6 of the order.

(a) M/s. LPL had no subsisting connectivity for injecting power into the grid;

- (b) M/s. LPL had no long term access/medium term open access/short term open access and hence it could not have injected power into the grid on a continuous basis.
- (c) Grant of connectivity is the function of the CTU and it has not granted connectivity while the generator was permitted by WRLDC as UI member and allowed the generator to inject power on continuous basis. All it could have done is only to allow infirm power for testing and full load testing and not regular power under UI without authentic connectivity. They have assumed that long term open access granted to PTC would flow automatically to M/s. LPL which is blatantly wrong and in violation of the regulations.

Issue No.3: Admission of M/s. LPL as UI Member

24. In respect of Unit 1, M/s LPL in its letter No. Re. LAPPL/PGCIL/402/9344 dated 1.12.2008 addressed to WRLDC had informed as under:

“As per the LTOA granted by PGCIL the 400 kV transmission lines have been laid from our switchyard with LILLO arrangement of Korba and Sipat 400 kV S/C line. Also the Special Energy Meters (SEMs) have been provided as per your advise communicated vide your letter cited above. The 400 kV switchyard has been commissioned on 31.3.2008 and power is being drawn through these lines from 10.5.2008 for various commissioning activities. With the commissioning activities for the Unit-I in full swing, we expect the Unit-1 synchronization during third week for December 2008.

The above is for your kind information and we request you to kindly initiate action from your side as required if any.”

25. In response to the above request, WRLDC has permitted M/s. LPL to inject infirm power as UI vide its Reference No. WRLDC/OS/1610(2)/08 dated 22.12.2008. The contents of the letter are extracted hereunder:

- “ X X X X X X
- *M/s Lanco Amarkantak Power Private Limited will be considered as WR UI pool member from the day of synchronization of Unit –I with WR grid and any deviation from the schedule will be settled through UI mechanism.*
 - *The infirm power from the unit till COD would be treated as UI power.*

- *Scheduling by WRLDC would commence after COD of the unit.*
X X X X X X
- *As per the BPTA signed with POWERGRID, M/s PTC India Ltd will be responsible for payment of transmission charges to CTU corresponding to the LTOA quantum of 300 MW and applicable from the date of synchronization of the unit.*
- *After commercial operation of the unit, common scheduling request for mutually agreed quantum signed by LANCO and the buyer shall have to be sent to WRLDC. X*
X X X."

26. M/s LPL in its letter of Re. No.LAPPL/PGCIL/402/11810 dated 14.12.2009

addressed to WRLDC had informed as under:

"Regarding the 2nd 300 MW Unit we would like to inform you that necessary SEMs have been installed for Generator Transformer-2 and Station Transformer-2 as per your advice. As per LTOA approval transfer of power from Unit 2 shall be through the existing LILO arrangement till WR pooling station would be ready. At present we have been drawing power through the LILO for the commissioning activities of Unit 2 which are in full swing. Synchronization is expected in January 2009.

The above is for your kind information and we request you to kindly initiate action, if any, required from your side please."

27. In response, WRLDC in its letter no. WRLDC/OS/1610(2)/10, dated 19.1.2010 has granted the permission as under:

- "X X X X X
- *M/S Lanco Amarkntak Power Limited is a WR UI pool member from the day of synchronization of Unit-I with WR grid i.e. wef 1st May 2009.*
 - *The infirm power from the unit 2 till COD would be treated as UI power.*
 - *Scheduling by WRLDC would commence after COD of the unit.*
 - *Any deviation from the schedule will be settled through UI mechanism.*
X X X X X
 - *As per the BPTA signed with POWERGRID, M/S PTC India Ltd will be responsible for payment of transmission charges to CTU corresponding to the LTOA quantum of 300 MW and applicable from the date of synchronization of Unit -2. After synchronization of Unit-2, transmission charge corresponding to the total LTOA quantum of 600 MW shall be payable by M/S PTC to POWERGRID. Copy of the BPTA signed between POWERGRID and PTC may be filed with WRLDC.*
X X X X X ."

28. It is noticed from the above letters of WRLDC that even though M/s LPL has asked only for synchronization of the unit, WRLDC has admitted M/s. LPL as WR UI pool member from the date of synchronization and permitted M/s. LPL to inject infirm power as UI power till the date of commercial operation. The permission is not linked to

generation of power during testing including full load testing. It is a blanket permission to inject infirm power into the grid as UI power till the date of commercial operation.

29. During the hearing of the matter on 28.11.2011, with reference to my query as to how and under what terms and conditions, M/s. LPL was admitted as an UI Member, the representative of WRLDC clarified that LANCO is connected with the CTU and in accordance with the **control area jurisdiction**, WRLDC has admitted M/s LPL as UI Member. Unit 1 and Unit 2 of the generating station of M/s LPL were allowed to be admitted as UI members with effect from 22.12.2008 and 19.1.2010 respectively. At that point of time, 2006 Grid Code was in operation. Clause 6.4 of the 2006 Grid Code as amended vide notification dated 30.3.2009, provides for demarcation of responsibilities between RLDC and SLDC as under:

“6.4 Demarcation of responsibilities

1. RLDCs shall coordinate the scheduling of generating stations owned by Central Government organizations (excluding stations where full share is allocated to host state), Ultra-Mega power projects and other generating stations of 1000 MW or larger size in which, States, other than the host State have permanent shares of 50% or more. Generating stations not meeting the above criteria regarding plant size and share of other States shall be scheduled by the SLDC of the State in which they are located. However, there may be exceptions for reasons of operational expediency, subject to approval of CERC.

2. In case of a generating station, contracting to supply power only to the State in which it is located, the scheduling, metering and energy accounting shall be carried out by the respective State Load Despatch Centre.

3. The State Load Despatch Centre which is responsible for coordinating the scheduling of a generating station shall also be responsible for (i) real time monitoring of the station's operation, (ii) checking that there is no gaming in its availability declaration, (iii) revision of availability declaration and injection schedule, (iv) switching instructions, (v) metering and energy accounting, (vi) issuance of UI accounts, (vii) collections/disbursement of UI payments, (viii) outage planning, etc.”

30. For WRLDC to exercise control area jurisdiction, the generating stations other than those owned by the Central Government organizations (excluding stations where full share is allocated to host State) and ultra mega power projects should fulfill two conditions, that is, it should have capacity of more than 1000 MW; and the States other than the host state should have share of 50% or more. The capacity of both units of the generating station is 300 MW each. Both units do not fulfill the conditions for exercise of control area jurisdiction by WRLDC. It may be argued that the Unit 1 was admitted as UI member on 22.12.2008 well before the 2006 Grid Code was amended on 30.3.2009 and therefore, should not be applicable to Unit 1. In my view such an argument cannot be sustained because, first of all, as per the order of the Commission dated 7.5.2008 in Petition No.58/2008 (suo motu), M/s LPL does not fulfill the eligibility condition to be under jurisdiction of WRLDC and secondly, the issue of control area jurisdiction being a dynamic concept, it has to be in alignment with the provisions of the prevalent regulations. Clause 6.4.1 further provides that the generating stations not meeting the criteria of plant size (i.e.1000 MW) and share of other States shall be scheduled by the SLDC of the State in which it is located. As per the Grid Code, the control area jurisdiction over the units of the generating station should have been exercised by Chhatisgarh SLDC. The Grid Code provides for exceptions for reasons of operational expediency subject to approval of CERC. To my knowledge, neither M/s. LPL nor WRLDC has ever sought approval for exercise of jurisdiction by WRLDC for operational expediency.

31. The 2010 Grid Code which came into force with effect from 3.5.2010 provides for the control area jurisdiction as under:

“6.4.2. The following generating stations shall come under the respective Regional ISTS control area and hence the respective RLDC shall coordinate the scheduling of the following generating stations:

a) Central Generating Stations (excluding stations where full Share is allocated to host state),

b) Ultra-Mega power projects

(c) In other cases, the control area shall be decided on the following criteria:

(i) If a generating station is connected only to the ISTS, RLDC shall coordinate the scheduling, except for Central Generating Stations where full Share is allocated to one State.

(ii) If a generating station is connected only to the State transmission network, the SLDC shall coordinate scheduling, except for the case as at (a) above.

(iii) If a generating station is connected both to ISTS and the State network, scheduling and other functions performed by the system operator of a control area will be done by SLDC,, only .if state has more than 50% Share of power ,The role of concerned RLDC, in such a case, shall be limited to consideration of the schedule for inter state exchange of power on account of this ISGS while determining the net drawal schedules of the respective states. If the State has a Share of 50% or less, the scheduling and other functions shall be performed by RLDC.

(iv) In case commissioning of a plant is done in stages the decision regarding scheduling and other functions performed by the system operator of a control area would be taken on the basis of above criteria depending on generating capacity put into commercial operation at that point of time. Therefore it could happen that the plant may be in one control area (i.e. SLDC) at one point of time and another control area (i.e. RLDC) at another point of time. The switch over of control area would be done expeditiously after the change, w.e.f. the next billing period.”

32. In accordance with clause 6.4.2 (c)(i) of 2010 Grid Code, if the generating station is connected only to ISTS, then RLDC shall coordinate the scheduling. Both units of the generating station were formally connected to ISTS in November 2010 as per the submission of CTU and deemed to be connected from the date of synchronization, that is, Unit 1 on 1.5.2009 and Unit 2 on 22.2.2010. Even assuming that the units of the generating station were connected to the ISTS from the dates of synchronization,

WRLDC could exercise control area jurisdiction only with effect from 3.5.2010 as per the provisions of clause 6.4.2(c)(i) of the 2010 Grid Code. Prior to this date, WRLDC has no jurisdiction over the units of the generating station of M/s. LPL. In my view, WRLDC has illegally exercised jurisdiction and the letters dated 22.12.2008 and 19.1.2010 are illegal having been issued in contravention of the provisions of 2006 Grid Code (as amended from time to time) and deserve to be set aside.

Issue No.4 : Injection of infirm power into the Grid

33. As already discussed in the preceding paragraph, the admission of both units of M/s. LPL as UI members is illegal and consequently, injection of power under UI in capacity of M/s. LPL as WR UI Pool member is illegal. The issue is also being considered from another point of view, that is, whether the units of the generating stations of M/s. LPL are permitted to inject infirm power into the grid prior to the commercial operation of the units. In its letters dated 22.12.2008 and 19.1.2010, WRLDC has conveyed that the infirm power from the units till the COD will be treated as UI. This promise held out by WRLDC to M/s. LPL needs to be tested on the basis of the statutory provisions.

34. The Commission decided to introduce the mechanism of Unscheduled Interchange in respect of the stations covered under Availability Based Tariff (ABT) in its order dated 4.1.2000 in Petition No.2/1999. In para 5.9.3 of the said order, the Commission observed as under:

“5.9.3 The draft notification contemplates planning the generation and drawal through a process of scheduling. After considering the declaration by generators of their availability and requisitions from the beneficiaries, RLDC is required to prepare the generation and drawal schedules in advance after taking into account the transmission losses. This schedule is to be finalised each day for the following day starting from 00 hours

separately for 96 time blocks of 15 minutes each. It is expected that the schedule of generation and drawal shall be observed by the respective parties with flexibility granted to modify the schedules with advance notice and with exemption in appropriate cases like grid disturbance, transmission constraint, grid safety etc. Any variation of the actual generation or drawal from the schedule shall be liable to a special UI charge payable/receivable by parties concerned. This charge is reckoned with reference to the frequency of the grid at which the deviation takes place. It is possible that a deviation sometimes is favourable or unfavourable to grid operation. Depending upon whether a utility is helping or adversely affecting the grid, UI charges will be receivable or payable. A proper metering arrangement needs to be provided so that deviation in each time block is clearly reflected and shall be billed accordingly.”{emphasis supplied}

35. Regulation 2.14 of the 2001 Tariff Regulations contained the following provisions regarding UI:

“2.14 Unschedule Interchange(UI) Charges applicable to stations covered under ABT: Variation in actual generation/drawal and scheduled generation/drawal shall be accounted for through Unscheduled Interchange (UI) Charges. UI for Generating Station shall be equal to its actual generation minus its scheduled generation. UI for beneficiary shall be equal to its total actual drawal minus its total scheduled drawal. UI shall be worked out for each 15 minute time block. Charges for all UI transactions shall be based on average frequency of the time block and the following rates shall apply” {emphasis supplied}

36. In 2004 Tariff Regulations, similar provisions were made in respect of thermal generation in Regulation 24 and hydro generation in Regulation 42. For the sake of brevity, only Regulation 24 is extracted below:

“24. Unscheduled Interchange(UI) Charges: (1) Variation between actual generation or actual drawal and scheduled generation or scheduled drawal shall be accounted for through Unscheduled Interchange (UI) Charges. UI for a generating station shall be equal to its actual generation minus its scheduled generation. UI for a beneficiary shall be equal to its total actual drawal minus its total scheduled drawal. UI shall be worked out for each 15 minute time block. Charges for all UI transactions shall be based on average frequency of the time block and the following rates shall apply with effect from 1.4.2004.”(emphasis supplied)

37. It is evident from the above that UI Charges were a part of 2001 Tariff Regulations and 2004 Tariff Regulations which were applicable to the generating stations whose tariff was determined by the Commission. Operation of UI mechanism pre-supposed existence of generators and beneficiaries. UI for the generator was the difference between actual generation and scheduled generation and the UI for the beneficiary was the difference between actual drawal and scheduled drawal. The UI mechanism was not clearly envisaged for the Independent Power Producers and the merchant plants since their tariff was not determined by the Commission.

38. UI charges were taken out of the purview of the Tariff Regulations when the Central Electricity regulatory Commission (Unscheduled Interchange Charges and related matters) Regulations, 2009 (hereinafter “UI Regulations”) came into force with effect from 1.4.2009. The scope of the UI Regulations is as under:

“4. Scope : These regulations shall be applicable to –(i) the generating stations and the beneficiaries, and (ii) sellers and buyers involved in the transaction facilitated through open access or medium term access or long-term access in inter-State transmission of electricity.”

The term ‘generating station’ has been defined as “a generating station whose tariff is determined by the Commission under clause (a) of sub-section (1) of Section 62 of the Act.” The word ‘buyer’ has been defined as “a person, other than the beneficiary, buying electricity through a transaction scheduled in accordance with the regulations of the Commission applicable for open access, medium term access and long term access”. Beneficiary has been defined as “a person purchasing electricity generated from a generating station.” The term “seller’ has been defined as a person, other than a generating station supplying electricity through a transaction scheduled in accordance

with the regulations specified by the Commission for open access, medium term access and long term access. Further, Regulation 5 of UI Regulations provides as under:

“The charges for Unscheduled Interchange for all the time-blocks when grid frequency is between 50.3 Hz and 49.2 Hz shall be payable for over-drawal by the buyer or the beneficiary and under-injection by the generating station or the seller and receivable for under-drawal by the buyer or the beneficiary and over-injection by the generating station or the seller and shall be worked out on the average frequency of the time-block at the rates given hereunder:-

A reading of the above provisions reveals that UI charges can be receivable by the generating station or seller for the over injection which can only be in relation to a schedule in respect of transactions executed through long term access, medium term and short term open access. The IPPs and Merchant Plants whose tariff is not determined by the Commission can be classified as sellers and they can sell powers to any buyer only through transactions scheduled in accordance with the regulations on long term, medium term and short term open access. In other words, if the merchant plant or IPP has not identified a buyer for sale of power through long term access, medium term and short term open access, it would not be eligible for injection of power under UI. **Therefore, the units of the generating station which did not have long term access, medium term open access and short term open access were not eligible to inject power under the UI into the grid.**

39. Next question is whether any of the regulations of the Commission allowed injection of infirm power before the commercial operation of the unit or the generating station. It is noticed that Clause 2.6 of the 2001 Tariff Regulations made following provisions for infirm power:

“2.6 Infirm Power: In respect of infirm power, that is sale of electricity prior to commercial operation of the unit, any revenue from such sale (other than the fuel cost), shall be taken as reduction in capital expenditure and not as net revenue.”

In the 2004 Tariff Regulations, Regulations 19 and 35 dealt with accounting of infirm power in respect of thermal generating station and hydro generating station. Regulation 19 is extracted as under:

“19. Sale of Infirm Power: Any revenue (other than the recovery of fuel cost) earned by the generating company from sale of infirm power, shall be taken as reduction in capital cost and shall not be treated as revenue.”

Thus, 2001 Tariff Regulations and 2004 Tariff Regulations only provided for accounting of the infirm power by reduction in the capital cost. They did not provide as to how the infirm power would be sold. Only through the 4th amendment to the 2004 Tariff Regulations notified on 31.12.2007 (effective from 7.1.2008), the concept of sale of infirm power as UI was introduced by amending Regulation 19 in respect of thermal generation and Regulation 35 in respect of hydro generation. Amended Regulation 19 is extracted as under:

“19. Sale of Infirm Power: Infirm power shall be accounted as Unscheduled Interchange (UI) and paid for from the regional / State UI pool account at the applicable frequency-linked UI rate. Any revenue earned by the generating company from sale of infirm power shall be applied for reduction in capital cost and shall not be treated as revenue”.

Similarly, Regulation 11 of the 2009 Tariff Regulations provide for the following for sale of infirm power:

“11. Sale of Infirm Power: Supply of infirm power shall be accounted as Unscheduled Interchange (UI) and paid for from the regional or State UI pool account at the applicable frequency linked rate:

Provided that any revenue earned by the generating company from sale of infirm power after accounting for the fuel expenses shall be applied for reduction in capital cost.”

40. Thus it is clear from the above that 4th amendment to the 2004 Tariff Regulations and 2009 Tariff Regulations permitted accounting of infirm power as UI. However, this dispensation was applicable to the generating stations whose tariff was determined by the Commission. Conversely, the provision was clearly inapplicable in case of those generating stations whose tariff was not determined by the Commission. There were weighty reasons for this provision in case of the generating stations whose tariff is determined by the Commission. Since the UI earned through the sale of infirm power would result in reduction in capital cost after accounting for fuel expenses, which serves the consumer interest as the consumers would be required to service the reduced capital cost over the useful life of the asset. At the same time, it would act as an in-built disincentive for the generator to prolong injection of infirm power and incentivise the generator to go for commercial operation at the earliest opportunity. This is not the case with merchant power plants or IPPs whose tariff is not determined by the Commission. For these plants, earning through UI by sale of infirm power would not result in reduction in capital cost and therefore, there is no disincentive for not prolonging the commercial operation of the generating station. Also, there is huge undue financial gain to the generators as the cost of fuel is much lower than the UI rates and also the agreed rates with the long term open access beneficiary is much lower than the UI rates recoverable.

41. Injection of infirm power prior to the date of commercial operation to all generators for the purpose of testing and full load testing was allowed by the Commission in the Connectivity Regulations which came into force with effect from 1.1.2010. Regulation 8 (7) of the Connectivity Regulations provided as under:

“(7) A generating station, including captive generating plant which has been granted connectivity to the grid shall be allowed to undertake testing including full load testing by injecting its infirm power into the grid before being put into commercial operation, even before availing any type of open access, after obtaining permission of the concerned Regional Load Despatch Centre, which shall keep grid security in view while granting such permission. This infirm power from a generating station or a unit thereof, other than those based on non-conventional energy sources, the tariff of which is determined by the Commission, will be governed by the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009. The power injected into the grid from other generating stations as a result of this testing shall also be charged at UI rates.”

The requirements of the regulations are: (a) the generator should have connectivity to the grid; (b) injection of infirm power should be for the purpose of testing including full load testing before the date of commercial operation; (c) Injection can be made before availing any type of access; (d) Permission of RLDC is required who shall keep the grid security in view while granting permission; (e) the power injected by a generating station whose tariff is determined by the Commission shall be governed in accordance with 2009 Tariff Regulations; and (f) in case of other generating stations, the power injected as a result of testing shall be charged at UI rates. Thus only with effect from 1.1.2010, a merchant plant or IPP having connectivity to the grid can inject power during testing and full load testing with the permission of RLDC and such injection can be charged at UI rate.

42. The reasons advanced by WRLDC for allowing injection of power under the UI to M/s. LPL as submitted in its various affidavits are summarised as under:

(a) M/s. LPL had secured long term access from the CTU for Unit 1. As during the period (pre-1.1.2010), LTOA implied connectivity (as there was no separate regulation for connectivity), Unit 1 was allowed to get connected to the grid and inject infirm power.

(b) For allowing injection of infirm power by M/s. LPL as UI, WRLDC was guided by the observations of the Commission in the Statement of Reasons to the Central Electricity Regulatory Commission (Terms and conditions of Tariff) (Amendment) Regulations, 2007 (effective from 7.1.2008) which is extracted as under:

“A clarification has been sought that the proposed treatment of infirm power as UI shall not apply where the tariff is determined through a transparent process of competitive bidding. It is, therefore, clarified that Regulations 19 and 35 are applicable only to the generating stations whose tariff is determined by the Commission, starting from the capital cost. These regulations necessarily require the capital cost reduction (for subsequent determination of capacity charge of the generating station) to the extent of revenue earned through sale of infirm power, and therefore, cannot be applied where capital cost does not come in picture for tariff determination. It is further clarified that in case of competitive bidding, the conditions specified in the bidding documents would in any case apply. However, in case of merchant power plants and merchant capacity, infirm power shall be accounted for as UI.”

(c) By its very nature, the UI mechanism operates outside the scheduled generation as it is dependent on the grid frequency and is an invitation to support grid stability. There seems to be no reason as to why such UI mechanism should be directly or indirectly related to the existence of long term or short term contracts. If the frequency in the system allows the generating company including a captive generating plant to inject power into the system to support grid frequency, they are entitled to do so without any need to obtain any long term, medium term or short term open access subject to curtailment of UI power by RLDCs in case of any threat to the system security.

(d) A generator having tested and synchronized the generating unit by seeking connectivity will have to go for declaration of commercial operation vis-à-vis the persons with whom he has long term or short term contracts. The declaration of commercial operation is essentially a contractual issue with persons with whom it has the PPA. If the Commission intends that all generators should notify the date

of commercial operation to an authority such as RLDC or NLDC, it may be specifically provided for, instead of being inferred by interpretation of various regulations.

(e) The present regulations do not cast any duty or function on the WRLDC to terminate the connectivity given to a generating station at the time of synchronization, testing and commissioning. The connectivity given by WRLDC cannot be taken away by WRLDC on the ground that long term, medium term or short term access had come to an end at any point of time or does not exist. The connectivity given continues to exist and it can be taken away only by an order of the appropriate Commission or appropriate court. The functions of WRLDC do not include the power to disconnect a generating station on the basis that it does not have open access or it is continuing to inject power without declaring commercial operation.

(f) There is an unresolved issue of the duration for which infirm power could be injected without any access since the Connectivity Regulation or any other regulation does not specify any outer limit for testing of unit and generating power on infirm basis subject to concurrence by RLDCs.

43. The above arguments of WRLDC deserve to be rejected outright. With regard to the first contention (a) of WRLDC at Para 42, I have already come to the conclusion in para 16 of this order that connectivity did exist as a distinct requirement under the 2006 Grid Code in addition to the long term open access under Open Access Regulations. Moreover, M/s. LPL did not have any LTOA in its favour. Therefore, connectivity was

granted by WRLDC to Unit 1 of the generating station in violation of the Grid Code and Connectivity Regulations. Even the decision of WRLDC to admit the units of the generating station as WR UI pool member was without jurisdiction and illegal as concluded by me in para 32 of this order.

44. Regarding the second contention of WRLDC at (b) of Para 42 that it allowed M/s. LPL to inject infirm power under UI being guided by the observations of the Commission in the Statement of Reasons to the 4th amendment to the 2004 Tariff Regulations, I am of the view that even though the observation was made in the Statement of Reasons, the Commission had not specified any regulations for injection of infirm power by merchant power plants or IPPs into the grid as UI. Had the Commission intended to extend the benefits of amended tariff regulations in case of merchant plant and IPPs, it could have done so. Such a provision only came to be specified by regulations with the notification of Connectivity Regulations with effect from 1.1.2010 which reveals that the observations in the Statement of Reasons was not intended to confer any right in the merchant power plant for injecting infirm power as UI. If WRLDC so genuinely felt about the need for allowing M/s. LPL for injection of infirm power in the interest of the grid, it was at liberty to approach the Commission for appropriate directions. It needs to be noted that RLDCs have been exempted in the Payment of Fee Regulations from paying filing fee for filing any petition before the Commission since they discharge essential regulatory functions.

45. As regards the contention (c) at Para 42 of WRLDC that UI operates outside the scheduled generation, I am not in agreement with the said interpretation. UI is a commercial mechanism to account for deviation from schedule. Even though it may not

be accounted for as scheduled generation, it cannot be said that UI operates outside the schedule. On the other hand it is inextricably linked to scheduled generation. The Hon'ble Supreme Court in its judgment dated 17.8.2007 in Central Power Distribution Co & Ors Vs CERC [(2007) 8 SCC 197] has explained the concept of Unscheduled Interchange as under:

"WHAT IS UI (UNSCHEDULED INTERCHANGE ?

10. In addition to two charges, a third charge contemplated in the ABT scheme is for the unscheduled interchange of power (UI charges). The UI charges are payable depending upon what is deviated from the schedule and also subject to the grid conditions at that point of time. This element was introduced to bring about the effective discipline in the system. Under this system UI charges will be payable, if:

- i) a generator generates more than the schedule, thereby increasing the frequency;
- ii) a generator generates less than the schedule, thereby decreasing the frequency;
- iii) a beneficiary overdraws power, thereby decreasing the frequency;
- iv) a beneficiary under draws power, thereby increasing the frequency.

11. It is thus clear from the above that UI charges are a commercial mechanism to maintain grid discipline. The UI charges penalises whosoever caused grid indiscipline, whether generator (NTPC) or distributor, is subject to payment of UI charges who are not following the schedule. The UI charges are not payable if the appellants maintain their drawl of electricity consistent with the schedule given by themselves. Therefore, there is no merit in the contention of the appellants that the UI charges are by way of penalty." {Emphasis laid}

UI Regulations which came into force from 1.4.2009 do not provide for injection of power as unscheduled interchange without having any form of access. The exception has only been made under the Connectivity Regulations for the limited purpose of testing only. Under no circumstances, WRLDC could have allowed M/s. LPL to inject power under UI prior to 1.1.2010, when, generating stations (other than those whose tariff was being determined by the Commission) were allowed to inject infirm power under the UI.

46. As regards other contention of WRLDC at Para 42(d) that the declaration of commercial operation is essentially a contractual issue with persons with whom the generator has the PPA and if the Commission wants that date of commercial operation should be notified by all generators, then it should be so specified in the regulations, I am of the view that such surmises of WRLDC are based on deliberate attempt to misinterpret the regulations to justify its own action. In the Tariff Regulations, the Commission has defined the date of commercial operation but has not specified any time limit for declaring the commercial operation. The reasons are obvious. In case of the generating stations whose tariff is determined by the Commission, the beneficiaries are the distribution companies of the States who have long term access in their favour. The generating company cannot prolong its decision to declare commercial operation as it will be liable to the distribution companies for violation of its contractual obligations under the PPA. Moreover, earning of UI for injection of infirm power will result in reduction of its capital cost which is sufficient disincentive for prolonging declaration of commercial operation. In case of other generating stations whose tariff is not determined by the Commission, they are allowed under the Connectivity Regulations to inject infirm power into the grid under UI **for the purpose of testing only**, if concerned RLDC permits the same keeping in view the grid security. **Therefore RLDCs have been entrusted with the responsibility to satisfy themselves that the permission sought by the generating station is for the purpose of testing or full load testing only.** If RLDC is satisfied that injection of power is for the purpose other than testing, then it has the power to withdraw the permission to the generating company for injection of infirm power.

47. The contention of WRLDC at Para 42(e) is that the connectivity given by WRLDC at the time of synchronization and testing cannot be taken away by WRLDC on the ground that long term, medium term or short term access has come to an end at any point of time or does not exist. I have already come to the conclusion that WRLDC has granted connectivity to both units of the generating station without the authority of law and without jurisdiction. The requirement of Regulation 8(6) of Connectivity Regulations is that a generating station is allowed to inject infirm power only for the purpose of testing and if the injection is not for testing, then power should be injected by availing long term, medium term or short term open access. Therefore, without the commercial operation, a generating station can inject power into the grid under short term, medium term and long term open access. Therefore, it is the responsibility of WRLDC to ensure that if the injected power is not for testing, then it should be under some form of access. In this connection, section 28(3) of the Electricity Act, 2003 is relevant which is extracted as under:

“(3) The Regional Load Despatch Centre shall-

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

It is evident from the above, that while scheduling and dispatch of electricity, WRLDC has to do so in accordance with the contracts with the licensees or generating companies operating in the region. Therefore, WRLDC has to satisfy itself whether the generating company or licensee seeking scheduling of power has the contract for long term access, medium term open access and short term open access and schedule the power accordingly.

48. WRLDC has contended in Para 40 (f) that there is an unresolved issue regarding the duration of injection of infirm power. In my view, the issue has arisen on account of misinterpretation of the provisions of Regulation 8(6) of the Connectivity Regulations by WRLDC. If the power is for the purpose of testing, then WRLDC is bound to ask questions related to testing such as the time of testing, duration of testing, type of fuel used etc, before allowing permission to inject power for testing. WRLDC has not placed on record a single document to show that the injection of power by M/s. LPL was only for the purpose of testing. In my view, a generating station may take as long as it can for the purpose of testing, but prolonged injection on sustained basis cannot be allowed under the garb of testing. Therefore, the duration of injection of infirm power has become an issue only because M/s. LPL has been allowed to inject infirm power on sustained basis.

49. WRLDC has further submitted that if the frequency in the system allows the generating company including the captive generating plant to inject power into the system to support grid frequency, they are entitled to do so without the need to obtain any long term, medium term or short term open access, subject to curtailment of UI power by RLDC in case of any threat to system security. This proposition needs to be rejected outright since injection of power into the grid by any generator should be as per the requirement of the relevant regulations and cannot be based on the sole consideration of supporting the grid frequency. Moreover, no such authority has been vested in RLDCs to allow injection to support grid frequency contrary to the provisions of the regulations. WRLDC in its affidavit dated 2.12.2010 has mentioned that “it did not receive any request from M/s LAPPL for scheduling power from 1st May 2009 to 8th April 2010 reportedly due to dispute which was being heard before MPERC, MP High Court,

APTEL and Supreme Court”. **This only proves that WRLDC was aware that Unit 1 of the generating station was not in the testing stage and was ready for commercial generation, but for the commercial dispute, it did not inject power under any form of access.**

50. As regards the prolonged injection of power under UI, M/s. LPL in its affidavit dated 30.12.2010 has submitted that “while the MPPTC appeal is pending before the Supreme Court, the Respondent could not declare commercial operation since the PPA is under dispute and there is no valid contract in place. The issue of declaring commercial operation did not arise since there is no long term PPA”. It follows that Unit 1 of the generating station was not declared under commercial operation by M/s. LPL solely for commercial considerations like the dispute over termination of PPA with PTC and absence of any long term arrangement for supply of power. M/s. LPL has also submitted that due to some teething problems, it could not declare the commercial operation. As regards Unit 1, the problems have been stated as under:

- (a) After the synchronization of Unit 1 with effect from 1.5.2009, as the turbine bearing temperature had been keeping high, the testing and stabilization process of the unit was affected badly.
- (b) Over loading of the 400 kV Korba-Sipat transmission line, through the LILO of which LTOA was granted to the Unit also impacted the LPL’s ability to achieve commissioning. The problems were partially addressed when the Pathadi-Sipat-Raipur transmission line was modified as Pathadi-Raipur line.
- (c) The private railways siding meant for transportation of coal from SECL mines to the power point was not commissioned till January 2010 which was crucial for ensuring adequate coal stock to operate the plant continuously at full load.

As regards Unit 2, M/s. LPL has submitted that the unit was synchronised on 22.2.2010 and achieved full load on 25.3.2010. However, due to technical problems and transmission constraints, LPL could not run the unit continuously at full load and declare commercial operation due to following reasons:

- (a) Heavy steam leakage from the turbine side leading to resynchronization on 7.4.2010;
- (b) Tripping on 9.4.2010 and 10.4.2010 due to EH oil leakage from the control valve;
- (c) Shutdown from 26.5.2010 to 21.6.2010 due to problems in the coal mills, gear box and coal mill motor;
- (d) Time taken for rectification of the problems due to non-availability of expert Chinese engineers on account of change in VISA policy;
- (e) Heavy leakage of flue gas in the duct leading to the chimney due to faulty design at joint plane;
- (f) Fire accident in coal mills and consequent failure of grinding rolls;
- (g) Problems in ash handling system due to choking of ash evacuation from the ESP hoppers and problem in wetting heads;
- (h) Delay in commissioning of dry ash handling system and water circulation system; and
- (i) Overloading of transmission lines and high frequency conditions prevailing in the system and consequent grid security issues

affecting operation of the unit continuously at full load and completion of testing and achieving stabilization.

51. From the operational data submitted by WRLDC, since the synchronization of Unit 1 and Unit 2 till March 2011, it is observed that the Unit 1 was injecting power continuously on regular basis up to a capacity of 275 MW from 20th July, 2009. It could be seen from the data that on 4th to 6th June 2009, Unit 1 has been steadily injecting power ranging from 201 MW to 273 MW in most of the time blocks of the day. This trend is seen during 18th June – 24th June 2009 where the Unit has been injecting 270 MW – 276 MW in maximum of the time blocks. The same trend is continued during 3rd July 2009 – 11th July 2009 and from 20th July 2009, full load capacity up to 280 MW has been injected into the grid as UI. Unit 2 was also capable of injecting power to its full load capacity by 25th March, 2010. Moreover, M/s. LPL has itself admitted in its affidavit that the Unit 2 was synchronized on 22.2.2010 and achieved full load on 25.3.2010. The injection data for Unit 2 for the 96 time blocks indicate that it achieved 256 MW on 25th March 2010 and thereafter, operating intermittently during 7th April 2010 to 13th April 2010. Thereafter the Unit has been injecting steady power up to a maximum of 263 MW until 25th May 2010. Data on 30th June 2010 indicate that the Unit has achieved its full load throughout the full time block. Moreover, PGCIL (CTU) in its affidavit dated 21.11.2011 has submitted in para 6 as under:

“However, considering the time period for establishment of WR Pooling Station and commissioning schedule of Unit-2, as an interim arrangement, Unit-2 was allowed to inter connect at the Unit-1 bus, which is already inter-connected with WR Grid by LILO of 400 kV Korba – Sipat S/c and Power Transfer from Unit-2 may be effected on short-term basis depending upon transmission capacity

availability. Since, WR Pooling Station, dedicated transmission system and other strengthening schemes for Unit-2 is not available, LTOA for Unit-2 is not valid.”

It may be clearly seen above that the M/s.LPL should have applied for short-term access immediately after their full load testing for injecting power. Thus, the teething problems cited by M/s. LPL do not appear to be sound ground for delay in commercial operation of the generating station.

From the above it emerges that M/s. LPL was not scheduling power under any form of access for commercial considerations only, even though the units were capable of generating power at full load. M/s. LPL was not entitled to inject the generated power as infirm power since the power was not generated during testing. It appears to me that once the permission was granted by WRLDC for injection of infirm power as UI till the date of commercial operation, there was sufficient commercial incentive for M/s. LPL

- (i) in not declaring commercial operation of the units,
- (ii) not to sell power under any form of access and
- (iii) to continue to sell energy generated under UI mechanism.

It is to be noted that the Unit 1 was declared commercial operation only on 9.4.2010 despite its synchronization on 1.5.2009 and achievement of full load on 20.7.2009. Similarly, Unit 2 was synchronized on 22.2.2010 and was seen achieving full load on 25.3.2010 but power was scheduled only from 7.5.2011 in compliance with the directions of Appellate Tribunal for Electricity.

52. My findings as at Para 51 above is well corroborated from the analysis below made by the Engineering Division of the Commission from the data submitted by WRDLC for both the Units on UI injection for the period 1.5.2009 to 27.3.2011.

INJECTION DATA BY UNIT 1 AND 2 OF LPL AS UI SINCE DATE OF SYNCHRONISATION					
Sl. No.	Month	Scheduled energy MWh	Actual Energy MWh	Unscheduled Interchange MWh	Amount received under UI Rs.
		(A)	(B)	C=(B-A)	
1	May 09	0.00	12693.00	12693.00	3,44,10,287
2	Jun 09	0.00	51346.02	51346.02	31,25,87,366
3	Jul 09	0.00	131342.13	131342.13	57,13,49,051
4	Aug 09	0.00	187050.27	187050.27	1,12,11,57,721
5	Sep 09	0.00	126353.07	126353.07	53,93,74,327
6	Oct 09	0.00	147823.93	147823.93	64,20,27,938
7	Nov 09	0.00	138183.02	138183.02	39,64,74,769
3	Dec 09	0.00	143171.42	143171.42	46,41,00,604
9	Jan 10	0.00	147471.51	147471.51	62,40,12,489
10	Feb 10	0.00	159759.63	159759.63	49,85,13,268
11	Mar 10	0.00	181736.86	181736.86	90,46,23,744
Total upto March 2010(A)		0.00	1426930.86	1426930.86	6108631564
12	Apr 10	117700.00	244192.99	126492.99	77,36,89,073
13	May 10	133560.00	287681.68	154121.68	59,04,50,217
14	Jun 10	166109.28	218088.18	51978.90	16,92,08,757
15	Jul 10	182559.07	322213.69	139654.62	41,55,77,719
16	Aug 10	50336.54	234634.82	184298.28	48,83,60,615
17	Sep 10	178239.03	309059.66	130820.63	25,65,30,065
18	Oct 10	201514.95	331800.68	130285.73	27,20,07,873
Total upto Oct 2010 (B)		1030018.87	1947671.7	917652.83	2,96,58,24,319
19	Nov 10	194909.71	278614.90	83705.19	15,71,50,476
20	Dec 10	164174.35	275348.74	111174.39	26,42,12,169
21	Jan 11	184029.99	310058.72	126028.73	38,53,49,966
22	Feb 11	182862.00	241679.17	58817.17	17,70,90,692
23	Mar 11	173970.14	230024.22	56054.08	13,15,39,096
Total{upto 27^m March 2011} (C)		899946.19	1335725.75	435779.56	1,11,53,42,399
Total (A) + (B) + (C)		1929965.06	4710328.31	2780363.25	10189798282.00

It is observed from the table above that till Unit 1 was declared COD on 9.4.2010, the generator has earned UI at the rate of Rs.4.28 per unit as against the agreement rate for unit 1 with PTC for supply to MPPTCL was in the range of Rs.2.18 to Rs.2.20 for a period of 10 to 25 years. The comparable tariff on cost plus basis as obtained from similarly placed generating station of NTPC's Sipat II worked out on actual basis at an average of Rs.1.83 per unit (capacity charge Rs.1.08 + energy charge Rs.0.76 + other charges Rs.0.03). Unit 1 and Unit 2 have injected 1,429,930.86 MW for the period from May 2009 to March 2010 as infirm power without any scheduling continuously on a firm basis and earned UI charges of Rs.610.86 crore. The extra cost earned by M/s. LPL with reference to the actual cost as per agreement or the fuel cost payable has been collected from the consumers. Had they (consumers of MPPTCL) obtained the power from PTC with whom M/s. LPL had agreement for LTOA for 25 years, they would not have paid such high cost for the power.

Similarly, it can be observed from the table that with effect from April 2010 to March 2011, the power generated from the Unit 1 is being sold at short term access rates through PTC and the power from Unit 2 is being sold at UI rates as infirm power since the date of its synchronization (22.2.2010). Total UI earned during this period was calculated as Rs.408.12 crore. Again the UI average rate works out to Rs.3.23 per Unit as against the agreed rate of Rs.2.34 per unit for supply to HPGCL from Unit 2. For this period, the cost of power for Sipat II works out to Rs.1.97 per unit (capacity charge Rs.1.09 + energy charge Rs.0.84 + other charges Rs.0.04). Data beyond 27th March 2011 has not been made available by WRLDC. It is pertinent to note that Unit 2 has started scheduling power to HPGCL and Chhatishgarh with effect from 7.5.2011. No

information has so far been provided to the Commission on the declaration of commercial operation by Unit-2.

53. From the above it can be concluded that there was no urgency for M/s. LPL to declare COD and it derived undue financial advantage at the cost of consumers. WRLDC who is the system operator with bounden duty to safeguard the interest of the grid and prevent such incidents wherein infirm power has been continuously injected into the grid without any schedule has failed miserably and acted against the provisions of regulations and law.

54. In view of the above discussion, I have come to the conclusion that M/s. LPL in the guise of testing has injected infirm power into the grid as UI power from 1.5.2009 till 9.4.2010 in respect of Unit 1 and from 22.2.2010 till 7.5.2011 in respect of Unit 2 of the generating station on sustained basis in furtherance of its commercial interest and has thus violated the provisions of Regulation 8(7) of the Connectivity Regulations. Therefore, under section 142 of the Act, a penalty of ₹ 1 lakh each for violation of the Connectivity Regulation by Unit 1 and Unit 2 of the generating station should be imposed on M/s. LPL. I am also of the view that M/s. LPL has unfairly gained by injecting infirm power under the UI which does not legitimately belong to M/s. LPL. There is, however, no provision in the regulations of the Commission as to how such cases should be dealt with in the interest of the consumers. In PTC India Ltd Vs CERC {JT2010(3)SC1}, Hon'ble Supreme Court has laid down the principle that absence of regulation does not prevent the Commission to discharge its functions under the Act

and the same can be taken as per the general power of regulation. The relevant observation of the Hon'ble Supreme Court is extracted as under:

“40. Accordingly, the Central Commission is set up under Section 76(1) to exercise the powers conferred on, and in discharge of the functions assigned to, it under the Act. On reading Sections 76(1) and 79(1) one finds that Central Commission is empowered to take measures/steps in discharge of the functions enumerated in Section 79(1) like to regulate the tariff of generating companies, to regulate the inter-State transmission of electricity, to determine tariff for inter-State transmission of electricity, to issue licenses, to adjudicate upon disputes, to levy fees, to specify the Grid Code, to fix the trading margin in inter-State trading of electricity, if considered necessary, etc.. These measures, which the Central Commission is empowered to take, have got to be in conformity with the regulations under Section 178, wherever such regulations are applicable. Measures under Section 79(1), therefore, have got to be in conformity with the regulations under Section 178. To regulate is an exercise which is different from making of the regulations. However, making of a regulation under Section 178 is not a pre-condition to the Central Commission taking any steps/measures under Section 79(1). As stated, if there is a regulation, then the measure under Section 79(1) has to be in conformity with such regulation under Section 178. This principle flows from various judgments of this Court which we have discussed hereinafter” (emphasis supplied)

From the above, it clearly emerges that making of regulation is not a pre-condition for taking any step/measures under Section 79(1) of the Act. The Commission has been vested with the power under Section 79(1)(c) to “regulate inter-State transmission of electricity”. The power to regulate also includes power to restrain and restrict. The Hon'ble Supreme Court in K. Ramanathan vs State of Tamil Nadu [(1985) 2 SCC 116], has explained the scope of the word ‘regulate’ as under:

“18. The word “regulation” cannot have any rigid or inflexible meaning as to exclude “prohibition”. The word “regulate” is difficult to define as having any precise meaning. It is a word of broad import, having a broad meaning, and is very comprehensive in scope. There is a diversity of opinion as to its meaning and its application to a particular state of facts, some courts giving to the term a somewhat restricted, and others giving to it a liberal, construction. The different shades of meaning are brought out in Corpus Juris Secundum, Vol. 76 at p. 611:

‘Regulate’ is variously defined as meaning to adjust; to adjust, order, or govern by rule, method, or established mode; to adjust or control by rule, method, or established mode, or governing principles or laws; to govern; to govern by rule; to govern by, or subject to, certain rules of restrictions; to govern or direct according to rule; to control, govern, or direct by rule or regulations. ‘Regulate’ is also defined as meaning to direct; to direct by rule or restriction; to direct or manage according to certain standards, laws, or rules; to rule; to conduct; to fix or establish; to restrain; to restrict.”

Therefore, absence of any provision in the Regulations cannot come on the way of the Commission to take appropriate measures to regulate the payment of UI charges to M/s LPL.

55. It needs to be considered as to what are the tariff M/s LPL would have been entitled for infirm power in terms of the PPAs and PSAs. As per para 6.7 of the PSA between PTC and MPSEB in respect of Unit 1, payment for output until COD of the project would be as under:

“6.7 Payment for output until COD of the Project:- During start-up, preliminary testing or other operations of the Project for achieving the COD, and during the Initial Performance Tests, the infirm power and energy absorbed by the Purchaser shall be paid for by the Purchaser at the rate of Fuel Payment for such energy.”

Similarly, in para 6.8 of the PSA between PTC and HPGCL in respect of Unit 2, during start-up, preliminary testing or other operations of the Project for achieving the COD, and during the Initial Performance Tests, the infirm power and energy shall be absorbed by the Purchaser (HPGCL). As per para 10.1(a) of the PSA, the payment for such infirm power will be as under:

“10.1(a) Payment Component until the Commercial Operation Date of the Project

“During start-up, preliminary testing or other operations of the Project until the Required COD of the Project, and during the Initial Performance Tests, the Purchaser shall cooperate fully with PTC and the Company to absorb the energy generated during such operations at the rate of Fuel Payment for such energy and the Applicable Trading Margin.”

Thus under the PSAs with MPSEB and HPGCL, M/s LPL (referred to as “the Company” in PSAs) shall be entitled for fuel cost and PTC for trading margin for sale of infirm power before the COD. Therefore, M/s LPL cannot be allowed to gain by injecting

infirm power into the grid as UI as compared to what M/s. LPL would have received under the PPA and PSA which permit only fuel cost for injection of infirm power prior to COD. I am of the view that the purpose of the Act and regulations and the ends of justice will be met if, M/s. LPL be directed to refund the UI charges to the UI pool account after adjusting the fuel expenses. Accordingly, M/s. LPL is directed to refund the UI charges to the UI pool account. Western Regional Power Committee is directed hereby to call for the records of injection of infirm power till the date of declaration of Commercial Operation of both the units of M/s. LPL and calculate the fuel expenses entitled and direct M/s. LPL to refund the excess over the amount earned under UI for credit of UI pool account. The task should be completed within a period of 3 months for the entire period of UI payment.

It is also pertinent to point out at this stage that Shri Shanti Bhushan, the learned Senior Counsel appearing for M/s. LPL during the hearing on 17.3.2011 had submitted that the UI charges would be reduced from the capital cost as and when the respondent's generating station supplies power to the distribution companies in future. It is in line with this submission and also with reference to the existing provision that in case of generating stations where the tariff is fixed by the Central Commission, the UI charges earned for injection of infirm power till the date of commercial operation should be credited to the capital account after deducting the fuel cost.

56. I have also come to the conclusion that WRLDC by misinterpreting the provisions of the regulations has admitted M/s. LPL as WR UI pool member who is not entitled to such treatment under the regulations and has allowed M/s. LPL to inject infirm power on a sustained basis and to earn payment for such power at UI rates. Thus, WRLDC has

seriously failed in discharging its statutory responsibility to ensure that connectivity to the grid is utilized for the purpose of testing only as required under Regulation 8(7) of Connectivity Regulations. WRLDC is warned for its failure to comply with the regulations and is directed to strictly comply with the regulations of the Commission and the provisions of the Act. The case is a fit one for detailed investigation by an independent authority namely CEA by constituting a group of experts. However, I direct that the management of POSOCO should carry out an in-house investigation into the circumstances under which M/s.LPL was allowed prolonged injection of infirm power into the grid in the guise of connectivity for testing and for series of acts of omission and commission wherein WRLDC has violated the regulatory provisions in regard to grid code and CEA's technical standards etc. as brought out in the order at appropriate places and take suitable remedial action for future under intimation to the Commission. The report should be sent to the Commission within 6 months from the date of the order.

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57. In this regard, though I am fully in agreement with MPPTCL that it was deprived of its legitimate share of power from Unit-1, consequent to the termination of PPA and the sufferers were the consumers of MP, I would like to go with para 45-48 of the order of my learned colleagues.

Sd/-
(M Deena Dayalan)
Member

Dated the 13th February 2012

