

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

PETITION NO. 133/ MP/2012

Coram:

Dr. Pramod Deo, Chairperson

Shri S. Jayaraman, Member

Shri V.S. Verma, Member

Shri M. Deena Dayalan, Member

Date of Hearing: 30.08.2012

Date of Order : 31.01.2013

In the matter of

Petition under Section 79(1)(f) of the Electricity Act, 2003 in relation to open access to the Uttarakhand Integrated Transmission Project (UITP) for evacuating and transmitting power from Tapovan Vishnugad and Lata Tapovan hydro projects to the Powergrid sub-station at Kashipur for onward supply to other States.

And in the matter of

Appropriate declaration under section 79(1) (c) of the Electricity Act 2003 read with regulations 2(1) (k), 20 & 21 of the CERC (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010 for declaring the UITP being developed by the Petitioner as deemed inter-State Transmission System for the purpose of such regulations

And in the matter of

Power Transmission Corporation of Uttarakhand Limited

Petitioner

Vs

1. NTPC Ltd, New Delhi
2. Central Electricity Authority, New Delhi
3. Powergrid Corporation of India Limited, Gurgaon
4. Uttar Pradesh Power Corporation Limited, Lucknow
5. Jaipur Vidyut Vitaran Nigam Limited, Jaipur
6. Ajmer Vidyut Vitaran Nigam Limited, Ajmer
7. Jodhpur Vidyut Vitaran Nigam Limited, Jodhpur
8. Tata Power Delhi Distribution Limited, Delhi
9. BSES Rajdhani Power Limited, New Delhi
10. Uttaranchal Power Corporation Limited, Dehradun
11. Haryana Power Purchase Centre, Panchkula
12. Punjab State Power Corporation Limited, Patiala
13. Himachal Pradesh State Electricity Board, Shimla
14. Power Development Department, Govt. of J&K, Srinagar
15. Power Department, Union Territory of Chandigarh, Chandigarh Respondents

Parties Present:

Shri Sitesh Mukherjee, Advocate, PTCUL
Shri Sakya Choudhuri, Advocate, PTCUL
Shri Anmol Shrivastava, Advocate, PTCUL
Shri M.G. Ramachandaran, Advocate, NTPC
Shri Anand Ganaeshan, Advocate, NTPC
Shri A.K. Agarwal, PTCUL
Shri Kamal Kant, PTCUL
Shri Santosh Vashisth, PTCUL
Shri C.K. Mandal, NTPC
Ms. Shilpa Agarwal, NTPC

ORDER

The petitioner, Power Transmission Corporation of Uttarakhand Limited (PTCUL), is the State Transmission Utility (STU) in the State of Uttarakhand under Section 39 of the Electricity Act, 2003 (the Act). The State Government of Uttarakhand (GoU) recognising the potential for setting up hydro power projects in the State along major river basins, namely, Alaknanda, Bhagarthi, Sharda and Yamuna decided to develop generation and transmission facilities by following the integrated basin approach. For development of hydro power projects in the river basins in the State, GoU signed MoUs with the Central Sector Generating Companies and IPPs. About 85% of power generated at these hydro power projects is proposed to be sold outside the State and the balance 15%, including 12% free power, is proposed to be consumed within the State. The petitioner has submitted that the Uttarakhand Integrated Transmission Project (UITP) was conceived as a feasible, economic and optimal plan for development of transmission system to pool power from several hydro generating projects in the State to designated pooling points in Uttarakhand, from where inter-State network could be developed to convey such power to beneficiaries outside the State. According to the petitioner, UITP

involves construction of 22 transmission lines of 400/220/132 kV and 8 new sub-stations and sub-station extensions to evacuate power up to the designated pooling points at Kashipur, Pitthoragarh and Dehradun. The power from Kashipur sub-station is proposed to be evacuated by Power Grid Corporation of India Ltd (PGCIL) outside the State to the beneficiaries of the Northern Region.

2. The petitioner has submitted that it proposed to undertake development of the UITP with funding from ADB, PFC and other financial institutions. Accordingly, Government of India and GoU entered into financing arrangements with ADB and PFC by executing loan agreements dated 25.2.2009 and 23.5.2011 respectively. The petitioner has submitted that UITP is ring fenced from state transmission projects and expenses incurred on these projects have not been included in the ARR of the petitioner as it is envisaged that the cost incurred on implementation of UITP would be recovered separately by way of transmission charges from the respective generators.

3. The petitioner has submitted that Respondent No. 1, NTPC Ltd.(NTPC) executed Implementation Agreements dated 23.6.2004 and 21.11.2005 with GoU for development of Tapovan Vishnugad HEP (4 x 130 MW) and Lata Tapovan HEP (171 MW) respectively on build, own, operate and maintain (BOOM) basis. The issue of the petitioner to take up the transmission system for development of comprehensive/integrated power evacuation system in Uttarakhand was discussed at various forums as under:

(a) The matter was discussed in the meeting convened by Secretary of Power, Government of India on 15.9.2006 where it was decided that the matter first needed

to be discussed in NRPC having regard to the integrated nature of the system involving both inter-State and intra-State transmission systems.

(b) In the 2nd meeting of Technical Coordination Committee ("TCC") of Northern Region and 3rd meeting of NRPC held on 9th and 10th November 2006, it was agreed that the petitioner/hydro power generators in the State of Uttarakhand would apply for open access to inter-State transmission system (ISTS) to PGCIL so that PGCIL in consultation with CEA could firm up the ISTS and in the process also firm up necessary modification in the system up to the pooling points.

(c) The petitioner submitted a proposal to CEA vide letter dated 3.1.2007 for approval of UITP to construct the power evacuation system for 5406.5 MW of generation projects in Yamuna, Bhagirathi, Alakananda and Sarda basin for an estimated cost of Rs.2446.74 crore. CEA examined the proposal by taking note of the decision in the TCC and NRPC meetings that the transmission systems would be developed from the generating stations to the pooling points within Uttarakhand and accorded no objection to PTCUL to take up implementation of the transmission system as the proposed arrangement would not have any direct commitment for payment of transmission charges by the other constituents and the recovery mechanism would be between PTCUL and the generators.

(d) On 4.5.2007, the Ministry of Power granted approval to the proposal of the petitioner for setting up UITP with ADB assistance and approached Department of Economic Affairs, Govt of India for appropriate recommendation to the proposal for obtaining ADB assistance.

4. The petitioner has submitted that NTPC applied for long term access to PGCIL on 9.1.2007 which was granted on 17.7.2009 for transfer of power from Tapovan power plant to the identified beneficiaries like Rajasthan and J&K in the Northern Region subject to signing of the requisite bulk power transmission agreement for sharing of the regional transmission charges. PGCIL has also granted long term open access to other hydro power project developers in the State from its Kashipur sub-station to transfer power outside the State. The petitioner has submitted that the hydro power project developers, other than NTPC applied to the petitioner for grant of LTA and have signed or are said to be ready and willing to sign connectivity agreement with the petitioner. The draft TSA was sent by the petitioner to Respondent No.1 on 27.10.2007 and Respondent No.1 reverted with its comments on 14.2.2008. The draft TSA was also discussed with NTPC in the meetings held on 28.1.2009 and 9.6.2009. Though NTPC did not object to signing of the TSA or the payment of transmission charges for use of the transmission system at these meetings, NTPC in its letter dated 3.12.2010 is stated to have intimated that since the beneficiaries of its hydro generating stations have been identified, the petitioner should directly execute TSAs with the beneficiaries of its hydro power projects in terms of the PPAs signed between NTPC and the beneficiaries which mandated that the evacuation of power was the sole responsibility of the beneficiaries for which they were required to enter into necessary arrangements with the transmission developer and directly pay the transmission charges to them. The petitioner has submitted that the terms of the PPA executed between the Respondent No.1 and its beneficiaries is not binding on the petitioner in any manner nor does it involve alteration of terms and conditions for development of the UTP.

The petitioner has submitted that it is only involved with the evacuation and transmission of power from the respondent No.1's projects upto the pooling point at Kashipur to enable Respondent No.1 to avail open access to PGCIL network for further inter-State transmission. The petitioner has submitted that in such circumstances, the petitioner is not in any manner involved with the beneficiaries of Respondent No.1. The petitioner has submitted that it is the Respondent No.1 which has to undertake necessary formalities with the petitioner and it is open to Respondent No.1 to pass on the liability of the transmission charges to its beneficiaries after having paid the same to the petitioner. The petitioner has submitted that it attempted to resolve the issue many times in various TCC and NRPC meetings as the situation remained unresolved on account of insistence of Respondent No.1 requiring the petitioner to execute the TSA with the beneficiaries of the projects.

5. The petitioner has submitted that it approached the Uttarakhand Electricity Regulatory Commission ("UERC") for prior approval for its capital investment for UTP as per the tariff regulations of the said Commission. UERC vide letter dated 10.12.2009 has informed the petitioner that UTP being developed for the purpose of evacuation of power from the hydro power projects in the Alakananda basin formed part of the ISTS and was amenable to jurisdiction of the Central Commission under clause (c) of sub-section (1) of Section 79 of the Act. Subsequently, UERC directed the petitioner to comply with the requirements of the Central Electricity Regulatory Commission (Sharing of Transmission Charges and Losses) Regulations, 2010 ("the Sharing Regulations") to ensure recovery of transmission charges as a deemed ISTS. The petitioner subsequently vide its letters dated 27.9.2011, 25.11.2011 and

5.12.2011 submitted before UERC that the investment approval for the UITP and the determination of tariff for such a transmission system is a necessary requisite to be declared as a deemed ISTS under the Central Electricity Regulatory Commission (sharing of Transmission Charges & Losses) Regulations, 2010 (hereinafter "Sharing Regulations"). However, UERC has reiterated its earlier view that the petitioner should take all necessary steps to comply with the Sharing Regulations for ensuring recovery of the transmission charges commensurate with the usage of the capacity of the UITP.

6. The Petitioner has submitted that pursuant to the decision of UERC, it submitted a proposal to NRPC vide its letter dated 28.11.2011 for certifying UITP as a deemed ISTS network as more than 50% of the power flow on the system would be outside the State of Uttarakhand. At the 22nd TCC and 25th NRPC meetings on 23 and 24 February 2012, Chairman, TCC informed the petitioner that UITP could not be granted deemed ISTS status as only the existing lines or lines expected to be commissioned in the next six months qualified for such status under the Sharing Regulations. The petitioner has submitted that UERC in its order dated 4.4.2012 has reiterated its earlier decision and has categorically indicated that since UITP would primarily handle flow of inter-State power, UERC would not consider cost of these schemes to be included in the overall ARR of the petitioner to be recovered from the distribution licensee of the State.

7. The petitioner has further submitted that CEA vide its letter dated 16.3.2012 has recognized that UITP being constructed by the petitioner for conveyance of electricity from the hydro power projects of NTPC and IPPs up to the interface point

with PGCIL is part of ISTS as defined under sub-section (36) of Section 2 of the Electricity Act, 2003 since it has been planned for evacuation of power from the hydro electric projects which propose to sell power outside the State. Accordingly, CEA has advised the petitioner to enter into TSAs with the beneficiaries of the hydro electric projects being set up by Respondent No.1. The petitioner has, however, submitted that given the limited role of evacuation and transmission up to the pooling point in the State of Uttarakhand, there is no reason for the petitioner to enter into TSAs with the beneficiaries of Respondent No.1. The petitioner has further submitted that in the meeting taken by CEA on 10.4.2012 to discuss the issues regarding evacuation of power from the hydro power projects being established at Alaknanda basin of Uttarakhand, the constituents of Northern Region attending the meeting including Respondent No.1 agreed that the petitioner should obtain a declaration to the effect that UITP qualifies for deemed ISTS status under the Sharing Regulations. The petitioner has submitted that it is facing difficulties in implementing UITP, because of the stand taken by NTPC which, the petitioner has alleged, is at variance with the recommendations of TCC and NRPC and the action taken by other hydro power project developers. The petitioner has expressed its inability to enter into TSA with each of the beneficiaries of the hydro power projects of NTPC and recover transmission charges from them on a regular basis. As the issue of signing of TSA has not been resolved, the petitioner has pointed out that implementation of UITP is being delayed.

8. The petitioner has submitted that if the Commission is inclined to agree with the view expressed by CEA that the transmission charges should be recovered by the petitioner from Respondent No.1's beneficiaries, then it would be imperative for

the timely and smooth execution of the UITP that the Commission approves UITP as a deemed ISTS as defined Regulation 2(1)(k) of the Sharing Regulations. The petitioner has further submitted that under the present regime for sharing of transmission charges and losses under the Sharing Regulations, the inter se relationship of a transmission utility with intended contractual beneficiaries has become irrelevant, and the transmission charges are determined on the basis of the utilisation of the transmission system by any utility. The petitioner has further submitted that to enable and facilitate a seamless collection and distribution of the transmission charges, the Sharing Regulations require all DICs to execute the prescribed TSA with the CTU. Therefore, under the present dispensation, for recovering the applicable transmission charges by the petitioner from the beneficiaries of Respondent No.1, it will be required to sign the TSA and RSA with the CTU and CTU will enter into agreement with Respondent No.1's beneficiaries along with other users of the UITP for evacuation of power out of the State of Uttarakhand under Regulation 13(1) of the Sharing Regulations. As regards the decision of NRPC that certification of intra-State transmission system can be done only for the existing systems or for systems that are scheduled to commence operation within the next six months in order to carry out the load flow studies to ascertain the true nature of the flow of the non-ISTS system, the petitioner has submitted that such a condition would not clearly apply in its case since the UITP has been conceived to primarily facilitate inter-State flow of power. The Petitioner has submitted that there is some inconsistency in the Sharing Regulations in the present form with regard to the procedure of approval/recognition of the deemed ISTS lines that are to be constructed by entities other than CTU/inter-State licensees to facilitate the financing of such projects and has prayed that to such extent the

Commission may exercise its power to remove difficulty under Regulation 21 of the Sharing Regulations to provide the necessary framework for the recognition of such deemed ISTS network.

9. In view of the above submissions, the petitioner has prayed for issue of directions to Respondent No.1 to execute TSA with the petitioner in relation to the utilization of UTP network for evacuation and transmission of power from its projects with the condition that the transmission charges for the UTP shall be borne by the Respondent No. 1. In the alternative, the petitioner has prayed that UTP network should be declared as a “deemed ISTS network” as defined in Regulation 2(1)(k) of the Sharing Regulations.

10. The Commission in the hearing dated 21.6.2012 directed the petitioner to implead CTU and the beneficiaries of the generating stations developed by NTPC in the State of Uttarakhand. The petitioner vide its affidavit dated 24.7.2012 has filed the revised memo of parties impleading PGCIL and the beneficiaries of the generating stations which has been taken on record. The petitioner has served copies of the petition on the newly added respondents. Replies to the petition have been filed by NTPC and PGCIL and the petitioner has filed its rejoinders to the replies.

11. NTPC in its reply filed vide affidavit dated 20.7.2012 has submitted that the transmission lines associated with Tapovan Vishnugad and Lata Tapovan being developed by the petitioner are inter-State transmission lines as they are incidental to inter-State transmission for evacuation of power from the generating projects to

places outside the State of Uttarakhand for which NTPC has signed PPAs with various Northern Region beneficiaries. NTPC has further submitted that the Standing Committee meetings held during 2004-08 also affirm that the transmission system developed by the petitioner is in the nature of inter-State transmission system. NTPC applied for long term access to CTU on 9.2.2007 for evacuation of power to various Northern Region beneficiaries from Kanwar Pass, Pipalkoti which was changed to Kashipur at the insistence of the petitioner. Further, NTPC applied on 17.9.2008 for open access for the system of the petitioner within Uttaranchal at the insistence of the petitioner. NTPC has submitted that after the PPAs were signed by it with the Northern Region constituents for the Tapovan Vishnugad in December 2010, it informed CTU and the petitioner about the signing of the PPAs in the Long Term Access Meeting held on 29.12.2010. NTPC is stated to have separately informed the petitioner vide its letter dated 3.12.2010 that long term PPAs have been signed with Northern Region beneficiaries including UPCL. In the PPAs, it was agreed that "NTPC has already applied for long term access upto pooling point to PTCUL and that UPCL agrees to enter into necessary agreements including BPTA with PTCUL". NTPC has submitted that similar provisions have been made in the PPAs with other beneficiaries of the project. NTPC has further submitted that the system being built by PTCUL is inter-State transmission system and this Commission's regulations shall apply for such system. In this connection, NTPC has relied upon Clause 24(iv) of the Detailed Procedure under the Connectivity Regulations in support of its contention that the beneficiaries shall be required to sign the BPTAs directly with CTU or the inter-State transmission licensees. NTPC has further submitted that as per Regulation 8(6) of the Sharing Regulations, long term customers availing supplies from inter-State generating stations shall be directly billed and shall be

liable to pay the transmission charges based on their share of capacity in such generating stations. NTPC has also denied that it has deliberately or knowingly executed the PPAs with the beneficiaries to provide execution of the Transmission Service Agreements by the beneficiaries with the petitioner. NTPC has submitted that it had signed the PPA with the beneficiaries consistent with the regulations of this Commission and as per the established mechanism being followed by NTPC for all its generating stations. It has been further submitted that the PPA provides for the supply of power by NTPC at the bus bar to the various beneficiaries, many of whom are situated outside the State of Uttarakhand and therefore, it is for the beneficiaries to execute TSA with the petitioner for transfer of power on the transmission line. NTPC has submitted that during the meeting taken by CEA on 10.4.2012, all beneficiaries of Tapovan Vishnugad and Lata Tapovan did not disagree to sign the TSAs with the petitioner. NTPC has prayed that the petitioner be directed to sign the TSAs with the beneficiaries of both generating stations and CTU may be directed to coordinate development of evacuation system of the proposed projects as mandated under the Act.

12. PGCIL in its affidavit dated 15.10.2012 has submitted that since 2005, the petitioner was advised on various occasions to approach this commission as the system was inter-State in nature but the petitioner had not approached the Commission during that time. Subsequently, In the meeting taken by Secretary (Power), Government of India on 25.9.2006 and in the 2nd TCC and 3rd NRPC meeting held on 10.11.2006, it was decided that the petitioner could take up the intra-State transmission system upto the pooling point on their own for which there was no requirement of any commitment of payment of transmission charges by other

constituents and arrangement of recovery of transmission charges would be only between the petitioner and the generators. CEA also accorded its no objection to the proposed plan of the petitioner to develop the transmission system since the recovery mechanism would be between the petitioner and the generators and the other constituents would not have any direct commitment for payment of transmission charges. PGCIL has submitted that as the transmission system was considered as intra-State transmission system and recovery of charges through generators, CTU had no role except to plan transmission system beyond the pooling points. Accordingly, CTU has planned and is implementing the system beyond the pooling points. As regards the prayer of the petitioner to declare the UITP network as Deemed ISTS, CTU has submitted that in case the status of the transmission lines being developed by the petitioner is changed from intra-State to inter-State, the present regulations/policy implementation of ISTS should be followed.

13. We have considered the submissions of the petitioner, NTPC and PGCIL. None of the beneficiaries of the Tapovan Vishnugad and Lata Tapovan generating stations of NTPC has filed any reply or participated in the proceedings before the Commission. In our view, the following issues emerge for our consideration in view of the rival contention of the parties:

- (a) What is the nature of the transmission lines being developed by the petitioner from the generating stations of NTPC in Uttarakhand till the pooling point at Kashipur?
- (b) Under the Electricity Act, 2003, which agency is responsible for developing these transmission lines?

- (c) Under the regulations of this Commission, whether NTPC or its beneficiaries are liable to sign the Transmission Service Agreement with the petitioner?
- (d) Relief(s) to be granted to the petitioner.
- (e) Consequential directions to be issued, if any.

Issue No. 1: Nature of the transmission lines being developed by the Petitioner

14. As per the documents on record, the transmission system for Lata Tapovan and Tapovan Vishnugadh was discussed in the 18th meeting of the Standing Committee on Transmission System Planning of Northern Region held on 6.6.2005. Relevant portion of the minutes is extracted as under:

“.....Shri B.M. Verma, JMD, UPCL stated that UPCL was considering to develop the transmission system as a comprehensive project. CE (SP&PA), CEA stated that if UPCL was intending to develop regional transmission system that would meet inter-State transmission needs, they would need to approach CERC”.

The matter was again discussed in the 19th meeting of the Standing Committee on transmission system of Northern Region held on 1.10.2005. Para 7.1 of the minutes of the meeting is extracted as under:

“7.1 Member (PS), CEA stated that as regards the proposal of Uttaranchal to build the proposed integrated transmission system from the generation projects upto the pooling points within the State, they would need to , as per the Electricity Act, 2003 obtain licence from CERC to construct such lines which were inter-State in nature. They also need to firm up the beneficiaries of power from these projects.”

A meeting was taken by Joint Secretary (Transmission), Ministry of Power on 9.12.2005 on Uttaranchal Power Sector Development Program. In the meeting, the representative of CEA and CTU submitted that since many of the generation projects were by central generating companies from where power needs to be transferred outside the State of Uttarakhand, the associated transmission systems of these

projects would be ISTS. It was decided that for construction of these ISTS, Uttarakhand would be required to obtain licence from CERC. It was also decided that Ministry of Power should not endorse the transmission projects of PTCUL for obtaining loan from ADB without meeting the concerns of CEA and CTU.

15. A meeting was taken by Secretary (Power) on 15.9.2006 for discussion on the issues related to proposal of Uttarakhand for seeking ADB assistance for the transmission projects. In the said meeting, it was explained by Principal Secretary (Energy), Government of Uttarakhand that the integrated transmission plan within the State had been prepared in consultation of CTU and CEA after taking into account the valley wise requirement to evacuate power from various proposed Central sector hydro electric projects, State sector hydro electric projects and few IPPs and the geographical limitations on right of way in hilly terrains. Secretary (Power) observed in the said meeting that as most of the power generated from the proposed hydro power projects was to be exported outside the State, main transmission line should be built by PGCIL and the STU could develop the feeder transmission lines depending upon the commissioning schedule of the State level projects or IPPs. The decision in the meeting was as under:

“7. Summerising the discussion, Secretary(Power) said that the proposed integrated transmission plan of Uttaranchal is not in line with the general approach so far being followed for developing inter-State transmission system. Concurrence of CTU is important in the matter of inter-State transmission. A deviation could be considered from general approach being followed so far if there are good technical reasons. It was agreed that the transmission plan of Uttaranchal be considered by the Regional Power Committee (RPC) and the consensus there could form the basis of future action.”

Pursuance to the above decision, the issue was discussed in the 2nd TCC and 3rd NRPC meeting held on 10.11.2006. In the meeting, the petitioner is stated to have informed that Government of Uttarakhand has signed MoUs with various

Central Sector generating companies and IPPs for development of various hydrogenation projects in different basins of the State and 40% of the power generated would be for the State of Uttarakhand including free power and balance would be sold by the generators. Uttarakhand would also trade power after meeting the power demand within the State. PTCUL is further stated to have informed that for evacuation of power from these hydro projects, integrated transmission system upto the pooling point of PGCIL is proposed to be implemented by PTCUL. The representative of CTU informed in the said meeting that the scheme would need to be firmed up in respect of inter-State transmission line based on open access applications in line with the procedure specified by CERC and the responsibility given to CTU in respect of inter-State transmission system as per the Electricity Act, 2003. The following decision was taken in respect of the transmission system to be undertaken by the petitioner:

“Chairman/Members of TCC observed that PTCUL could take up the intra-State transmission system up to the pooling point on their own, for which there was no requirement of any commitment of payment of transmission charges by other constituents and arrangement of recovery of transmission charges will be only between PTCUL and the generators.

After deliberation it was agreed in TCC that PTCUL/generators would apply for open access for inter-State transmission systems to CTU so that Powergrid in consultation with CEA could firm up inter-State transmission system and necessary modification in the system up to the pooling point would be firmed up in the process.”

The above views of TCC were endorsed in the NRPC meeting held on 10.11.2006.

16. The petitioner in its letter dated 3.1.2007 took up the matter with Central Electricity Authority furnishing the details of the transmission lines to be constructed by it from the generation projects in Uttarakhand. CEA after taking note of the discussions in the meeting taken by Secretary (Power), Government of India and in

the meetings of TCC and NRPC examined the scope of the transmission proposed to be undertaken by PTCUL and found that the proposed transmission system was from the generation projects within Uttaranchal and upto the pooling points within Uttaranchal i.e. 400 kV Tehri/Koteswar pooling station, and 400 kV Roorkee, Kashipur and Pithoragarh pooling stations. CEA in its letter dated 9.1.2007 has conveyed no objection to PTCUL to undertake the implementation of the transmission system as the transmission system would not have any direct commitment for payment of transmission charges by the other constituents and recovery mechanism is only between PTCUL and the generators. The proposed transmission system of PTCUL was endorsed in the 22nd meeting of the Standing Committee on Power System Planning of Northern Region on held on 12th March 2007.

17. The discussion in paragraphs 14 to 16 above shows that the transmission systems for evacuation of power from the generating stations being developed by the Central Sector generating stations on the river basins of Uttaranchal have two components: intra-State components from the generation bus bar till the pooling stations of PGCIL located within the State of Uttarakhand and inter-State transmission systems from the pooling stations of PGCIL within Uttarakhand to the beneficiaries outside the State. While the inter-State transmission systems are being developed by PGCIL, the intra-State transmission systems are being developed by PTCUL, the State Transmission Utility of Uttarakhand. The transmission systems have been planned in consultation with CEA and have been approved in the Standing Committee of Transmission Planning in which PGCIL is a member. We notice that only in the 18th and 19th Standing Committee meetings, CEA had raised

the issue that PTCUL should approach CERC for transmission licence. However, in the subsequent deliberations in the meeting taken by Secretary (Power) and in the meetings of NRPC, it was agreed that the transmission systems from the generating stations to the sub-stations of PGCIL within the State of Uttarakhand would be developed by the petitioner as intra-State transmission system. The same has been approved by CEA and subsequently ratified in the 22nd meeting of the Standing Committee on Transmission held on 12.3.2007.

18. Section 73(a) enjoins upon the Central Electricity Authority to discharge the following functions:

“(a) advise the Central Government on the matters relating to the national electricity policy, formulate short-term and perspective plans for development of the electricity system and co-ordinate the activities of the planning agencies for the optimal utilisation of resources to subserve the interests of the national economy and to provide reliable and affordable electricity for all consumers;”

Thus the Central Electricity Authority has been vested with the function to formulate the perspective plans for development of the electricity systems and co-ordinate the activities of the planning agencies for optimal utilisation of resources. The planning agencies for transmission systems are Central Transmission Utility at the inter-State level and State Transmission Utility at the State level. The transmission systems proposed to be executed by the petitioner have been discussed in the various Standing Committee meetings held under the aegis of the Central Electricity Authority in which both CTU and STU have participated. Moreover, it is noticed from the CEA letter dated 9.1.2007 that CEA has conveyed its no objection primarily for the reason that the transmission system would not have any direct commitment for payment of transmission charges by the other constituents and recovery mechanism is only between PTCUL and the generators. In

other words, the transmission systems from the generation bus bar within the State of Uttarakhand to the PGCIL pooling stations were being considered as associated transmission systems akin to dedicated transmission systems of the generator since the generating stations were conceived to be operated as merchant plants only. Therefore, under the circumstances prevailing in 2007, the CEA and the planning agencies had decided that the transmission systems from the generation bus bars of the generating stations developed by the Central Sector generating stations in the river basins of Uttarakhand to the pooling points of the sub-stations of PGCIL within the State would be developed by the petitioner as intra-State transmission system. It is also noticed that NTPC applied for long term access to CTU on 9.2.2007 for evacuation of power from the pooling point to various constituents of the Northern Region and to PTCUL on 17.9.2008 for open access for evacuation of power from the generation bus bar till the pooling point of PGCIL. Open access has been granted by CTU to NTPC on 17.7.2009 for transfer of power from Tapovan Vishnugad with target beneficiaries subject to signing of BPTA by NTPC. As per the affidavit of PGCIL, NTPC has not signed the BPTA and therefore, the LTA has lapsed after the expiry of period of one month from the date of grant of open access. There is exchange of draft TSA between the petitioner and NTPC, but no headway has been made regarding signing of TSA.

19. Certain developments have taken place subsequently which has changed the planning and arrangements agreed to in the Standing Committee and NRPC forums for development of the transmission systems for evacuation of power from the Central Sector generation in the river basins in the State of Uttarakhand. Firstly, the character of Lata Tapovan and Tapovan Vishnugad generating stations which were

being developed as merchant plants by NTPC was changed after signing of PPAs by NTPC with the beneficiaries of the Northern Region. NTPC has also stated that Ministry of Power, Government of India is in the process of issuing allocation of power. As in cases of other Central generating stations, the PPAs of NTPC provide that the power shall be sold at the bus bar of the generating stations which means that the beneficiaries would be required to sign the necessary Transmission Service Agreements with the Transmission Service Providers, in this case CTU and the petitioner. Secondly, UERC was approached by the petitioner for approval of capital investment which was turned down by UERC on the ground that 80% of the power to be evacuated through the transmission systems proposed to be developed by the petitioner are to be wheeled outside the State through the CTU system beyond the pooling point of Kashipur and therefore, the system is in the nature of inter-State transmission system and cannot be included in the Annual Revenue Requirements of the Petitioner. Under the circumstances, the petitioner has approached this Commission with two alternative prayers i.e. to direct NTPC to sign Transmission Service Agreement with it or to accord deemed ISTS status under the Sharing Regulations so that the petitioner is able to recover its transmission charges through PoC.

20. The above developments necessitate us to examine the true nature of the transmission systems being developed by the petitioner and to pass consequential directions for early execution of the projects matching with the commissioning of the Central Sector generating stations being developed in the river basin of Uttarakhand. It is an admitted fact that UITP scheme is being developed by the petitioner as an integrated scheme for evacuation of power from the Central Sector generating

stations, State Sector generating stations and Independent Power Producers in the State of Uttarakhand. The UITP system will be linked to both State network and the ISTS network. It is also an admitted fact that 85% of the power proposed to be generated by the generating stations being developed on the river basins of the State is meant for consumption outside the State. Therefore, the transmission systems being developed by the Petitioner under UITP scheme are primarily meant for wheeling power outside the State. That being the case, it needs to be considered whether the transmission system remains an intra-State transmission system as claimed by the petitioner. Section 2 (37) of the Act defines "intra-State transmission system" to mean any system for transmission of electricity other than an inter-State transmission system. Section 2(36) of the Act defines inter-State transmission system as under:

"(36) " inter-State transmission system" includes -

- (i) any system for the conveyance of electricity by means of main transmission line from the territory of one State to another State;
- (ii) the conveyance of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to such inter-State transmission of electricity;
- (iii) the transmission of electricity within the territory of a State on a system built, owned, operated, maintained or controlled by a Central Transmission Utility."

It is seen from the definition of inter-State transmission system that the conveyance of electricity within the territory of a State can be said to be part of inter-State transmission system in two circumstances. Firstly, such conveyance of electricity within the State should be incidental to inter-State transmission of electricity. Secondly, the transmission of electricity should take place within the territory of a State on a system built, owned, operated, maintained or controlled by the Central Transmission Utility. In this case, the transmission systems from the

generating stations proposed on the river basin of Uttarakhand are not being built by CTU and therefore, the transmission system will not be covered under section 2(36)(iii) of the Act. However, the transmission lines will be utilised primarily for conveyance of power from the Central Sector generating stations to the beneficiaries outside the State. Since the transmission systems will be connected to the sub-station of PGCIL at Kashipur from where power will be transmitted to the beneficiaries outside the State, the subject transmission systems become incidental to inter-State transmission system under section 2(36)(ii) of the Act and are a part of the inter-State transmission system.

Issue No.2: Which agency should execute the subject transmission lines?

21. Since we have come to the conclusion that the transmission system developed by the petitioner is a part of inter-State transmission system, the next question arises which is the agency competent to execute the subject transmission lines. Section 38(2)(c) of the Act provides that it shall be the function of the Central transmission Utility to ensure development of an efficient, coordinated and economical system of inter-State transmission lines for smooth flow of electricity from the generating stations to the load centres. Section 39(2)(c) of the Act provides that the functions of the State Transmission Utility shall be to ensure development of an efficient, co-ordinated and economical system of intra-State transmission lines for smooth flow of electricity from a generating station to the load centres. The term “load centre” has not been defined in the Act. The Appellate Tribunal for Electricity in *Nalwa State Steel and Power Ltd. vs. Chhatisgarh Power Distribution Co. Ltd.* {2009 ELR (APTEL) 609} has held that ‘a load centre is a conglomeration of load’ which would refer to the system of a distribution licensee. The transmission systems being

developed by the petitioner for evacuation of Central Sector generating stations are not meant for wheeling power to the distribution systems of the State only but to distribution systems in the other States through the network of CTU. Therefore, it is the responsibility of the CTU under the Act to develop the subject transmission systems for evacuation of power outside the State. However, for the reasons explained in para 11 to 16 above, the petitioner has been approved by the planning agencies under the Act to develop the UITP system as an integrated transmission system in the river valleys of Uttarakhand considering the right of way problems. The petitioner as a State Transmission Utility cannot execute inter-State transmission lines unless it is an inter-State transmission licensee. Section 40(a) of the Act provides that it shall be the duty of a transmission licensee to build, maintain and operate an efficient, co-ordinated and economical inter-State transmission system or intra-State transmission system as the case may be. Therefore, the petitioner needs to be an inter-State transmission licensee under the Act in order to build, maintain and operate an inter-State transmission line. Section 12 of the Act provides that no person shall transmit electricity unless he is authorised to do so by a licence issued under section 14. Section 14 says that the Appropriate Commission may on an application made to it under section 15 grant licence to any person to transmit electricity. Second proviso to section 14 provides that the Central Transmission Utility or the State Transmission Utility shall be deemed to be transmission licensee under the Act. It is pertinent to mention that the second proviso does not say that the CTU or STU shall be a deemed inter-State or intra-State licensee respectively. It merely says that CTU or STU shall be deemed to be transmission licensee under the Act. In other words, CTU or STU are not required to obtain transmission licence at all. However, if a CTU executes an intra-State transmission line or a STU executes

an inter-State transmission line, it needs to be authorised to do so by the Appropriate Commission. In our view, the petitioner being a deemed licensee will not be required to apply for licence but will require due authorisation from this Commission to execute the inter-State transmission system.

22. The Commission is aware that a number of transmission lines of the State network carry inter-State power and therefore, become incidental to inter-State Transmission System. In order to ensure that the transmission charges for use of such lines are duly collected from the actual users, the Commission has introduced the concept of “deemed ISTS” in the Sharing Regulations.

“Deemed Inter State Transmission System (Deemed ISTS) means such transmission system which has regulatory approval of the Commission as being used for interstate transmission of power and qualified as ISTS for the purpose of these Regulations unless otherwise specified;”

Thus the Sharing Regulations provide that any transmission system being used for inter-State transmission of power and qualified as ISTS shall be treated as “deemed ISTS” after regulatory approval by this Commission.

23. The petitioner has approached the Commission for approval of deemed ISTS status to the UTP scheme being executed by it. We have already come to the conclusion that the transmission system developed by the petitioner is part of inter-State Transmission System and shall be used for wheeling power outside the State. Considering the fact that the petitioner is a deemed transmission licensee, we in exercise of power under section 12 of the Act authorise the petitioner to execute the UTP Scheme and also accord deemed ISTS status to the UTP scheme being

executed by the petitioner to the extent it is used for transmission of inter-State power.

Issue No.3: Signing of transmission agreement by NTPC with the petitioner

24. The petitioner has submitted that as per the Implementation Agreement and the approval of the CEA and the Standing Committee, the issue of sharing of transmission charges for the transmission lines has to be decided between the petitioner and the project developers. While other project developers have agreed to sign the transmission service agreement with the petitioner, only NTPC has refused to sign the transmission service agreement. The petitioner has further submitted that NTPC is insisting that the petitioner should sign the transmission service agreement directly with the beneficiaries of NTPC. The petitioner has submitted that as per the provisions of Regulation 2 (6) read with Regulation 2 (19) of the Uttarakhand Electricity Regulatory Commission (Terms and Conditions of intra-State open access), Regulations 2010, open access can only be granted to Respondent No. 1 and not to any beneficiary outside the State of Uttarakhand to whom UERC Regulations do not apply. NTPC has submitted that since the transmission system built by the petitioner is an inter-State transmission system, the petitioner is required to enter into the transmission service agreement as per the Connectivity Regulations and Sharing Regulations of the Commission. NTPC has further submitted that CEA in its letter dated 16.3.2011 has also advised the petitioner to sign the TSA directly with the beneficiaries.

25. We have considered the submissions of the petitioner and Respondent No. 1. It is noted that the transmission system from the generation bus-bar till the pooling

point is being developed by the petitioner and beyond pooling point for evacuation power outside the State is being developed by CTU. Since, both the systems are part of the inter-state transmission system, necessary agreements are required to be signed as per the Regulations 15 of the Connectivity Regulations which is extracted below:

"15. The applicant shall sign an agreement for long-term access with the Central Transmission Utility in case long-term access is granted by the Central Transmission Utility, in accordance with the provision as may be made in the detailed procedure. While seeking long-term access to an inter-State transmission licensee, other than the Central Transmission Utility, the applicant shall sign a tripartite long-term access agreement with the Central Transmission Utility and the inter-State transmission licensee....."

The above provisions were implemented through the Detailed Procedures dated 31.12.2009 issued under the Connectivity Regulations with the approval of the Commission. Para 24.1.2(b)(ii)(vi) of the Detailed Procedures is extracted as under:-

"In case of applicants who have already firmed up the entity or entities to whom electricity is proposed to be supplied or from whom electricity is proposed to be procured for the entire quantum of power for which LTA has been sought through signing of PPA or, in the case of inter-State generating stations owned by the Central Government or Ultra Mega Power Projects coming up through the initiative of the Central Government, allocation of power to various beneficiaries as notified by it, then the applicant shall not be required to submit Bank Guarantee (BG) with the application form or the Construction Stage BG. In such cases, however, the augmentation of the transmission system as identified for grant of LTA shall be undertaken only after agreement of the beneficiaries in Standing Committee on Power System Planning/Regional Power Committee for bearing its transmission charges. The applicant shall submit a copy of PPA or notification made by Govt. of India, whichever is applicable. The long-term access agreement, may, in such cases, be directly signed by the beneficiaries with the CTU or tripartite agreement with the CTU and ISTS, as the case may be."

Though under Regulation 15 of the Connectivity Regulation, the applicant is required to sign the tripartite agreement with the CTU and the other inter-State transmission licensee, it has been clarified in the procedure that where allocation of power to various beneficiaries from the Central Sector Generating Station has been

made by the Central Government, the long-term access agreement shall be signed by the beneficiaries with the CTU or the tripartite agreement with the CTU and ISTS, if another inter-State transmission licensee is involved. Since the power from the Tapovan Vishnugad and Lata Tapovan generating stations of the NTPC has been allocated by the Central Government in December, 2010, the long-term access agreements shall be signed by the beneficiaries of the generating stations and not by NTPC.

26. Central Electricity Regulatory Commission (Sharing of Transmission charges and losses) Regulations 2010 (Sharing Regulations) came into force w.e.f. 1.7.2011. According to Regulation 13 of the Sharing Regulations, the transmission service agreement shall be signed by the designated ISTS customers (the beneficiaries of the generating station) with the CTU in respect of the use of the inter-state transmission system. Where the system of another ISTS licensee is involved, Regulation 13 (9) of the Sharing Regulations provides for the following procedures:-

"(9) The CTU shall enter into a separate Revenue sharing agreement with other ISTS transmission licensees to disburse monthly transmission charges among various transmission licensees....."

Further Clause 2.2.2 of the model Transmission Service Agreement approved by the Commission under the Sharing Regulations provides that the transmission service agreement shall be signed by all new ISTS licensees intending to provide ISTS services and to develop and maintain any part of the ISTS network. Clause 2.2.3 of the agreement further provides that any new ISTS licensees shall become a party to the transmission service agreement by execution of supplementary agreement by such ISTS licensees with the CTU.

27. Therefore, under the prevailing regulations and the procedures issued by the Commission, the petitioner after being recognised as a deemed ISTS licensee shall become a party to the transmission service agreement by executing a supplementary agreement with CTU. The liability for payment of ISTS charges has been provided in Regulation 8 (6) of the Sharing Regulations which is extracted as under:

"(6) For long term customers availing supplies from inter-State generating stations, the charges payable by such generators for such Long Term supply shall be billed directly to the respective Long Term customers based on their share of capacity in such generating stations. Such mechanism shall be effective only after "commercial operation" of the generator. Till then, it shall be the responsibility of generator to pay these charges."

In view of the above, no separate transmission service agreement is required to be signed by the beneficiaries of NTPC with the petitioner.

Issue No. 4: Relief to be granted to the petitioner.

28. The petitioner has prayed for two alternative reliefs. First, NTPC should be directed to enter into TSA with the petitioner in relation to utilization of the UITP scheme for evacuation of power from its projects with the liability to bear the transmission charges. Alternatively, the UITP network should be declared as deemed ISTS network under the Sharing Regulations. As we have already come to the conclusion under Issue No. 2 that the petitioner's system is deemed ISTS system under the Sharing Regulations, therefore, the signing of transmission service agreements will be governed as per the Sharing Regulations and procedures issued thereunder. As discussed under Issue No. 3, neither NTPC nor its beneficiaries are required to sign separate transmission service agreement with the petitioner under

the provisions of the Sharing Regulations as the beneficiaries have already entered into transmission service agreement with the CTU. The petitioner is required to enter into a supplementary agreement to transmission service agreement and revenue sharing agreement with CTU.

29. At this point we intend to clarify that we have accorded the status of deemed ISTS to the petitioner to execute the UITP system which is essentially a part of inter-State transmission system as a special case taking into account the historical sequence of events and the integrated development of the transmission systems due to the right of way problems in the hilly regions of Uttarakhand. Our decision in this order shall not be construed as a precedent and all regional transmission lines shall be planned and developed by the CTU.

Issue No. 5: Consequential Directions

30. CTU in its affidavit has submitted that if the status of the line is changed from intra-State to inter-State, the present regulations/ policies for implementation of ISTS may be followed. We do not intend to issue any directions in this regard. However, it is clarified that the petitioner shall execute the UITP project in accordance with the policy of the Central Government as issued from time to time.

31. Since we have considered the transmission lines being used for evacuation of power from the Central Sector Generating Stations and IPPs in the river basin of Uttarakhand outside the State as incidental to the inter-State transmission of electricity and as part of the inter-State transmission system and accorded the status of a deemed ISTS on the petitioner, we direct the petitioner to segregate the

transmission lines carrying the inter-State power and approach the CTU which is the nodal agency for vetting of the comprehensive transmission scheme in accordance with the Connectivity Regulations. We direct CTU to study the transmission system in accordance with the Connectivity Regulations and in case, any modifications are suggested by CTU, the same shall be incorporated and implemented by the petitioner. CTU shall also monitor the implementation of the inter-State transmission portion of the UITP scheme. In order to ensure that the implementation of the transmission system comes up in an optimum manner, the petitioner shall implement the transmission scheme in a phased manner matching with the commissioning of the generating stations. CTU shall monitor the construction of the inter-state transmission system.

32. It is noticed that only the long term access granted to NTPC by CTU is on record and the status of long term access to other Central Sector generators and IPPs in the region is not known. It is therefore possible that these generators might have planned to sell their entire power or part of it on merchant basis through medium term open access and short term open access. Since transmission lines are built only for long term access, the transmission charges for the transmission lines built to cater to the requirement of sale of power through medium term and short term access cannot be saddled on the beneficiaries of the inter-State transmission system and must be borne by the concerned generating companies. We direct the petitioner to ensure that these generators enter into appropriate agreements with the petitioner and CTU for bearing the transmission charges till they identify and enter into PPAs with the beneficiaries outside the State.

33. It is essential that the transmission lines which have been accorded deemed ISTS status are segregated from the dedicated transmission lines and intra-State transmission lines to obviate any confusion about the liability for payment of transmission charges. The dedicated transmission lines from intra-state generators, i.e. those generators selling power only within the State of Uttarakhand, from the generation bus bar upto the main transmission line/pooling point of Uttarakhand would be considered as dedicated transmission lines/intra-state transmission system and the transmission system beyond the main transmission line/pooling point of Uttarakhand would be considered as a combination of intra-State transmission system and inter-State transmission system and paid for accordingly. That is, the Yearly transmission charges of the various elements of such system would be divided into intra-State portion and inter-State portion, based on installed capacity of the generating stations using the common system. Charges for the ISTS would be shared by beneficiaries of ISTS. For the intra-state transmission system, the charges would be shared as directed by UERC.

34. A related question arises about the determination of the transmission charges of the inter-State component of the UITP scheme. Under the Sharing Regulations, the sharing of the transmission charges shall be based on the yearly transmission charges which is defined in Regulation 2 (1) (y) as under:

"(y) Yearly Transmission Charge (YTC) means the Annual Transmission Charges for the existing and new transmission assets of the transmission licensees and deemed ISTS Licensees including non-ITS lines certified by Regional Power Committees for carrying inter-State power, determined by the Appropriate Commission under Section 62 of the Act or adopted by the Appropriate Commission under Section 63 of the Act or as otherwise provided in these Regulations."

The petitioner is directed to file the petition for determination of transmission charges before this Commission in accordance with the prevalent tariff regulations.

35. The petition is disposed of in the terms of the above directions.

sd/-
(M. Deena Dayalan)
Member

sd/-
(V. S. Verma)
Member

sd/-
(S. Jayaraman)
Member

sd/-
(Dr. Pramod Deo)
Chairperson