

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 213/MP/2011

**Coram: Dr. Pramod Deo, Chairperson
Shri S Jayaraman, Member**

Date of Hearing: 17.1.2012

Date of Order : 25.1.2012

In the matter of

Miscellaneous petition under Regulation 25A of CERC (Open Access in Inter State Transmission Regulations, 2008 and Regulation 7(L) of CERC (Procedure, Terms and Conditions for grant of trading license and other related matters) Regulations, 2009 read with Regulation 111 of CERC (Conduct of Business) Regulations 1999 in the matter of non-payment of transmission charges by the beneficiaries to the petitioner.

And

In the matter of

Power Grid Corporation of India Ltd

.....**Petitioner**

V/s

1. Bihar State Electricity Board, Patna
2. West Bengal State Electricity Board, Calcutta
3. Grid Corporation of Orissa Ltd., Bhubanewshwar
4. Damodar Valley Corporation, Calcutta
5. Power Department., Govt. of Sikkim, Gangtok
6. Jharkhand State Electricity Board, Ranchi
7. Assam State Electricity Board, Guwahati
8. Meghalaya State Electricity Board, Shillong
9. Government of Arunachal Pradesh, Itanagar
10. Power & Electricity Department., Govt. of Mizoram, Aizwal
11. Electricity Department, Govt. of Manipur, Imphal
12. Department of Power, Govt. of Nagaland, Kohima
13. Tripura State Electricity Corporation Ltd., Agartala
14. Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jaipur
15. Ajmer Vidyut Vitran Nigam Ltd, Ajmer
16. Jaipur Vidyut Vitran Nigam Ltd., Jaipur
17. Jodhpur Vidyut Vitran Nigam Ltd., Jodhpur
18. Himachal Pradesh State Electricity Board, Shimla
19. Punjab State Electricity Board, Patiala
20. Haryana Power Purchase Centre, Panchkula
21. Power Development Department Govt. of Jammu & Kashmir, Jammu

22. Uttar Pradesh Power Corporation Ltd., Lucknow
23. Delhi Transco Ltd., New Delhi
24. Chandigarh Administration, Chandigarh
25. Uttarakhand Power Corporation Ltd, Dehradun
26. BSES Yamuna Power Ltd., New Delhi
27. BSES Rajdhani Power Ltd., New Delhi
28. North Delhi Power Ltd, New Delhi
29. NDMC, New Delhi
30. North Central Railway, Allahabad
31. Karnataka Power Transmission Corporation Ltd, Bangalore
32. Bangalore Electricity Supply Company Ltd. Bangalore
33. Gulbarga Electricity Supply Company Ltd., Gulbarga
34. Hubli Electricity Supply Company Ltd., Hubli
35. Mangalore Electricity Supply Company Ltd. Mangalore
36. Chamundeswari Electricity Supply Corporation Ltd, Mysore
37. Transmission Corporation of Andhra Pradesh Ltd., Hyderabad
38. Eastern Power Distribution Company of Andhra Pradesh Ltd., Visakhapatnam,
39. Southern Power Distribution Company of Andhra Pradesh Ltd., Tirupati
40. Central Power Distribution Company of Andhra Pradesh Ltd., Hyderabad
41. Northern Power Distribution Company of Andhra Pradesh Ltd., Warangal
42. Kerala State Electricity Board, Thiruvananthapuram
43. Tamil Nadu Electricity Board, Chennai
44. Electricity Department, Govt. of Pondicherry, Pondicherry
45. Electricity Department, Govt. of Goa, Panaji, Goa
46. Madhya Pradesh Trade Co., Jabalpur
47. Madhya Pradesh Audyogik Kendra Vikas Nigam Ltd., Indore
48. Maharashtra State Electricity Distribution Co. Ltd., Mumbai
49. Gujarat Urja Vikas Nigam Ltd., Baroda
50. Electricity Department, Administration of Daman & Diu, Daman
51. Electricity Department, Administration of Dadra Nagar Haveli, Silvassa
52. Chhattisgarh State Electricity Board, Raipur,
53. Powerlinks Transmission Ltd., New Delhi
54. Jaypee Powergrid Ltd., New Delhi
55. Reliance Power Transmission Ltd., Gurgaon
56. Lanco Kondapali Power Ltd., Hyderabad
57. M/s Torrent Power Generation Ltd. Surat
58. PTC India Ltd, Bhikaji Cama Palace, New Delhi
59. M/s Jindal Power Ltd., Gurgaon
60. M/s Heavy Water Board, Mumbai
61. M/s Adani Power Ltd., Ahmedabad
62. AD Hydro, Noida
63. Lanco Anpara Power Private Ltd., Gurgaon
64. Everest Power Private Ltd., New Delhi
65. Tamil Nadu Generation & Distribution Co, Chennai
66. National Load Despatch Centre, New Delhi
67. Northern Region Load Despatch Centre, New Delhi

68. North Eastern Regional Load Despatch Centre, Shillong
69. Eastern Regional Load Despatch Centre, Kolkata
70. Southern Regional Load Despatch Centre, Bengaluru
71. Western Regional Load Despatch Centre, Mumbai
72. Northern Regional Power Committee, New Delhi
73. Southern Regional Power Committee, Karnataka
74. Eastern Regional Power Committee, Kolkata
75. Western Regional Power Committee, Mumbai
76. North Eastern Regional Power Committee, Shillong
77. Power Exchange India Ltd, Mumbai
78. Indian Energy Exchange Ltd, New Delhi
79. Tata Power Trading Company Ltd, Mumbai
80. Adani Enterprises Ltd, Gurgaon
81. PTC India Ltd, New Delhi
82. Reliance Energy Trading Ltd, New Delhi
83. Vinergy International Pvt. Ltd., Mumbai
84. NTPC Vidyut Vyapar Nigam Ltd, New Delhi
85. National Energy Trading and Services Ltd, New Delhi
86. Karam Chand Thapar & Bros, New Delhi
87. Subhash Kabini Power Corporation Ltd, Bangalore
88. Special Blasts Ltd, Raipur
89. Instinct advertisement & Marketing Ltd, New Delhi
90. Essar Electric Power Development Corporation Ltd, Mumbai
91. Suryachakra Power Corporation Ltd, Hyderabad
92. JSW Power Trading Company Ltd, Mumbai
93. VISA Power Limited, Kolkata
94. Pune Power Development Private Ltd, Maharashtra
95. Ispat Energy Ltd, Mumbai
96. Greenko Energies Pvt. Ltd., Hyderabad
97. Vandana Vidhyut Ltd., Chattisgarh
98. Indrajit Power Technology Pvt. Ltd., Mumbai
99. Adhunik Alloys & Power Ltd., Kolkata
100. Indiabulls Power Trading Ltd., Gurgaon
101. Jindal Power Trading Company Ltd., New Delhi
102. RPG Power Trading Co. Ltd., Kolkata
103. GMR Energy Trading Ltd., Bangalore,
104. Jain Energy Ltd., Kolkata
105. Righill Electric Pvt. Ltd., Bhopal
106. Shyam Indus Power Solutions Pvt. Ltd., New Delhi
107. Global Energy Pvt. Ltd., New Delhi
108. Knowledge Infrastructure Systems Pvt. Ltd. New Delhi
109. Mittal Processors Pvt. Ltd. Ghaziabad
110. Godawari Power and Ispat Ltd., Raipur
111. Shree Cement Ltd., New Delhi
112. PCM Power Trading Company Ltd., Kolkata
113. Abellon Clean Energy Ltd., Ahmadabad

114. Jay Polychem Ltd., New Delh
115. Jaiprakash Associates Ltd., New Delhi
116. My Home Power Ltd., Hyderabad
117. Customised Energy Solutions India Private Ltd, Pune
118. BS TransComm Ltd., Hyderabad
119. Chromatic India Ltd., Mumbai
120. Kandla Energy and Chemical Ltd., New Delhi
121. World Solar Power Private Ltd., Ahmadabad

....Respondents

The following were present:

- 1) Shri V.V. Sharma, NRLDC
- 2) Shri Fekharshing, NRLDC
- 3) Ms. Deepika Kolia, BRPL
- 4) Shri Amit Kapur, Advocate, BRPL
- 5) Shri Dushyant Manocha, BYPL
- 6) Shri Rajeev Gupta, PGCIL
- 7) Shri U.K. Gupta, PGCIL
- 8) Shri Mahender Singh, PGCIL
- 9) Shri Rakesh Prasad, PGCIL
- 10) Shri S.S. Raja, PGCIL
- 11) Shri R.T. Agarwal, PGCIL
- 12) Shri Manu Shesadri, Advocate, IEX
- 13) Shri Akhilesh Awasti, IEX
- 14) Shri S. Vallinayagam, Advocate, TNEB
- 15) Shri Rajiv Porwal, Respondent NRHDC
- 16) Shri M.G. Ramchandran, Advocate
- 17) Ms Swapna Shesadri, Advocate
- 18) Shri R.B. Sharma, Advocate, JSEB
- 19) Shri Mohit Kumar Shah, BSEB
- 20) Shri Aabhas Parimal, Advocate, BSEB
- 21) Shri Rakesh Kumar, PTC
- 22) Shri Varun Pathak, PTC
- 23) Shri Ravi Prakash, PTC
- 24) Shri Manoj Dubey, MPT
- 25) Dr. Meenu Mishra, BYPL
- 26) Shri Ankit Agarwal, TPTCL
- 27) Shri Chekhar Saklani, BSES, YPL
- 28) Shri Sameer Singh, BSES, YPL
- 29) Shri Rahul, Singh, BSES, YPL
- 30) Shri ML Batra, PXIL

ORDER

This petition has been filed by Power Grid Corporation of India Limited seeking directions to (a) National Load Despatch Centre (NLDC) or Regional Load Despatch Centres (RLDC) not to grant open access for sale of electricity from entities and associates of such entities who have defaulted in payment of transmission charges to the petitioner till the outstanding dues are cleared (b) all the trading licensees not to enter into any transaction to purchase electricity from such entities and their associates. The petitioner has also sought appropriate directions and orders to remove difficulties of transmission licensees to effect the regulation of power supply by invoking Central Electricity Regulatory Commission (Regulation of Power Supply) Regulations, 2010 to ensure that the beneficiaries have sufficient disincentive for not making payment by the due date.

2. After hearing Shri R N Nayak, CMD, PGCIL, the Commission had issued the following directions in our order dated 26.12.2011:

"10. We have considered the submission of the petitioner. Non-payment of transmission charges or partial payment of transmission charges by the DICs for the transmission services availed by them is a matter of grave concern as it will sooner or later cripple the financial viability of the petitioner and other inter-State transmission licensees. It will bring to a standstill the entire regulatory mechanism which has been evolved and put in place in order to supply safe, reliable and quality power to the consumers and will act as a dampener to the investment in the transmission sector which the country needs keeping in view the power requirement in future. This Commission which has been vested with the function to regulate the inter-State transmission of electricity has the mandate of the Parliament to ensure that inter-State transmission is regulated in a smooth and efficient manner and is not crippled on account of non-payment or partial payment of transmission charges. We direct all DICs to make timely payment of transmission charges and other charges to the petitioner in accordance with the bills raised by the CTU. Our direction will not be applicable in the

case of Odisha and West Bengal where the High Courts have allowed the DICs in those States to pay at the old rates till the disposal of the writ petitions.

11. We direct issue of notices to all respondents to file by 10.1.2012 their responses to this petition including their payment position of transmission charges as on 31.12.2011. Since invocation of Regulation 7(1) of the Trading Licence Regulations and Regulation 25A of the Open Access Regulations will affect the interests of inter-State traders and power exchanges, we direct the petitioner to implead them in this petition. The inter-State traders and the Power Exchanges may file their submission if any by 10.1.2012."

3. In compliance with our directions, the petitioner has amended the memo of parties in its affidavit dated 28.12.2011 and served copies of the petition on all the respondents. In response to the petition, the 19 respondents have filed their replies, which are discussed below in brief:

(a) Grid Corporation of Odisha Limited (GRIDCO), Respondent No.4, has submitted that it has filed a writ petition before the High Court of Odisha to stay the notice for regulation of power imposed by the petitioner and also the problems arising due to the operation of the Central Electricity Regulatory Commission (sharing of Transmission Charges and Losses) Regulations, 2010 (hereinafter the "Sharing Regulation"). The petitioner has filed a transfer application before the Supreme Court for transferring the writ petitions filed in the High Courts at Patna, Kolkata and Cuttack to the High Court of Delhi where a similar writ petition has been filed. Since the case is *sub-judice* before the higher court of law, the prayer of the petitioner not to grant short term open access to the defaulting entities and not to allow the traders to purchase electricity from these entities may not be applicable to GRIDCO.

- (b) Meghalaya Energy Corporation Limited, Respondent No.8, has submitted that its revenue has been adversely affected due to dispute on distribution tariff for the year 2008-09 by major industrial consumers of the State under the banner of Byrnihat Industrial Association which is presently pending before the Supreme Court. Moreover, Meghalaya State Electricity Regulatory Commission is expected to issue tariff order for 2011-12 and 2012-13 shortly and the financial situation of MeECL shall improve due to which outstanding dues of the petitioner shall be cleared at the earliest.
- (c) Adani Power Ltd, Respondent No.61, has submitted that it has been impleaded as a respondent since it is a Designated ISTS Customer (DIC) in its capacity of being a long term customer of ISTS. In compliance with the directions of the Commission, it has paid all the bills received from the petitioner relating to POC charges by respective due dates and there is no dues pending as on 31.12.2011.
- (d) Bihar State Electricity Board, Respondent No.1, has submitted that it has been consistently voicing its objection to the Sharing Regulation being contrary to the National Electricity Policy and Tariff policy apart from the regulation being discriminatory, non-transparent, unjust and unconstitutional. BSEB has filed a writ petition before the Patna High Court and on a transfer application moved by the petitioner, further proceedings before the High Court have been stayed by the Supreme Court. BSEB has submitted that it should be allowed to pay the transmission charges at the old rates till the

determination and adjudication of the validity of the Sharing Regulations by the Supreme Court or Delhi High Court.

- (e) Tata Power Trading Company Ltd, Respondent No.77 has submitted that presently, 10% of the total power generation in India is routed through short term open access through bilateral and collective transactions. Through STOA mechanism, PGCIL/RLDCs/NLDC are able to recover the applicable transmission and open access charges as trading licensees are paying these charges without any default and mostly in advance. By not granting short term access, the petitioner would stand to lose by not getting transmission open access charges which they would otherwise be getting from the trading licensees. It has been submitted that the request of the petitioner may not be agreed and the petitioner should be directed to classify and demark the defaults on the basis of type of open access granted.
- (f) Reliance Energy Trading Ltd, Respondent No.82, has submitted that it would not be appropriate and within the frame work of the regulations that on account of default/delay in payment of Long term/Medium term Open Access charges by some entities, restrictions are imposed on Open Access or purchase/sale under short term transaction through the traders or the exchanges who have not defaulted in the payment of STOA or RLDC charges.
- (g) National Energy Trading and Services Ltd, Respondent No.85, has submitted that huge outstanding dues are also payable by the various distribution

companies/utilities to the trading licensees which is eroding their margins drastically. Even under such circumstances, the traders are continuously following up with defaulting buyers to clear their outstanding dues. Any restriction on short term trades due to payment default on account of non-payment of transmission charges to the petitioner will be detrimental to the traders. Trading Licensees have executed several power purchase agreements with IPPs and Merchant Generators and power sale agreements with various state distribution companies/utilities. Denial of STOA will frustrate the agreements of trading licensees with the generators and the distribution companies and would trigger the compensation on the traders. It has been submitted that the principle should be to deny the respective beneficiaries for the respective access for the respective defaults and there should not be any inter category (Long/Medium/Short) corrections for recovery, or any blanket restrictions on the trades.

- (h) Indian Energy Exchange Ltd, Respondent No.78, in its reply has submitted that if short term open access is not allowed to defaulting entities, they would continue to use UI as the escape route which will compromise the grid security and at the same time the defaulting entities would continue to default with impunity in UI payments as well. There are sufficient provisions existing in the long term and medium term agreements to handle such defaults. There is specific regulation to recover the dues even after the provisions in the agreements have been exhausted apart from which recourse may be made to the Tripartite Agreements signed by the State Governments through

which dues can be recovered. IEX has further submitted that there should not be any occasion for overreaching the short term open access consumers to cure defaults under long term/medium terms agreements.

- (i) MP Power Trading Company Ltd, Respondent No.46, has submitted that before taking any deterrent action against the entities which defaulted the payment of transmission charges to the petitioner, the Commission may consider the practical difficulties being felt by the DICs with regard to the absence of transparency and understanding the calculation of PoC charges under the Sharing Regulations and subsequent raising of the bills by the petitioner. As regards the payment of PoC charges by MPPTCL, the respondent has submitted that as against the bills of ₹ 296.25 crore raised by the petitioner, a payment of ₹ 327.07 crore has already been released in favour of the petitioner as on 31.12.2011. MPPTCL is however having outstanding of ₹ 40.16 crore which is of the period of less than 60 days.
- (j) JSW Power Trading Company Ltd, Respondent No.92, has submitted that it has made all payments of open access charges, operating charges or any other charges billed by RLDC or NLDC and there has been no event of default. It would not be within the frame work of regulation that on account of default/delay in payment of long term open access charges by some beneficiaries, restrictions are proposed on grant of short term open access or purchase/sale under short term transaction through the traders or the exchanges who have not defaulted or delayed the payment.

- (k) Gujarat Urja Vikas Nigam Ltd (GUVNL), Respondent No.49, has submitted that it has been making payments towards all the monthly PoC claims raised by the petitioner in accordance with the regional transmission account issued every month by WRPC. As regards the signing up of the transmission service agreements, GUVNL has submitted that the petitioner approached it for signing of the TSA without relevant details filled up in Schedule-I and Schedule-II of TSA. On the request of GUVNL, the petitioner has now forwarded the details of Schedule-II only.
- (l) PTC India Ltd, Respondent No.58, has submitted that for the fault of the distribution companies, the traders should not be penalized as they are not party to the problem. Since the Commission cannot direct the central generating stations and other state generating companies to not deal with the defaulting entities and states in cases where dues have not been paid to the trading licensees, similarly the trading licensees should not be directed by the Commission. If the Commission is inclined to take a view in favour of the petitioner, then a similar arrangement should be made for other licensees as well and they should also be protected through a similar arrangement. PTC has further submitted that it has entered into long term and short term contracts with IPPs who are selling power on single part tariff. In case of imposition of regulation as proposed by the petitioner on the defaulting agencies, the IPPs would be required to divert their contracted power in which case the compensation/ payments under IPPs need to be firmed of. PTC has suggested for amendment in the Sharing Regulations to regulate the supply

of power to the defaulting entities in case of their failure to pay the outstanding dues.

(m) Knowledge Infrastructure System Ltd, Respondent No.108, has submitted that disallowing short term open access to defaulting entities shall result in such entities over drawing power from the grid in order to fulfill their demand. Moreover, not allowing debt ridden distribution licensees to sell their surplus power to make some profits in order to repay their debts will act against the purpose of making discoms financially stable. The petitioner should classify the nature of default and intervention of the Commission should be seen with reference to the nature of default, relevant regulation applicable and withdrawal of open access relevant to the nature of default in payment.

(n) Shree Cement Ltd, Respondent No.111, has submitted that denying STOA will not lead to an immediate recovery to the petitioner; rather it will lead to annihilation of emerging trading environment and would further incapacitate the players. If STOA is denied or if Regulation 25A of the Open Access Regulations is amended to deny STOA then it would lead to impossibility of performing its commitment and huge losses would accrue for no fault of the respondent.

(o) GMR Energy Trading Ltd, Respondent No.102, has submitted that it would be unjust and in contravention with the relevant regulation to impose restriction on open access or purchase/sale under short term transaction through the traders or exchanges who have defaulted or delayed payment on account of default/delay in payment of long term open access charges by

some entities/utilities. Instead, restrictions should be on purchase/sale of power under long term agreements by defaulting entities/utilities. It has been submitted that any withdrawal of open access should be just on the basis of category of default and necessary action/regulation be taken/issued for transactions under defaulting category only.

- (p) Lanco Anpara Power Ltd, Respondent No.63, has submitted the payment position of transmission charges for 100 MW long term open access availed by it till November, 2011. As per the said statement, no payment is outstanding against the respondent till 30.11.2011.
- (q) BSES Rajdhani Limited, Respondent No.27, has submitted that the issue regarding payment of transmission charges to the petitioner by the respondent is pending before the Commission in Petition No. 177/2011 in which order is awaited.
- (r) Tamil Nadu Generation and Distribution Power Ltd, Respondent No.65, has submitted that the respondent had been making payment to the petitioner to avoid any kind of inconvenience. However, on account of conversion of TNEB into companies, certain payments were defaulted by the respondent. A meeting was held between the Chairman of the respondent and the senior officers of the petitioner company and it was decided that the outstanding dues and current PoC bills would be cleared by due dates.
- (s) BSES Yamuna Ltd, Respondent no.26, in its reply has submitted that as regarding signing of the Transmission Service Agreement it has certain reservation which had been conveyed to the petitioner. As regards the open

access, the respondent has submitted that the request of the petitioner may be denied as the same is against the express provisions of the Act. As regards the outstanding payment, the same is pending before the Commission in Petition No. 179/MP/2011 in which order is awaited.

(t) Maharashtra State Electricity Distribution Company Limited, Respondent No.48, has submitted that MSEDCL being a DIC has been regularly making payments against the CTU's bills towards the PoC transmission charges against its long term contracts and no payment is outstanding from MSEDCL on this account as on date. It has been further pointed out that deviation bill raised by CTU has been forwarded to the STU of Maharashtra since as per the Sharing Regulation deviation bill is the responsibility of the STU. MSEDCL has opposed the suggestion of the petitioner for appropriate regulation or direction to draw upon other disburseable amounts payable to the transmission system beneficiaries so as to ensure liquidation of the transmission related charges first, as such a provision could confer on the CTU with unilateral power to recoup any bills which may not be admissible by the utility.

(u) Electricity Department Union Territory of Chandigarh, Respondent No. 24 has submitted that an amount of ₹ 6,81,08,144/- for payment of interstate transmission system charges (PoC Bills) and ₹ 4,25,445/- for payment of supplementary bills (Non PoC) are outstanding as on 31.12.2011, due to non-availability of funds against Purchase of Power. On receive of additional funds, the payment to the petitioner shall be made on priority basis.

4. During the hearing of the petition, the Learned Counsel for the petitioner brought to the notice of the Commission that the default in payment of transmission charges is posing a serious problem leading to the default of the petitioner to its lenders. He also submitted that as on 17.1.2012, an amount of ₹ 517.50 crore was outstanding for more than 60 days. The Learned Counsel sought urgent intervention of the Commission to improve the cash flow position of the petitioner.

5. The learned counsel for TANGEDCO submitted that the outstanding dues of the petitioner would be cleared by March 2012. As regards the Transmission Service Agreement, the learned counsel submitted that the same was under process and would be signed shortly. Learned counsel for PTC submitted that the Commission should issue appropriate directions to balance the interest of all including the traders. Learned counsel for JSEB sought time to file the reply and further submitted that JSEB has challenged the Sharing Regulations before the High Court of Jharkhand and the petitioner cannot seek recovery of the entire pending amount through the present petition. Learned counsel for PTC submitted that consistent and willful default of payment of transmission charges as required under Regulation 25A of Open Access Regulations has not been made out for invocation of the said provision. Learned counsel for IEX submitted that willful default has not been made out in this case. He further submitted that for default in long term and medium term access, short term access should not be penalized. Moreover when there is a specific problem in dealing with payment defaults, Regulation 25A of Open Access Regulations should not be

invoked. Learned counsel for BSES Yamuna Power Limited submitted that as regards payment of outstanding dues, the order has been reserved in the petition filed by it before the Commission. As regards the signing of TSA, learned counsel pointed out certain provisions in the TSA about which it has reservation. Learned counsel for BSES Rajdhani Power Limited submitted that there is no consistent and willful default requiring invocation of Regulation 25A of the Open Access Regulations. Learned counsel for MPPTCL submitted that all dues towards transmission charges have been paid. The representative of PXIL submitted that the prayers of the petitioner if implemented will have far reaching effect.

6. The learned counsel for the petitioner submitted that the traders and power exchanges have no locus standi in the matter. The learned counsel further submitted that any payment is not made within 60 days from the date of billing, it becomes willful default. The learned counsel sought appropriate directions in the matter.

7. We have considered the submission of the petitioner and the respondents. After notification of the Sharing Regulations, the petitioner has been entrusted with the responsibility of raising the bills and collection of PoC charges on behalf of all the ISTS Licensees and distribution of the collected transmission charges amongst the eligible ISTS licensees. The petitioner raised the first bills for the month of July 2011 in August 2011 and the bills for the months of August, September and October, 2011 have been raised in the subsequent months as per the methodology specified in the Sharing Regulations. The petitioner has further submitted that some of the beneficiaries are

releasing only part payment or not paying at all, despite regular follow up and concerted efforts by the petitioner and allowing payment of previous dues in installments. Despite best efforts by the petitioner, the dues have not been liquidated by some of the beneficiaries. The petitioner has also issued notices to the defaulting entities for regulation of power supply as provided in Central Electricity Regulatory Commission (Regulation of Power Supply) Regulation, 2010 (hereinafter referred to as "power supply regulations") in the month of September and October 2011 to recover the dues considering the huge revenue requirements of the petitioner to meet investment obligations. These notices were subsequently withdrawn on receipt of some payments and on commitments to liquidate the balance dues shortly. These commitments were either not honoured or partially honoured. The petitioner has cited certain difficulties in operationalisation of power supply regulations such as identifying the cheapest source of power supply, prior consultation with generators, estimating the price and involvement of SLDCs which need to be resolved. To discourage the incidence of non-payment of transmission charges, the petitioner has sought approval of the Commission for invocation of Regulation 25A of the Open Access Regulations and Regulation 7(1) of the Central Electricity Regulatory Commission (Procedure Terms and Conditions for grant of trading license and other related matters) Regulations, 2009, (hereinafter "Trading Licence Regulations").

8. Regulation 25A of the Open Access Regulations is extracted as under:

"25A Short-term Open Access Not To Be Granted-

When so directed by the Commission, the National Load Despatch Centre or the Regional Load Despatch Centre, as the case may be, shall not grant short-term open access to entities and associates of such entities, who consistently and willfully default in payment of Unscheduled Interchange charges, transmission charges, reactive energy

charges, congestion charges and fee and charges for National Load Despatch Centre or Regional Load Despatch Centre including the charges for the Unified Load Despatch and Communication Scheme."

Regulation 7(1) of the Trading Licence Regulations is extracted as under:

"The licensee shall not purchase electricity from the entities and the associates of such entities, defaulting in payment of Unscheduled Interchange charges, transmission charges, reactive energy charges, congestion charge and fee and charges for National Load Despatch Centre or Regional Load Centre or the Unified Load Despatch and communication Scheme or any other payment levied by the Commission or any of the State Commissions under the provisions of the Act or any regulation made thereunder, when so advised by the Commission."

9. The above provisions of the Open Access Regulations clearly provides that for consistent and willful default in payment of transmission charges and other charges, the Commission may direct NLDC and RLDCs not to grant open access to such defaulting entities or their associates. It has been argued by many of the respondents that consistent and willful default has not been established. On the other hand, learned counsel for the petitioner has argued that any default beyond sixty days from the date of raising the bills shall be considered as willful default.

10. The purpose of introducing the provisions of Regulation 25A has been explained in the Statement of Reasons extracted as under:

"105. In our opinion, the transmission system of a region is an integrated system and non-payment of any of these charges would affect the operation of the entire transmission system and may lead to collapse of commercial arrangements. As such, non-payment of any charge relating to transmission system needs to be discouraged. Therefore, we have not accepted the argument of MPPTCL. The services availed of have to be paid for. We are also not inclined to accept the PTC's argument that such denial of open access in the event of payment default shall act as a barrier for market development. Whereas we appreciate the concern of the Chhattisgarh SERC for extending such power of denial of open access by SLDC in granting concurrence, no-objection or standing clearance but would like to impress that in case of such payment default by any of the regional/ intra-state entity of

relevant charges to STU and SLDC etc., such agencies may approach the Commission if deemed necessary. Accordingly, we have retained the proposed insertion of clause 25A."

It is clear from the above that the purpose of having this provision for denial of short term open access is to discourage non-payment of any of the charges such as transmission charges, RLDC fees and charges, and charges for Unified Load Despatch and Communication Scheme etc. which would affect the operation of the transmission system and lead to collapse of the commercial arrangement.

11. The word 'wilful' has not been defined in the Open Access Regulations. Black's Law Dictionary defines the word 'wilfulness' as "an act done intentionally and designedly, a conscious failure to observe care; conscious; knowing; done with stubborn purpose, but not with malice." The Supreme Court in Ramachandra N. Kulkarni v. State of Mysore {AIR 1964 SC 1701} has held that a review of various decisions brings out clearly the guiding principle that the meaning to be attached to the words 'wilful' or 'wilfully' has to be ascertained on a close examination of the scheme and nature of the legislation in which the words appear and the context in which they are used. Therefore, the existence of willful and consistent default on the part of an entity has to be considered in the context of the Open Access Regulations i.e. the requirement for prompt liquidation of transmission charges and other charges. Where an entity has received the bill but has not made the payment by the due date which affects the cash flow position of the transmission licensee or the system operator, such default will be considered as willful. If such default is prolonged beyond a reasonable period, then the default will be considered as consistent. The petitioner has submitted

that payment default position as on 17.1.2012 which is annexed as **Annexure 1** to this order. Perusal of the said statement shows that the DICs mentioned therein have defaulted in the payment of the bills by one to two months beyond the period of sixty days permissible by the 2009 tariff regulations. By not paying the bills within 60 days, these DICs are incurring the extra liability in the form of late payment surcharge @ 1.5% per month. Considering the totality of the circumstances, a case for willful and consistent default is not made out at this stage. Since denial of short term open access will adversely affect the commercial interest of the trading licensee and the power exchanges, the Commission had directed for issue of notices to the inter-State trading licensees and power exchanges. All trading licensees and power exchanges have opposed the proposal to deny short term open access to the entities which have defaulted in paying the transmission charges. Therefore we are not inclined to invoke Regulation 25A of Open Access Regulations at this stage. The petitioner is granted liberty to approach the Commission on case to case basis for appropriate directions under Regulation 25A of Open Access Regulations in case any of the DICs consistently and willfully default in paying the transmission charges and other charges.

12. The petitioner has prayed for invocation of Regulation 7(1) of the Trading Licence Regulations which requires the licensees not to purchase electricity from the entities who default in making payment of transmission charges and other charges. The inter-State trading licensees have opposed this measure as this would seriously affect their business. For invoking this provision, there is a requirement for data regarding the past transactions involving the sale of electricity by the defaulting entities through the trading

licensees. If the defaulting entity has not sold any power in the past or the quantum of sale is very meager, then the invocation of this provision will not yield any result. We direct the petitioner to approach the Commission on case to case basis for invoking this provision.

13. The petitioner has suggested for amendment of Regulation 25A of Open Access Regulations to bring within the ambit the transactions through power exchange. Similarly, the petitioner has proposed that Regulation 7A of Trading Licence Regulations be amended to include 'sale' of electricity by the defaulting entities. We are of the view that the deterrent provided in the Regulations should be strong and effective to ensure prompt payment of dues failing which the entire commercial mechanism of purchase and sale of electricity will collapse. We direct the staff of the Commission to examine the suggestions of the petitioner to make appropriate provisions in the regulations.

14. The petitioner has also prayed for issuance of directions to remove difficulties of transmission licensees to effect regulation of power supply using the Power Supply Regulations. The petitioner has suggested that there are certain practical difficulties in operationalisation of Regulation of Power Supply by a transmission licensee as per Power Supply Regulations as under:

- (a) Identifying the cheapest source of power supply;
- (b) Prior consultation with generators;
- (c) estimating the price; and

(d) Involvement of SLDC

The petitioner has submitted that these difficulties are required to be deliberated and resolved involving all the stakeholders.

15. We have considered the submission of the petitioner. Power Supply Regulations provides as under with regard to regulation by a transmission licensee:

"15. On the request of a Transmission Licensee for Regulating the power supply, the Regional Load Despatch Centre may, under intimation to the concerned generating company, curtail the medium-term open access or long-term access of the allocated power or power supply contracted by the Defaulting Entity, on account of regulation according to the notice served under Regulation 4 of these regulations, preferably from the cheapest generating station in that corridor. The Regulating Transmission Licensee may decide the quantum and duration of denial of open access/ access in consultation with any of the concerned generating companies who have a contract to sell power to the Regulated Entity and the concerned Regional Load Despatch Centre. The Transmission Licensee can propose the quantum and duration of regulation of power supply based on an estimated price, indications of which can be taken from the Power Exchange Uniform Market Clearing Price and the prevailing price of electricity sold through traders directly.

16. The generating company, as a result of reduction of open access shall be entitled to sell the power rendered surplus due to regulation of power supply, to any person including any of the existing beneficiaries, during the regulation of power supply. The revenue received on account of sale of this power shall be utilised in following sequence:

- a) to pay the energy charges and any incidental expenses, including trading margin if power is sold through a trader, of the generating company
- b) to pay the outstanding dues of the transmission licensee.
- c) any remaining amount to be passed on to Regulated Entity.

17. In case of such reduction of drawl schedule, the liability of payment of capacity charges for its original share in the generating station shall remain with the Regulated Entity."

In our view, the above provisions clearly protect the interests of the transmission licensees including the petitioner to recover the outstanding dues by resorting to regulations of power supply.

16. The learned counsel for the petitioner raised the issue of non-signing of the Transmission Service Agreements by some of the DICs. A statement showing the current status of signing of TSA is annexed to this order as **Annexure II**. During the hearing of the petition, some of the respondents brought to our notice that the petitioner has not provided the required documents/clarifications. We direct the petitioner to provide the required information to the DICs in this regard. We also take this opportunity to clarify that the TSA has been issued as a model agreement under the provisions of the Sharing Regulations for ensuring uniformity. While the genuine grievances of the DICs will be looked into, there is no reason why the signing of the TSAs should be delayed. In any case, as per clause (5) of the Regulation 13 of the Sharing Regulations, the notified model Transmission Service Agreement shall be the default transmission agreement and shall mandatorily apply to all DICs. In other words, till the TSAs are signed by the DICs, they will be bound by the model TSA. The petitioner has filed another petition (Petition No.196/2011) regarding non-signing of TSAs. We have heard the parties and a detailed order will be issued in that case.

17. We had directed the DICs in our order dated 26.12.2011 to make timely payment of transmission charges and other charges to the petitioner in accordance with the bills raised by the CTU. Despite our directions, some of the DICs have not made payments to the CTU. Except in cases where the matter regarding the amount due for payment is sub judice before the High Courts or Supreme Court or this Commission, we direct the staff to process the case for non-compliance of directions of the Commission by the defaulting DICs on account of non-payment of transmission charges and other charges.

18. Petition No.213 of 2011 is disposed in terms of the above.

Sd/-
(S Jayaraman)
Member

sd/-
(Dr. Pramod Deo)
Chairperson

ANNEXURE-I**TRANSMISSION CHARGES OUTSTANDING AGAINST VARIOUS UTILITIES
BEYOND 60 DAYS (as on 17.1.2012)****(₹ in crore)**

S. No.	Region	Name of the UTILITY	POC	Other than POC	DUES	Avg monthly billing(03 Months)	No. of months due
	Eastern Region		84.02	2.39	86.41		
1	ER	WEST BENGAL	29.3	2.39	31.72	18.86	1.68
2	ER	ORISSA	16.11		16.11	15.61	1.03
3	ER	JHARKHAND	8.15		8.15	7.70	1.06
4	ER	BIHAR	30.43		30.43	25.45	1.20
	Northern Region		193.05	211.91	404.96		
5	NR	Anpara-C	0.00	0.43	0.43	0.70	0.61
6	NR	JVNL	10.30	0.00	10.30	11.86	0.87
7	NR	JdVVNL	6.09		6.09		
8	NR	Chandigarh	2.52		2.52		
9	NR	Himachal Pradesh	11.42	0.00	11.42		
10	NR	BYPL	20.11	112.03	132.14		
11	NR	BRPL	40.98	98.85	139.83		
12	NR	AVVN	3.70	0.60	4.30		
13	NR	UP	97.93		97.93	87.00	1.13
	Southern Region			8.71	8.71		
14	SR	TNEB	0.00	8.71	8.71	41.84	0.21
	North Eastern Region		6.32	11.10	17.42		
15	NER	ARUNACHAL PRADESH	0.00	3.74	3.74	2.31	1.62
16	NER	ASSAM	0.00	0.88	0.88	12.81	0.07
17	NER	MANIPUR	2.21	0.00	2.21	2.13	1.04
18	NER	MEGHALAYA	3.02	4.05	7.07	3.52	2.01
19	NER	MIZORAM	1.09	1.21	2.30	1.26	1.82
20	NER	TRUPURA	0.00	1.22	1.22	1.69	0.72

	ALL INDIA (DUES MORE THAN 60 DAYS)	283.39	234.11	517.50	
	1. Dues of DTL (₹ 2.12 Cr) not included in above 2. Installment allowed as per CERC order to UP (₹ 141 Cr)				
	NDPL (14.10 Cr.), TNEB (₹ 90 Cr.) Assam (₹ 9.28 Cr.) and Punjab (₹ 20.08) have not been included above				

Annexure- II**DICs who have not signed the TSA as on 16.1.2012**

	Name of DIC	Status of signing	
		TSA(Date of Signing)	Remarks
WESTERN REGION			
1	GUVNL (Gujarat)		Not Signed
2	MAHARASHTRA		Not Signed
3	CSPDCL	22.06.2011	
4	MPTRADECO	30.07.2011	
5	D&D	07.07.2011	
6	DNH	07.07.2011	
7	HWB	23.12.2011	
8	GOA		Not Signed
9	PTC	22.06.2011	
NORTHERN REGION			
1	NDPL	30.06.2011	
2	PSPL (Punjab)	01.07.2011	
3	PDD-J&K	04.07.2011	
4	NDMC	11.07.2011	
5	HPPC (Haryana DISCOMS)	22.07.2011	
6	UPCL (Uttarakhand)	27.07.2011	
7	BRPL	19.08.2011	
8	BYPL		Not Signed
9	RDPPC	25.07.2011	
10	UPPCL (UP DISCOMS)	18.07.2011	
11	UPPTCL (UP STU)	18.07.2011	
12	HPSEB	09.08.2011	
13	UT-Chandigarh	19.08.2011	
14	Railway		Not Signed
SOUTHERN REGION			
1	APCPDCL	10.06.2011	
2	APNPDCL	10.06.2011	
3	APEPDCL	10.06.2011	
4	APSPDCL	10.06.2011	
5	LKPL	10.06.2011	
6	BESCOM	10.06.2011	
7	HESCOM	10.06.2011	
8	GESCOM	22.06.2011	
9	MESCOM	27.06.2011	
10	CESC	13.07.2011	
11	PONDY		Not Signed
12	TANGEDCO	05.08.2011	
13	KSEB	02.08.2011	
EASTERN REGION			
1	BSEB		Not Signed
2	JSEB		Not Signed

3	DVC		Not Signed
4	GRIDCO		Not Signed
5	SIKKIM		Not Signed
6	WBSEDCL		Not Signed
NORTH EASTERN REGION			
1	Manipur		Not Signed
2	Assam		Not Signed
3	Tripura		Not Signed
4	Meghalaya		Not Signed
5	Nagaland		Not Signed
6	Arunachal Pradesh	07.12.2011	
7	Mizoram	15.12.2011	
ISTS LICENSEES			
1	Western Region Trans (Gujarat) Pvt Ltd	01.08.2011	
2	Western Region Trans (Maharas.) Pvt Ltd	01.08.2011	
3	Power links transmission	04.11.2011	
4	JP Power Grid Ltd.	04.08.2011	
GENERATORS			
1	Neepco	13.06.2011	
2	NLC	10.06.2011	
3	AD Hydro Power Ltd.	03.08.2011	
4	NTPC		Not Signed
5	NHPC		Not Signed
6	Tehri Hydro Development Corporation Ltd.		Not Signed
7	NPCII		Not Signed
8	Bhavini (Kalpakkam PFBR Atomic Stn.)	05.08.2011	
9	Lanco Power	05.08.2011	
10	SJVNL		Not Signed
11	Jindal Power Limited	14.11.2011	
12	Adani		Not Signed
13	Torrent Power	23.12.2011	
14	Mundra UMPP		Not Signed