

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.10/SM/2014

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K.Singhal, Member

Shri A.S.Bakshi, Member

Date of Hearing: 12.2.2015

Date of Order : 30.6.2016

In the matter of

Non-Compliance of Regulation 8 (6) Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010.

And

In the matter of

1. Southern Regional Load Despatch Center (SRLDC)
29, Race Course Cross Road,
Bengaluru - 560009
2. National Load Despatch Center (NLDC)
B-9, Qutab Institutional Area,
Katwaria Sarai,
New Delhi-110016
3. Central Transmission Utility (CTU)
Saudamini, Plot no. 2,
Sector-29, Gurgaon-122001
4. Southern Region Power Committee (SRPC)
29, Race Course Cross Road,
Bengaluru - 560009
5. Udupi Power Corporation Ltd.
Second Floor, Le-Parc Richmond, 51,
Richmond Road, Bengaluru-560025

...Respondents

6. Punjab State Power Corporation Ltd.
The Mall, Patiala – 147001
 7. Power Company of Karnataka Ltd.
KPTCL Building, Kaveri Bhavan,
K.G.Road, Bengaluru -560009
 8. Bangalore Electricity Supply Company Ltd.
K.R.Circle,
Bengaluru -560001
 9. Mangalore Electricity Supply Company Ltd.
Paradigm Plaza, AB Shetty Circle,
Mangalore-575001
 10. Gulbarga Electricity Supply Company Ltd.
Station Main Road, Gulbarga-585102
 11. Hubli Electricity Supply Company Ltd.
Corporate Office, Navanayar, PB Road,
Hubli-580 025
 12. Chamundeshwari Electricity Supply Company Ltd
Corporate office, No. 927, LJ Avenue, New Kantaraya
Urs Road, Sarwathipuram, Mysore-270 009
-Proforma Respondents

ORDER

Regulation 8 (6) of Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010 (hereinafter "Sharing Regulations") provides that long-term customers availing supplies from inter-State generating stations shall share the transmission charges from the date of commercial operation of the generating station. Regulation 8 (6) of the Sharing Regulations is extracted as under:

"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"

2. Based on the information available for computation of injection and withdrawal charges under POC mechanism, LTA quantum of Udupi Power Corporation Ltd. (UPCL) wasnot being considered which resulted in higher uniform charges for all other DICs, the Commission vide order dated 20.6.2014 directed CTU, NLDC, SRPC and SRLDC as under:

"3. It has come to our notice that for computation of injection and withdrawal charges under POC mechanism, LTA quantum of UPCL is not being considered which results in higher uniform charges for all other DICs. As a result, the cost of transmission system used by UPCL is being wrongly socialized among the DICs.

4. Regulation 8 (6) of Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters), 2009 stipulates that "the grant of connectivity shall not entitle an applicant to interchange any power with the grid unless it obtains long-term access, medium-term open access or short-term open access." It is not clear whether UPCL has been granted LTA by CTU and whether UPCL has entered into BPTA or long-term access agreement with CTU.

5. In the above background, we direct CTU to clarify its position in regard to the following:

(a) Whether LTA has been granted to UPCL? If yes, details of LTA granted and date of its effectiveness.

(b) Whether UPCL has signed the BPTA or long-term access agreement with CTU? If yes, a copy of the same be placed on record. If no, the reasons for not cancelling LTA be furnished.

(c) Whether data regarding LTA of UPCL was shared with the Implementing Agency for PoC computation? If not, the reasons for not sharing the information may be furnished.

6. It has come to our notice that the matter regarding non-inclusion of UPCL for PoC computation has been discussed in various meetings at SRPC Forum. We direct SRPC Secretariat to submit the details of deliberations held and recommendations of SRPC in this regard.

7. NLDC is directed to explain as to whether non-inclusion of UPCL in the PoC charges was brought to the notice of CTU and if so, the response of CTU thereon.

8. SRLDC is directed to explain as to how injection of UPCL is reflected in the schedule of Karnataka and Punjab."

3. As per the Commission's directions, Southern Regional Power Committee (SRPC), Southern Regional Load Despatch Centre, National Load Despatch Centre, CTU have submitted their responses.

4. Southern Regional Power Committee, vide its affidavit dated 26.6.2014, has submitted as under:

(a) NPCL (Now UPCL) made an application for grant of LTA for 939 MW (845 MW for Karnataka and 94 MW for Punjab). In the 24th Standing Committee Meeting (SCM) held on 18.6.2007 evacuation scheme was finalized, namely (i) Dedicated Transmission system for NPCL to be owned, operated and maintained by NPCL i.e. NPCL Switchyard- Hassan 400 kV D/C quad line, 1x315 MVA 400/220 kV transformer at NPCL switchyard and 220 kV D/C line from NPCL switchyard to local sub-station, viz. Kemar. (ii) Transmission system to be taken up as Regional Strengthening scheme, namely Hassan-Mysore 400 kV D/C line. However, KSEB did not agree to the sharing of transmission charges of Hassan-Mysore 400 kV D/C line under Regional Strengthening Scheme.

(b) Subsequently, in the 6th SRPC meeting held on 15.2.2008, KSEB agreed to share transmission charges of Hassan-Mysore transmission line only with assured allocation to the extent of 100-150 MW from UPCL. SRPC approved Hassan-Mysore line as Regional Strengthening Scheme.

(c) In the 11th SRPC meeting held on 17.9.2009 it was noted that KPTCL was constructing 400 kV quad D/C line from UPCL to Hassan sub-station and 220 kV D/C line to Kemar sub-station. In this regard, UPCL was asked to enter

into BPTA with PGCIL for whole capacity of the project. It was suggested that Punjab and Karnataka should enter into BPTA in proportion to their shares from the project for sharing transmission charges.

(d) In the 12th meeting of SRPC held on 18.10.2009, KPTCL informed that since no quantum of power had been allocated to Kerala and entire power would be evacuated through 400 kV lines constructed by KPTCL, there was no requirement for KPTCL to apply for LTOA. KSEB stated that since there is no power allocated to KSEB as a pre-condition for its consent, Mysore-Hassan line as Regional Strengthening Scheme is no more valid.

(e) In the 12th meeting of Commercial Sub-Committee of SRPC held on 12.3.2010, PGCIL informed that UPCL was an ISGS with KPTCL and Punjab as beneficiaries and they were required to sign BPTA with CTU. As per the Commission's Regulations, KPTCL and Punjab could apply for grant of LTA, MTOA or STOA as per their requirements.

(f) In the 20th SRPC meeting held on 28.9.2012, APTRANSCO stated that Karnataka was paying only withdrawal charges. However, injection charges were being shared by other beneficiaries. Karnataka was using this regional line for evacuation of UPCL's power without payment of injection charges and other constituents were sharing the cost of line without deriving any benefit.

5. Southern Regional Load Despatch Centre (SRLDC) and National Load Despatch Centre (NLDC) vide their joint affidavit dated 2.7.2014 have submitted that originally the

UPCL's generating station was envisaged to be directly connected to ISTS by a dedicated transmission line from UPCL to Hassan owned by UPCL. However, the line connecting the generating station to ISTS is now owned by KPTCL. Moreover, the evacuation of the first generator was done through 220kV network of Karnataka till the line from UPCL to Hassan was constructed. Therefore, UPCL is an embedded generator in the State of Karnataka. SRLDC and NLDC have further submitted that the details of LTA/MTOA furnished by CTU on monthly basis are forwarded to RPCs by NLDC for preparation of Regional Transmission Account (RTA) and for consideration in next quarter. However, till date, CTU has not indicated any LTA quantum from UPCL. SRLDC and NLDC have stated that in the various SRPC meetings, the issue of UPCL was discussed and it emerged that Karnataka has LTA of 90% and the LTA for the rest 10% with Punjab was yet to be effective. Since the generating station is connected only to intra-State transmission system, the responsibility of scheduling lies on SLDC, Karnataka in terms of Regulation 6.4.2(c) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 (Grid Code). Accordingly, SLDC, Karnataka is carrying out the scheduling of UPCL. It has been submitted that CTU is required to intimate RLDC/NLDC for scheduling and consideration of UPCL in PoC computation.

6. National Load Despatch Centre (NLDC), vide affidavit dated 22.9.2014, has submitted that the details of LTA/MTOA furnished by CTU are forwarded to all RPCs by NLDC. Therefore, if any LTA/MTOA is to be included in RTA issued by RPC, CTU has to initiate the same. NLDC has further submitted that CTU has to intimate RLDC/NLDC for scheduling and consideration in PoC computation. NLDC has suggested that dis-

connection of the generator may only be considered as last resort in cases like grid security, persistent failure to pay transmission charges, RLDC fees, DSM charges, etc. In the present case, since the payment liability of the generator is not shown in the RTA issued by SRPC, there is no default on part of generator to pay such statutory charges.

7. CTU, vide affidavit dated 21.7.2014, has submitted as under:

(a) UPCL was granted LTA in June, 2007 in accordance with 2004 Open Access Regulations. The LTA details are as under:

(i) LTA Quantum of 939 MW (Karnataka-845 MW and Punjab-94 MW),

(ii) Transmission requirement for the LTA

(a) Dedicated transmission system to be implemented by Udupi (then NPCL)

-NPCL switchyard-Hassan 400 kV quad D/C line,

-1x315 MVA 400/220kV transformers at NPCL switchyard,

- 220 kV D/C transmission line from NPCL switchyard to local sub-station viz. Kemar,

(b) Common transmission system to be implemented as Regional Strengthening Scheme

-Hassan-Mysore 400 kV D/C line

(iii) Date of commencement of open access whichever is later of the following:

(a) Date of commissioning of generation project,

(b) Date of commissioning of dedicated transmission system, and

(c) Date of signing of requisite tariff agreement.

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(b) The transmission system associated with grant of LTOA included dedicated transmission line from generation switchyard to nearest ISTS point viz. 400/220 kV Hassan sub-station of PGCIL and system strengthening in the form of Hassan-Mysore 400 kV D/C line.

(c) KPTCL chooses to construct the dedicated transmission line as intra-State Transmission line. In 2009, when the generating station was under construction, there was provision of the sharing of transmission charges that 400/220 kV transformer and downstream 200 kV bays used to be shared by the local State entity where 400/220 kV sub-station was located. Since the immediate evacuation line belongs to KPTCL and the transmission charges for transformers at Hassan were being borne by KPTCL, there was no need to sign the LTA Agreement and to share any ISTS charges for the injection of power by Udupi. At the same time Punjab was also not coming forward for signing of long term access agreement for bearing transmission charges.

(d) PGCIL was opposed to the stand taken by KPTCL and requested KPTCL to sign the agreement to avoid a situation when the generation project gets commissioned but the related commercial arrangements are not in place. The matter was also discussed in the 29th Standing Committee meeting held on 27.8.2009 wherein it was decided that the issue needs to be discussed and resolved in SRPC forum. Thereafter, the matter was taken up in the 11th meeting of SRPC held on 17.9.2009 and subsequently in the meetings of SRPC held over 4^{1/2} years but the matter could not be resolved. In the 24th meeting of SRPC held

on 15.3.2014, it was decided that the affected parties may approach the Commission for resolution of dispute.

(f) As regards, the question of cancellation of LTA by CTU due to non-signing of LTA Agreement by UPCL, CTU has submitted that cancellation would have resulted in usage of ISTS by UPCL without paying the applicable transmission charges. As per Regulation 35 of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2004 (2004 Open Access Regulations), SRPC was the appropriate forum for resolution of dispute related to open access in inter-State transmission and the matter was already under consideration of SRPC. Accordingly, pending decision of SRPC on quantum of drawl corresponding to KPTCL and Punjab, and in the absence of signing of LTA agreement, the data regarding injection and drawl was not shared with Implementing Agency for computation of POC charges.

8. Southern Regional Power Committee (SRPC), vide its affidavit dated 5.9.2014, has submitted that CTU granted LTOA on 28.6.2007 in terms of 2004 Open Access Regulations. However, BPTA was not signed with CTU. As per available records, CTU had never approached SRPC for redressal of issue of non-signing of BPTA. From 2007 to 2009, the issue was not taken up with the Commission in line with provisions Regulation 35 of 2004 Open Access Regulations. SRPC has submitted that in the 12th Commercial sub-committee meeting, CTU suggested Karnataka and Punjab to apply either for LTOA, MTOA or STOA which was not in line with the LTOA granted. Further, in the 24th Meeting of SRPC held on 15.3.2014, CTU/NLDC did not communicate the

LTA details in respect of UPCL/KPTCL/PSPCL to be accounted in the RTA/REA. Therefore, there had been continuous endeavour by SRPC to get the issue resolved and since the issue was not getting resolved, affected was required to approach the Commission.

9. Power Company of Karnataka Ltd. and Punjab State Power Corporation Ltd. vide Record for Proceedings for the hearing dated 8.7.2014 were issued notices to file their replies. NLDC was directed to suggest remedial measures to mitigate leaning of such generators like UPCL on ISTS when they are not sharing transmission charges and losses of ISTS.

10. Power Company of Karnataka Ltd. (PCKL), vide affidavit dated 18.9.2014, has submitted that CTU had permitted Long Term Open Access to UPCL in June 2007 for 939 MW (Karnataka 845 MW and Punjab 94 MW). In the 5th meeting of SRPC held on 25.8.2007, the evacuation of power from NCPL (UPCL) was discussed and finalized according to which NCPL Switchyard-Hassan 400 kV quad D/C line was to be owned operated and maintained by NCPL (UPCL). PCKL has submitted that supplementary BPTA was entered into with KPTCL and distribution companies of Karnataka (Principal Buyers) on 6.10.2007 for execution of 400 kV D/C line from the project switchyard to Hassan (PG) and 220 kV D/C lines for inter-connecting from the project switchyard connecting with the 220 kV switchyards of KPTCL at Kemar and Kavour. According to PCKL, in the 11th meeting of SRPC held on 17.9.2009, KPTCL informed that it was constructing 400 kV quad moose D/C Switchyard to Shantigrama, Kemar sub-station. KPTCL is also stated that to have advised UPCL to sign BPTA with CTU for the whole

capacity of the project. PCKL has further submitted that Hassan-Mysore line was commissioned on 1.7.2012 and treated as Southern Region's asset. Similarly, UPCL-Hassan 400 kV transmission line was commissioned on 25.8.2012. PCKL has submitted that TSA was entered into between the distribution companies for Karnataka and PGCIL on June, 2011 in which 400 kV D/C Hassan-Mysore transmission line along with bay extension at Hassan and Mysore built under System Strengthening Scheme was included in New ISTS scheme of Transmission System in Southern Region. In various SRPC meeting, the scheduling of power and signing of Tripartite Agreement were discussed between the parties but no consensus could be reached. KPTCL forwarded the draft Tripartite Transmission Service Agreement to PSPCL vide letter dated 20.12.2013 and followed up vide letter dated 16.4.2014. UPCL has requested vide letter dated 15.3.2013 to convey concurrence to KPTCL. In the 24th meeting of SRPC held on 15.3.2014, CTU clarified in response to the query of UPCL regarding cancellation of LTA that as per the regulations, beneficiaries were deemed signatories and LTA could not be cancelled. PCKL has submitted that the transmission line segments from UPCL Switchyard to Mysore sub-station via PGCIL Pooling Station at Hassan (Shanthigrama) needs to be considered as a intervening transmission facility and transmission charges for this facility needs to be calculated as per the Central Electricity Regulatory Commission (Rates, Charges and Terms and Conditions for use of Intervening Transmission Facilities) Regulations, 2010.

11. PSPCL, vide its affidavit dated 17.11.2014, has submitted that PSPCL entered into PPA with UPCL for 94 MW. However, due to non-execution of the TSA with PSPCL, no power is flowing from UPCL to PSPCL. According to PSPCL, scheduling of

power and signing of Tripartite Transmission Service Agreement were discussed in various SRPC meetings. However, no consensus was arrived between parties. Therefore, no such agreement has been signed till date with PSPCL. PSPCL has submitted that since, no power is flowing from UPCL to PSPCL no transmission charges are required to be paid by it. PSPCL has submitted that the issue whether UPCL should be included for calculation of POC charges is required to be considered by the Commission.

12. UPCL was directed vide Record of Proceedings for the hearing dated 23.9.2014 to submit copy of PPA signed with Karnataka and Punjab for their respective quantum of power from UPCL. CTU was directed to file the information with regard to (a) The Regulation under which date of commencement of LTA has been indicated as later of the dates, namely (i) Date of commissioning of generation project (which as per application is in 4th Quarter, 2009); (ii) Date of commissioning of dedicated transmission system; (iii) Date of signing of requisite tariff agreement. (b) Details of BPTA/any other Agreement signed in respect of Hasan-Mysore transmission line. In case BPTA has not been signed the basis on which CTU proceeded with construction of the line, (c) Minutes of meeting in which the evacuation system of NPCL (now UPCL) was discussed and finalized, and (d) Capital cost and tariff approved by the Commission and COD of Hasan-Mysore transmission line.

13. UPCL, vide its affidavit dated 12.10.2014, has submitted that originally, the installed capacity of the generating station was 1015 MW which was subsequently increased to 1200 MW in 2009 after obtaining environment clearance from MoEF, Gol

on 9.9.2009. Govt. of Karnataka granted NOC on 3.2.2009 with condition that 90% of power would be made available to Karnataka. UPCL has further submitted that PPA for 90% of 1015 MW power was signed with Karnataka on 26.12.2005 and for remaining 10%, PPA was signed with PSPCL on 29.9.2006. However, PSPCL has not been able to evacuate power in the absence of TSA with KPTCL and PGCIL. Therefore, remaining 10% is being absorbed by the State of Karnataka. UPCL has submitted that after enhancement of capacity from 1015 MW to 1200 MW, PSPCL, vide its letter dated 25.3.2010, was offered additional 18.5 MW. However, PSPCL did not reply till date. UPCL has submitted that it has also signed PPA on 9.4.2014 with KSEB for supply of 18.5 MW on short term basis for the period from 1.6.2014 to 31.5.2015. However, KSEB was not able to evacuate power due to non-availability of open access permission. Therefore, entire 1200 MW power is being availed by DISCOMs of Karnataka. UPCL has submitted that in terms of the PPA with ESCOMs of Karnataka, PSPCL and KSEB, it is the obligations of the buyers to draw power from UPCL's power plant switchyard by making necessary arrangement for evacuation facility. UPCL has submitted that in terms of Regulation 8 (6) of the Sharing Regulations, in case of inter-State generating stations, the transmission charges for long term supply is payable by the respective long term customer based on their share of capacity in the generating station. UPCL has also submitted that in the light of the admission made by PCKL and the ESCOMs of Karnataka in affidavit dated 22.9.2014 that they are the Long Term Customers availing power from UPCL, they would be liable to pay the transmission charges based on their share of capacity in the generating station.

14. CTU, vide its affidavit dated 30.10.2014, has submitted as under:

(a) LTOA was granted to the petitioner as per the provisions of the 2004 Open Access Regulations. In terms of Regulation 9(ii) of the 2004 Open Access Regulations, CTU published "Guidelines for Open Access by Long Term Open Access Customers", which specified the terms and conditions for long term open access. Accordingly, CTU issued intimation for grant of LTA in which CTU mentioned conditions of date of commencement of open access.

(b) In the 24th Standing Committee of SR and 6th meeting of SRPC held on 18.6.2007 and 15.2.2008 respectively, Hassan-Mysore 400 kV D/C transmission line has been approved as "Regional Strengthening Scheme".

(c) As per terms and conditions of BPTA signed between PGCIL and the beneficiaries, any transmission system, which is approved for execution by PGCIL at SREB/SRPC forum, shall automatically become an integral part of the BPTA. The same was communicated to SR beneficiaries after approval of number of transmission systems in SRPC including Hassan-Mysore 400 kV D/C transmission line.

(d) The completed cost of the common transmission system is Rs.10,910.12 lakh. The tariff approved by the Commission is Rs.1,473.41 lakh, Rs.2,124.22 lakh and Rs.2,102.23 lakh for the financial years 2011-12, 2012-13 and 2013-14 respectively. COD of Hassan-Mysore transmission line is 1.7.2011.

15. PGCIL, PSPCL and PCKL, vide ROP for the hearing dated 12.2.2015, were directed to hold meeting along with SRPC to sort out the matter amicably and submit report in this regard.

16. SRPC, vide its letter dated 15.4.2015, has submitted that as per the Commission's direction dated 12.2.2015, a meeting of PGCIL, PSPCL, PCKL and SRPC Secretariat was held on 31.3.2015 in SRPC, Bengaluru. The summary of deliberations of the meeting is as under:

"PGCIL informed that :

- LTA had been granted in 2007 to UPCL (NPCL) of installed capacity of 1015 MW (2 x 507.5 MW) for transfer of 939 MW - Karnataka 845 MW and Punjab 94 MW. The injection point was 400/220 kV Hassan S/S of PGCIL as indicated vide letter dated 28.06.2007.
- The transmission requirement identified is as given below:
Dedicated Transmission System for NPCL to be owned, operated and maintained by NPCL:
 - NPCL switchyard- Hassan 400 kV quad D/C Line
 - Provision for 1x315 MVA 400/220kV transformer at NPCL switchyard
 - 220 kV D/C line from NPCL switchyard to local substation viz Kemar.

Transmission System to be taken as Regional Strengthening Scheme

- Hassan-Mysore 400 kV D/C line.
- The matter regarding signing of BPTA had been taken up with Applicant (NPCL). NPCL vide letter dated 30.7.2007 had informed that BPTA would be signed by the ESCOMs of Karnataka and Punjab State Electricity Board (PSEB).
- Payment of transmission charges with respect to approved UPCL injection is to be made from the date of DOCO of 400 kV Hassan-Mysore D/C line of PGCIL i.e. from 1.7.2011.
- CERC Intervening Regulations, 2010 may not be applicable in this case for usage of CTU network.

PCKL:

- PCKL informed that ESCOMs had not been approached by PGCIL for signing the BPTA.
- PCKL informed that only 845 MW (with 1,140 MW ex-bus injection at UPCL i.e. including Punjab share) at Hassan as per Load Flow Study conducted by KPTCL has been observed with installed capacity of UPCL of 1,200 MW (2*600 MW). LTA application may thus need to be reviewed on account of power flow through the 220 kV network of KPTCL.

- PCKL stated that KPTCL participation was also required for further clarity on the issue.
- PCKL stated that National Electricity Policy mandates adoption of a mechanism sensitive to distance, direction and related to quantum of flow. Tariff Policy reiterates the same and goes a step further to suggest various mechanisms.
- Further, transmission charge as per PoC method is not the first choice for this case when inter-State transmission is treated as intervening transmission facility particularly when the point of injection and point of drawal are within the same state and the assets utilization for evacuation of power from UPCL can be identified. Therefore, applicability of the provisions of the Electricity Act, under Sections 35 and 36 is proposed as given below:

"35. Intervening transmission facilities

The Appropriate Commission may, on an application by any licensee, by order require any other licensee owning or operating intervening transmission facilities to provide the use of such facilities to the extent of surplus capacity available with such licensee.

Provided that any dispute regarding the extent of surplus capacity available with the licensee shall be adjudicated upon by the Appropriate Commission.

36. Charges for intervening transmission facilities,

(1) Every licensee shall, on an order made under section 35, provide his intervening transmission facilities at rates, charges and terms and conditions as may be mutually agreed upon:

Provided that the Appropriate Commission may specify rates, charges and terms and conditions if these cannot be mutually agreed upon by the licensees.

(2) The rates, charges and terms and conditions referred to in subsection (1) shall be fair and reasonable, and may be allocated in proportion to the use of such facilities.

Explanation – For the purposes of section 35 and 36, the expression "intervening transmission facilities" means- the electric lines owned or operated by a licensee where such electrical lines can be utilized for transmitting electricity for and on behalf of another licensee at his request and payment of a tariff or charge."

- PCKL stated that CERC Intervening Regulations, 2010 are applicable.

PSPCL:

- PSPCL informed that Tripartite Agreement between UPCL, KPTCL and PSPCL is yet to be signed.
- Signing of BPTA/LTA would be taken up after signing of Tripartite Agreement.
- In the absence of the Agreements, PSPCL is not availing power from UPCL.

SRPC Secretariat

- SRPC observed that the LTA application had been processed and granted under CERC (Open Access in Inter-state Transmission) Regulation 2004. As per Clause 9, system strengthening for providing long term access had also been considered.
- As per the records available, CTU had not raised the issue regarding non-signing of BPTA by ESCOMs of Karnataka and PSEB during 2007-2009, even under Redressal Mechanism. The Commission could have been approached as per provisions of the Regulations.
- In various Meetings under SRPC forum, other constituent states had expressed concern that transmission charges/injection charges in respect of UPCL were being borne by them.
- In the 23rd SRPC Meeting held on 26.10.2013, it had been noted that KPTCL vide letter dated 7th August, 2013 had furnished the Revised Tripartite Transmission Agreement to PSPCL. PSPCL vide letter dated 16th October 2013 had intimated receipt of the draft agreement.
- One of the 400 kV Talaguppa-Nelamangala D/C line of KPTCL got LILOed at Hassan S/S of PGCIL. It is observed that cost of Taiguppa-Hassan S/C line and also Bassan-Nelamangala is considered as Zero for PoC computation. The LILO portion has been constructed by PGCIL. But the cost of the same has not been considered as the YTC of that line and instead charged on other ISTS lines.
- While arriving at slab rate of Karnataka, the LTA from UPCL had not been considered from the effective date (1.7.2011).
- PSPCL has not responded to various communications from SRPC.
- In the 24th Meeting of SRPC held on 15th March 2014, KSEBL had stated that in case Punjab was not willing to avail power, UPCL should take necessary steps to terminate the PPA and identify another beneficiary.
- On perusal of the Electricity Act u/s 2(36)- Definition of Inter-State transmission System and Section 35 and 36 of the Act, rates for use of intervening facilities of CTU by STU in accordance with CERC (Rates, Charges and term & conditions of Intervening Transmission Facilities) Regulation, 2010 appear to be not applicable.
- CTU/NLDC has not communicated the UPCL LTA details for KPTCL/PSPCL to be accounted in Regional Transmission Account.
- Explanatory Memorandum to draft 3rd Amendment to Sharing Regulations states as follows :

“4.3.1. As the final billing of transmission charges is presently being done on the basis of LTA, certain stakeholders have raised objection that sharing of charges is based on contract and not on usages This is not entirely correct because the

detailed computation of PoC charges is done based on actual usage of the transmission system. The transmission charge for actual network usage is computed based on load generation figures forecasted and agreed by DICs in Validation Committee. Only at the stage of computing PoC rates, the charges are divided by LTA to compute the rate. This PoC rate is again multiplied at later stage by LTA to recover PoC charges. The recovery of uniform charges is for LTA but as both the computations are done together, stakeholders take a view that transmission charge allocation is based on LTA. The present process of computation is explained through an example of DLC "X" and DIC "Y" in the succeeding para:

DIC	Load (MW)	Withdrawal (Load) PoC Charges (Rs.) per month	withdrawal (Load) POC(As per computation) (Rs./MW/Month)	LTA (Demand) (MW)	Withdrawal PoC Rate (Rs/MW/ Month)	Withdrawal (Load) POC Charges (As per LTA) (Rs./Month)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
X	4989	45,79,42,697	91,783	2,668	1,71,665	45,79,42,697
Y	1414	18,96,39,554	1,34,104	1,741	1,08,928	18,96,39,554

4.3.2 These DICs are drawing 4989 MW and 1414 MW respectively as per Load flow and their transmission system usage as computed by WebNet Use software is given in Col 3. However in present method of computation, as their withdrawal LTA are different from their actual draws, to compute withdrawal PoC Rates in these DIC's Zone, withdrawal PoC Charges (Rs./Month) are divided by its LTA (MW) to compute Withdrawal PoC Rate (Rs. MW/Month), i.e. [(3)/(2)]. When these Withdrawal PoC rates are again multiplied by LTA (Col. 7) it will give same withdrawal PoC charges as computed by software. Thus, till this point, multiplication by LTA has no impact."

* As per above, Karnataka withdrawal PoC Charges (Rs. /Month) would have remained same irrespective of UPCL LTA was made effective or not.

- UPCL injection PoC Charges (Rs. /Month) is calculated by WebNet software as Injection from UPCL is considered in the base case.
- As UPCL LTA is yet to be made operational the cost computed by WebNet Software for usage of ISTS by UPCL is not considered for cost recovering of ISTS system. This leads to under recovering of Transmission charges to be paid for using ISTS system.
- For recovering entire transmission charges of ISTS, the DIC who are paying transmission charges as per Hybrid Methodology and Postage stamp method are also sharing the transmission of the assets whose charges are not recovered due to non-operationalization of LTA.

Recommendation of SRPC secretariat:

- Non-operationalization of UPCL LTA has led to under recovery of transmission charges to the extent of Injection charges payable by UPCL.
 - LTA needs to be operationalised with effect from 1.7.2011.
 - Transmission charges payable by UPCL for using ISTS system need to be paid by its beneficiaries in the ratio under which fixed charges are being paid.
 - As per the data available on NLDC website, injection charges payable by UPCL as per Hybrid Method is less than Rs.20,000/MW/Month.
 - Hence Slab rate for fixing UPCL injection PoC Slab rate, least slab rate of Southern Region could be considered for each applicable period. LTA quantum as granted to UPCL by CTU shall be considered.
 - Subsequently, the Commission vide notification dated 1.4.2015 had notified CERC (Sharing of Inter State Transmission Charges and Losses) (Third Amendment) Regulations, 2015 which is to come into force with effect from 1st May, 2015.
 - Therefore, the period of applicability could be from 1.7.2011 to 30.4.2015. This is the period from when LTA has become effective and to the date from which 3rd Amendment of Sharing of 1ST charges and losses gets applicable.
 - Post implementation of 3rd Amendment applicable regulation would be as follows :
 - "2.8.1.a. Methodology for calculation of PoC rates and billing of PoC charges
 - (i) PoC rates for billing towards LTA/MTOA shall be calculated only on Withdrawal nodes (as Withdrawal charges) and for generators who have Long Term Access to target region (as injection charges) corresponding to untied power. PoC rates shall not be calculated for ISGS with identified long term customers/ beneficiaries with whom PPA have been signed."
- * With effect from 1st July, 2011, RTDA also would be computed for UPCL, injection at Hassan with respect to LTA granted."

Analysis and Decisions:

17. We have heard the learned counsels and representatives of the parties. We have considered the pleadings of the parties, including reply filed on behalf of the respondents and the documents available on record. The following issues arise for our consideration:

- (1) Whether LTA for UPCL should be made effective? If yes, what should be date from which LTA should be effective?
- (2) Who should pay charges for LTA taken by UPCL?
- (3) Whether CTU has dealt with the case in accordance with applicable regulations?
- (4) Whether Central Electricity Regulatory Commission (Rates, Charges and term and conditions of Intervening Transmission Facilities) Regulations, 2010 would be applicable for recovery of the transmission charges of transmission segment from UPCL's Switchyard to Mysore sub-station via PGCIL Pooling station at Hassan?

The above issues have been dealt with as under:

Issue No. 1: Whether LTA for UPCL should be made effective? If yes, what should be date from which LTA should be effective?

18. Udupi Power Corporation Limited (UPCL) has set up a 1200 MW (2X600 MW) Mega Power Project based on the imported coal in Udupi District in the State of Karnataka. The capacity of the generating station was originally envisaged as 1015 MW which was subsequently enhanced to 1200 MW having two units of 600 MW each. Generation of power from the first and second units of the generating station of UPCL started on 11.11.2010 and on 19.8.2012 respectively. After augmentation of capacity from 1015 MW to 1200 MW, 90% of the augmented capacity of 185 MW was tied up with ESCOMs of Karnataka. UPCL entered into PPA on 29.9.2006 with PSPCL for supply of 10% of 1015 MW capacity. UPCL was granted LTA as per the provisions of 2004 Open Access Regulations and the transmission system associated with grant of LTA was finalized in 24th Standing Committee Meeting held on 18.6.2007 which included a dedicated transmission system from generation switchyard to the nearest ISTS point viz. 400/220 kV Hassan sub-station of PGCIL to be owned, operated and

maintained by UPCL and system strengthening in the form of Hassan-Mysore 400 kV D/C transmission line. According to UPCL, since PSPCL has not been able to evacuate power as it has not entered into TSA with KPTCL and PGCIL, remaining 10% is being absorbed by Karnataka. After enhancement of capacity from 1015 MW to 1200 MW, PSPCL was vide letter dated 25.3.2010 offered additional 18.5 MW. However, no response was received from PSPCL in this regard.

19. According to SRPC, in the 6th SRPC meeting held on 15.2.2008, Hassan-Mysore 400 kV D/C transmission line was approved as Regional Strengthening Scheme. In the 11th SRPC meeting held on 17.9.2009, it was brought to the notice that KPTCL was constructing 400 kV (Quad) D/C line from UPCL to Hassan sub-station and 220 kV D/C line to Kemar sub-station. In the said meeting dated 17.9.2009, UPCL was requested by KPTCL to sign BPTA with PGCIL for whole capacity of the project. SRPC suggested that Punjab and Karnataka might sign BPTA in proportion with their shares from the generating station for sharing of transmission charges. SRPC has submitted that in the 20th SRPC meeting held on 28.9.2012, the representative of APTRANSCO informed that Karnataka was paying only withdrawal charges. However, injection charges were being shared by other beneficiaries and Karnataka was using this regional line for evacuation of UPCL's power without payment of injection charges and other constituents were sharing the cost of the transmission line without deriving any benefit. SRPC has submitted that as per available records, CTU had never approached SRPC for resolution of dispute regarding non-signing of BPTA by Karnataka and Punjab. SRPC has stated that from 2007 to 2009, the issue was not taken up with the Commission as per the provisions of 2004 Open Access Regulations.

20. NLDC and SRLDC have submitted that originally the UPCL's generating station was envisaged to be directly connected to ISTS by a dedicated transmission line from UPCL to Hassan owned by UPCL. However, the line connecting the generating station to ISTS is now owned by KPTCL. NLDC and SRLDC have submitted that since the evacuation of the first generator was done through 220kV network of Karnataka till the line from UPCL to Hassan was constructed, UPCL is an embedded generator in the State of Karnataka. NLDC and SRLDC have submitted that details of LTA/MTOA furnished by CTU on monthly basis are forwarded to all RPCs by NLDC for preparation of Regional Transmission Account (RTA) and for consideration in next quarter. However, till date, CTU has not indicated any LTA quantum from UPCL. According to NLDC and SRLDC, issue was discussed in number of SRPC meetings and it emerged that Karnataka had LTA of 90% and rest 10% with Punjab was yet to be effective. Presently, SLDC, Karnataka is carrying out the scheduling of UPCL.

21. CTU has submitted that in 2009, when the generating station was under construction, there was provision for sharing of transmission charges in respect of 400/220 kV transformer and downstream 220 kV bays used to be shared by the local State entity where the 400/220 kV sub-station was located. Accordingly, KPTCL cited the reasons that immediate evacuation line belongs to KPTCL and the transmission charges for transformers at Hassan are also being borne by KPTCL and did not sign LTA Agreement and share any ISTS charges for the injection of power by Udupi. According to CTU, Punjab was also not coming forward for signing of long term access agreement to bear transmission charges. The matter was discussed in the Standing Committee in which it was decided that the issue needs to be discussed and resolved in

SRPC forum. However, it has not been resolved despite special TCC meetings held in this regard. In the 24th meeting of SRPC held on 15.3.2014, it was decided that the matter should be taken up with the Commission for resolution of dispute regarding LTA quantum. CTU has contended that as regards the question of cancellation of LTA by CTU due to non-signing of LTA Agreement by UPCL, cancellation would have resulted in usage of ISTS by UPCL without paying the applicable transmission charges. CTU has submitted that as per Regulation 35 of the 2004 Open Access Regulations, SRPC was the appropriate forum for resolution of disputes related to open access in inter-State transmission and the matter is already under the consideration of SRPC. Accordingly, pending the decision of SRPC on quantum of drawl corresponding to KPTCL and Punjab, and in the absence of signing of LTA agreement, the data regarding injection and drawal were not shared with Implementing Agency for computation of PoC charges. CTU has submitted that as per terms and conditions of BPTA signed between PGCIL and the beneficiaries, any transmission system approved for execution by PGCIL at SERB/SRPC forum, shall automatically become an integral part of the BPTA and the same was communicated to the beneficiaries of the Southern Region for approval in SRPC including Hassan-Mysore 400 kV D/C transmission line.

22. During the course of hearing, learned counsel for CTU submitted that since the LTA quantum from Udupi generating station has not been included in the PoC mechanism, both injection and withdrawal charges corresponding to Udupi is not being considered for computation of PoC charges resulting in higher uniform charges for all consumers which in effect is socializing the cost of transmission system used by UPCL. Learned counsel further submitted that the power from UPCL is being scheduled

regularly by SLDC, Karnataka. However, no transmission charges are being charged from the long term beneficiaries i.e. Karnataka and Punjab. He suggested that Punjab and Karnataka be directed to sign BPTA in proportion to their respective share from the project for sharing transmission charges. Learned counsel submitted that as per the SRPC affidavit dated 26.6.2014, the issue in the present petition was discussed regularly in the SRPC meeting. Accordingly pending the decision of SRPC, the LTA was not cancelled.

23. SRPC has submitted that as per the Commission's direction dated 12.2.2015, a meeting with PGCIL, PSPCL, PCKL and SRPC Secretariat was held on 31.3.2015 in SRPC, Bengaluru. In the said meeting, SRPC recommended that LTA needs to be operationalised with effect from 1.7.2011 and transmission charges payable by UPCL for using ISTS system need to be paid by its beneficiaries in the ratio under which fixed charges are being paid. SRPC has submitted that as per the data available on NLDC's website, injection charges payable by UPCL as per Hybrid Method is less than Rs 20,000 /MW/Month, therefore, slab rate for fixing UPCL injection PoC slab rate, least slab rate of Southern Region could be considered for each applicable period and LTA quantum as granted to UPCL by CTU shall be considered. SRPC has submitted that subsequently, the Commission notified the Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) (Third Amendment) Regulations, 2015 which came into force with effect from 1.5.2015. Therefore, the period of applicability could be from 1.7.2011 to 30.4.2015 and this is the period from which LTA has become effective till the date from which 3rd Amendment of Sharing of

ISTS charges and losses is applicable. With effect from 1.7.2011, RTDA would be computed for UPCL injection at Hassan with respect to LTA granted.

24. We have considered the submissions of the respondents. We have also perused the PPAs signed by UPCL with DISCOMs of Karnataka and PSEB on 26.12.2005 and 29.9.2006 respectively. The relevant extracts of the PPAs signed with DISCOMs of Karnataka and PSEB are extracted as under:

PPA signed with DISCOMs of Karnataka:

"Annexure-4

DESCRIPTION OF FACILITY AND SITE

The electric power will be delivered to the grid at 400 kV and 220 kV and for this purpose the Facility will have its own 400 kV and 220kV switchyards within the plant boundary. The switchyard will be outdoor type with one and half breaker scheme. Principal buyers shall provide one (1) 400 kV D/C line from the project switchyard connecting to Hassan for power evacuation. Principal Buyers shall also provide two (2) nos. 220 kV D/C line for interconnecting from the project switchyard connecting with the 220 kV switchyards of KPTCL at Kemar and Kavour.....

..... Principal Buyer shall provide a line up to the Plant and Company will provide necessary receiving sub-station, step down transformer, switchgear, etc. The startup power will be drawn from either Kemar or Kavour sub-station of KPTCL through 220 kV lines and switchyard to be considered as part of the plant....."

PPA signed with PSEB:

"4.9 Open Access and Wheeling Charges

The Buyer shall enter into appropriate agreement with KPTCL and PGCIL for evacuation and transmission of Power for which Seller will provide all necessary assistance. Buyer shall pay the transmission and Long Term Access charges to KPTCL/PGCIL as approved by the Commission."

25. The PPA entered into between UPCL and DISCOMs of Karnataka provides for construction of 400 kV D/C transmission line from the project switchyard connecting to Hassan for power evacuation and two (2) nos. 220 kV D/C transmission lines for inter-connecting the project switchyard with the 220 kV switchyards of KPTCL at Kemar and Kavour. The PPA with Karnataka does not envisage the requirement of any ISTS line for evacuation of power from UPCL. Therefore, KPTCL was right in constructing the 400

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kV D/C transmission line from the generating station to the Hassan sub-station as per the terms and conditions of the PPA signed in 2005. It is however seen that UPCL was granted LTA by CTU in June 2007 which consisted of transmission lines within the scope of the UPCL and the transmission lines to be executed by PGCIL as regional strengthening line. The transmission lines within the scope of UPCL were:

- (a) UPCL Switchyard-Hassan 400 kV quad D/C line
- (b) 1x315 MVA 400/220 kV transformer at UPCL Switchyard,
- (c) 220 kV D/C line from UPCL Switchyard to local sub-station at Kemar.

The transmission line within the scope of CTU is the Hassan-Mysore 400 kV D/C line. It is, therefore, seen that the transmission assets which were within the scope of UPCL as per the LTA were to be developed by KPTCL in terms of the PPA. The LTA discussions as well as the LTA granted by CTU has not captured the provision of PPA for construction of 400 kV D/C line from the generating station to Hassan by KPTCL due to which it appears that instead of UPCL developing the transmission assets, it is the KPTCL which developed the transmission assets from the UPCL Switchyard till Kemar and Kavour. The contention raised by CTU vide affidavit dated 21.7.2014 that "KPTCL chooses to construct the dedicated line as intra-State line" is not correct since this was provided for in the PPA signed in 2005.

26. As per our direction dated 12.2.2015, SRPC convened a meeting with PGCIL, PSPCL, PCKL along with SRPC. SRPC, vide its letter dated 15.4.2015 has placed on record summary of deliberations of the meeting. SRPC has made the following recommendations:

- Non-operationalization of UPCL LTA has led to under recovery of transmission charges to the extent of Injection charges payable by UPCL.
- LTA needs to be operationalized with effect from 1.7.2011.
- Transmission charges payable by UPCL for using ISTS system need to be paid by its beneficiaries in the ratio under which fixed charges are being paid.
- As per the data available on NLDC website, injection charges payable by UPCL as per Hybrid Method is less than Rs.20,000/MW/Month.
- Hence Slab rate for fixing UPCL injection PoC Slab rate, least slab rate of Southern Region could be considered for each applicable period. LTA quantum as granted to UPCL by CTU shall be considered.
- Subsequently, the Commission vide notification dated 1.4.2015 had notified CERC (Sharing of Inter State Transmission Charges and Losses) (Third Amendment) Regulations, 2015 which is to come into force with effect from 1st May, 2015.
- Therefore, the period of applicability could be from 1.7.2011 to 30.4.2015. This is the period from when LTA has become effective and to the date from which 3rd Amendment of Sharing of 1ST charges and losses gets applicable.
- Post implementation of 3rd Amendment applicableregulation would be as follows :
 - "2.8.1.a. Methodology for calculation of PoC rates and billing of PoC charges*
 - (i) PoC rates for billing towards LTA/MTOA shall be calculated only on Withdrawal nodes (as Withdrawal charges) and for generators who have Long Term Access to target region (as injection charges) corresponding to untied power. PoC rates shall not be calculated for ISGS with identified long term customers/ beneficiaries with whom PPA have been signed."*
- * With effect from 1st July, 2011, RTDA also would be computed for UPCL, injection at Hassan with respect to LTA granted."

27. We are in agreement with the recommendations of SRPC. In our view, the LTA of UPCL shall be operationalised with effect from COD of 400 kV Hassan-Mysore D/C transmission line i.e. from 1.7.2011 and shall be effective from the same date. LTA has been granted for 939 MW i.e. Karnataka 895 MW and Punjab 94 MW. 400 kV Hassan-Mysore line was commissioned on 1.7.2011. Therefore, payment of transmission charges for the 400 kV Hassan-Mysore line has to commence with effect from 1.7.2011.

Further, BPTA has not been signed so far towards LTA sought by Udupi. Despite the non-signing of BPTA, power is flowing on 400 kV Hassan-Mysore D/C transmission line. As submitted by UPCL in SRPC, 845 MW injection at Hassan has been **based** as per the load flow study of KPTCL. In other words, the ESCOMs of Karnataka have been drawing their shares of power as well as the share of Power of Punjab from Udupi through the 400 kV Hassan-Mysore D/C transmission line. In our view, even though ESCOMs of Karnataka and PSPCL have not signed the BPTA towards LTA sought by Udupi, since the Hassan-Mysore line has been commissioned on 1.7.2011. LTA is deemed to have been operationalized with effect from 1.7.2011.

Issue No. 2: Who should pay charges for LTA taken by UPCL?

28. SRPC has contended that LTA needs to be operationalized with effect from 1.7.2011 and transmission charges payable by UPCL for using ISTS system needs to be paid by its beneficiaries in the ratio under which fixed charges are being paid. SRPC has submitted that as per the data available on NLDC's website, injection charges payable by UPCL as per Hybrid Method is less than Rs.20,000 /MW/Month. Therefore, least slab rate of Southern Region could be considered for fixing UPCL injection PoC slab rate for each applicable period and LTA quantum as granted to UPCL by CTU shall be considered. SRPC has submitted that as per the Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) (Third Amendment) Regulations, 2015 which came into force with effect from 1.5.2015, the period of applicability could be from 1.7.2011 to 30.4.2015. This is the period from when LTA has become effective and to the date from which 3rd Amendment of Sharing

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Regulations are applicable. SRPC has submitted that with effect from 1.7.2011, RTDA also would be computed for UPCL.

29. Regulation 8 (6) of the Sharing Regulations provides 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."

As per the above provisions, 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 shares of capacity in such generating stations.

30. We have considered the submissions of the respondents. Since, KPTCL and PSPCL have signed PPA with UPCL, they are the Long Term customers of the inter-State generating station of UPCL. It is noted that UPCL had applied to CTU for grant of LTA for 1015 MW with 90% share of Karnataka and 10% share of Punjab. CTU granted LTA to UPCL for 939 MW in the month of June, 2007. However, PSPCL is not availing this power. UPCL has also entered into the PPA with KSEB for supply of 18.5 MW on short term basis on 9.4.2014 for period from 1.6.2014 to 31.5.2015. In our view, Karnataka as a long term customer has availed more than 90% power from UPCL. On the other hand, Punjab is not availing power from UPCL. Therefore, Karnataka is liable to pay the transmission charges for long term supply from UPCL's generating station towards LTA of entire 939 MW in terms of Regulation 8 (6) of the Sharing Regulations.

31. SRPC has illustrated in its submission that withdrawal PoC Charges (Rs./Month) of Karnataka would have remained same irrespective of whether UPCL's LTA is made effective or not. Under PoC mechanism, prior to Third Amendment of Sharing Regulations, the long term customer was required to pay withdrawal charges as well as injection charges of the generator. We are in agreement with contention of SRPC that Karnataka withdrawal PoC Charges (Rs./Month) may have approximately remained same irrespective of UPCL's LTA was made effective or not, therefore, Karnataka shall not be liable to pay any additional withdrawal charges towards operationalization of LTA for Udupi is liable to pay only the UPCL injection PoC Charges (Rs./Month) for the minimum injection slab rate for southern region for the application period from 1.7.2011 to 30.4.2015. After issuance of the Third Amendment of Sharing Regulations which came into effect from 1.5.2015, injection charges are not being calculated separately. Therefore, Karnataka would pay the withdrawal charges as per the provisions of the Sharing Regulations. In our view, whenever Punjab wishes to take power from UPCL generating station, it will make fresh application to CTU for grant of LTA. From the next quarter of issue of this order LTA for UDUPI shall be considered in PoC calculations. Karnataka should pay such charges within 6 months of issue of bill by CTU. The charges so collected from Karnataka shall be reimbursed back to DIC of ISTS in next month bill.

Issue No.3: Whether CTU has dealt with the case in accordance with applicable regulations?

32. As per the Commission's direction dated 23.9.2014, CTU has submitted that LTA was granted to UPCL under the provisions of provisions of 2004 Open Access Regulations. Regulation 9(ii) of the 2004 Open Access Regulations provides as under:

"(ii).....

Provided that the nodal agency shall issue necessary guidelines, procedure and application forms within 30 days of commencement of these regulations."

33. CTU has submitted that as per the above provisions, CTU published "Guidelines for Open Access by Long Term Open Access Customers." Under Para 8 of the these guidelines the following has been stated:

"We confirm that, the long term open access shall be effective from the date from which the open access has been permitted or the date on which the system strengthening identified through studies is in place, whichever is later, provided Bulk Power Transmission Agreement has been executed with CTU/ STU/ SEB/ other transmission licensees."

34. CTU has submitted that LTA was granted to the petitioner indicating the date of start of open access in accordance with the above provisions.

35. We have considered the submission of CTU. It is noted that the "Guidelines for Open Access by Long Term Open Access Customers" published by CTU under Regulation 9(ii) of Open Access Regulations, 2004 provides that the long term open access shall be effective either from the date from which the open access has been permitted or the date on which the system strengthening identified through studies is in place, whichever is later, or BPTA has been executed with CTU/ STU/ SEB/ other transmission licensees. The Guidelines mandates CTU to provide firm date to start the long term open access. CTU should have granted a firm date to commence LTA. We are of the view that CTU has not dealt with the instant case in accordance with Guidelines issued by it under Regulation 9 (ii) of the 2004 Open Access Regulations.

36. The representative of PGCIL during the hearing on 12.2.2015 informed that the Hassan-Mysore 400 kV D/C transmission line was constructed on the basis of LTA application made by UPCL. Perusal of the order dated 11.3.2013 in Petition No. 190/TT/2011 determining the transmission tariff of Hassan-Mysore 400 kV D/C transmission line reveals that the investment approval for the Hassan-Mysore 400 kV D/C line was accorded by the Board of Directors of PGCIL on 16.2.2009 and the line was commissioned on 1.7.2011. It is observed that the Hassan-Mysore 400 kV D/C transmission line was planned as Associated Transmission System of UPCL's generating station for evacuation of power to the beneficiaries. When UPCL made an application to CTU for grant of LTA, the BPTA was required to be signed either by UPCL or by its beneficiaries, namely KPTCL and PSPCL. We are of the view that PGCIL, which is also discharging the function of CTU, should have obtained investment approval and started construction of Hassan-Mysore 400 kV D/C transmission line after signing of BPTA/LTA by UPCL or by its beneficiaries. SRPC has submitted that CTU should have approached the Commission if Karnataka and PSPCL failed to sign the BPTA/TSA. CTU has submitted that it did not approach the CERC as matter was under consideration of the SRPC in terms of Regulation 35 of the 2004 Open Access Regulations. We are of the view that the Commission is not denuded of its power under Section 79 (1) (f) of the Act, if SRPC was considering the matter under Regulation 35 of the 2004 Open Access Regulations. In fact, CTU should have approached the Commission under Section 79 (1) (f) of the Act read with Regulation 32 of the Connectivity Regulations.

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Issue No. 4: Whether Central Electricity Regulatory Commission (Rates, Charges and term and conditions of Intervening Transmission Facilities) Regulations, 2010 would be applicable for recovery of the transmission charges of transmission segment from Hassan to Mysore sub-station?

37. Learned counsel for Power Company of Karnataka Limited (PCKL), during the hearings on 22.1.2015 and 12.2.2015 submitted that the generating station of UPCL is an embedded intra-State generator. Originally, the generating station of UPCL was envisaged to be directly connected to ISTS by a dedicated transmission line owned by UPCL, from UPCL's switchyard to Hassan sub-station of PGCIL. However, the transmission line connecting the generating station to ISTS i.e. from UPCL's switchyard to Hassan sub-station is now owned by KPTCL. Hassan-Mysore line has capital cost of approximately Rs.600 crore and Karnataka shall be paying approximately additional Rs.150 crore per year towards the LTA for marginal use of the line. Learned counsel submitted that currently the transmission charges for Hassan-Mysore line should be recovered as per the provisions of the Central Electricity Regulatory Commission (Rates, Charges and term and conditions of intervening transmission facilities) Regulations, 2010. Learned counsel submitted that the electricity from UPCL is evacuated using the State system i.e. 400 kV D/C UPCL-Hassan transmission line and entire electricity from the UPCL is being consumed by the distribution companies of Karnataka. Only marginal power is flowing through the ISTS i.e. 400 kV D/C Hassan-Mysore transmission line along with bay extension at Hassan and Mysore build under System Strengthening Scheme. Therefore, the transmission line segments from Hassan to Mysore sub-station is an intervening transmission facility. Learned counsel for PGCIL contended that as per the National Electricity Policy and Tariff Policy, there should be a process of consultation with the beneficiaries for the purpose of undertaking

transmission system planning. The transmission system planning needs be firmed up whether the transmission system requirement is proposed to be implemented as network expansion or regional system strengthening. He further submitted that after the consensus arrived in the meeting with the constituents of Southern Region, the transmission system related to UPCL was taken up for implementation.

38. According to SRPC, in the meeting held on 31.3.2015, SRPC informed that as per Section 2(36) of the Electricity Act, 2003 dealing with definition of Inter-State transmission System and Sections 35 and 36 of the Act, rates for use of intervening facilities of CTU by STU in accordance with the Central Electricity Regulatory Commission (Rates, Charges and term and conditions of Intervening Transmission Facilities) Regulations, 2010 are not applicable.

39. We have considered the rival contentions of the respondents. The scope and applicability of the Central Electricity Regulatory Commission (Rates, Charges and term and conditions of Intervening Transmission Facilities) Regulations, 2010 provides as under:

“3. Scope and Applicability:

(1) These regulations shall apply only where a contract path can be identified.

(2) These regulations shall apply where the intervening transmission facilities incidental to inter-State transmission owned or operated by a licensee, are used or proposed to be used by any trading licensee or distribution licensee for transmission of power through long-term access, medium-term open access or short-term open access, and where the contracting parties have failed to mutually agree on the rates and charges for the usage of such intervening transmission facilities as envisaged under the proviso to sub-section (1) of Section 36 of the Act.”

Further, Section 35 of the Electricity Act, 2003 defines the 'Intervening Facilities' as under:

"35. Intervening transmission facilities

The Appropriate Commission may, on an application by any licensee, by order require any other licensee owning or operating intervening transmission facilities to provide the use of such facilities to the extent of surplus capacity available with such licensee:

Provided that any dispute regarding the extent of surplus capacity available with the licensee shall be adjudicated upon by the Appropriate Commission."

40. The Central Electricity Regulatory Commission (Rates, Charges and term and conditions of Intervening Transmission Facilities) Regulations, 2010 clearly provides that these regulations shall apply only where a contract path can be identified and where the intervening transmission facilities incidental to inter-State transmission owned or operated by a licensee are used or proposed to be used. In the instant case, in the 24th Standing Committee of constituents of Southern Region and 6th SRPC meeting held on 18.6.2007 and 15.2.2008 respectively, the Hassan-Mysore 400 kV D/C transmission line was approved as regional strengthening scheme. Therefore, we are of the view that the Central Electricity Regulatory Commission (Rates, Charges and term and conditions of Intervening Transmission Facilities) Regulations, 2010 is not applicable in the present case.

Summary of our Decision:

41. In view of the above, we direct as under:

- (a) The LTA granted by CTU to ESCOMs of Karnataka and PSPCL shall be deemed to be operationalized with effect from 1.7.2011 when the 400 kV Hassan-Mysore D/C transmission line was put into commercial operation.

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- (b) Since Karnataka ESCOMs were drawing power from UPCL corresponding to their shares as well as share of PSPCL, they shall be liable to pay the PoC injection charges for the LTA quantum granted to both Karnataka and PSPCL and PoC drawal charges for the LTA quantum granted to PSPCL.
- (c) The PoC slab rate payable for UPCL shall be least injection slab rate for the Southern Region applicable for the relevant application period. They will apply for the period from 1.7.2011 till 30.4.2015.
- (d) With effect from 1.5.2015, the provisions of Regulation 2.8.1(a) of the Sharing Regulations as amended shall be applicable.
- (e) PSPCL has temporarily surrendered the power to UPCL for period of three years. There is also untied capacity of 18.5 MW at the disposal of UPCL. Therefore, the buyer of the power shall be liable to pay the PoC charges as per Regulation. In case 18.5 MW is not tied up, the PoC charges, as per Regulations, shall be borne by UPCL.
- (f) PGCIL should have approached the Commission for appropriate direction in the event of failure of Karnataka ESCOMs and PSPCL to sign the TSA since the efforts of SRPC was not yielding result. The Commission is not denuded of its power to adjudicate the dispute if the matter is being handled by SRPC under Regulation 35 of the Open Access Regulations to find an amicable solution.

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(g) 400 kV Hassan-Mysore D/C transmission line cannot be considered as an intervening transmission facility as it was approved by the constituents of Southern Region to be developed as ISTS. Accordingly, Central Electricity Regulatory Commission (Rates, Charges and term and conditions of Intervening Transmission Facilities) Regulations, 2010 shall not be applicable in this case.

42. Petition No. 10/SM/2014 is disposed of in terms of the above.



(A.S. Bakshi)
Member



(A.K. Singhal)
Member



(Gireesh B. Pradhan)
Chairperson