

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

**Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member**

Date: 29th of June 2016

Petition No. 135/MP/2014

In the matter of

Petition under Section 79 (1) (c) of the Electricity Act, 2003 and Regulation 32 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-Term and medium term open access in inter-State transmission and related matters) Regulations, 2009

And

In the matter of

NTPC Ltd.
NTPC Bhawan, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi-110 003

...Petitioner

Vs

1. Power Grid Corporation of India Ltd.
B-9, Qutab Institutional Area,
Katwaria Sarai, New Delhi-110016

2. Haryana VidyutPrasaran Nigam Limited
Shakti Bhawan,
Sectgor-6, Panchkula-134 109
Haryana

3. GRIDCO Limited
Janpath, Bhubaneswar-751 022
Odisha

...Respondents

Parties Present:

Shri M.G.Ramachandran, Advocate, NTPC
Ms. Anushree Bardhan, Advocate, NTPC
Shri A.K.Bishnoi, NTPC
Shri S.K.Jain, NTPC
Shri A.K.Srivastava, NTPC
Ms. Supriya Singh, NRLDC
Ms. Suparana Srivastava, Advocate, PGCIL
Shri Ashok Rajan, Advocate, HVPNL
Shri Anand K.Ganesan, Advocate, HVPNL
Ms. Swapna Seshadri, Advocate, HVPNL

ORDER

This petition has been filed by NTPC Limited under Section 79 (1) (c) of the Electricity Act, 2003 (Act) read with Regulation 32 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-Term and medium term open access in inter-State transmission and related matters) Regulations, 2009 (Connectivity Regulations) seeking declaration that:

(a) The Connectivity and the Long Term Open Access secured by the Petitioner from Haryana Vidyut Prasaran Nigam Limited (HVPNL) shall be deemed to be the Connectivity and Long Term Open Access granted by Central Transmission Utility as per the provisions of the Connectivity Regulations;

(b) The petitioner is entitled to the exemption from the payment of transmission charges and transmission losses as provided in Regulation 7 (u) and (v) of the Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010 as amended from time to time (Sharing Regulations);

(c) The Solar Power Project is not required to obtain any No Objection Certificate from the State Load Dispatch Centre or the State Utilities for grant of Open Access on the inter State Transmission System and that CTU shall grant the Open Access on the said lines, subject to the capacity being available without any reference to the State Utilities.

Brief Facts of the Case

2. NTPC has set up a 431.6 MW Fardiabad Gas Power Station (Faridabad GPS) at Faridabad. The power generated from the generating station is supplied to the State of Haryana through the 220 kV D/C Faridabad Samaypur transmission line owned, operated and maintained by CTU. Since Faridabad GPS is supplying power only to the State of Haryana, the control area jurisdiction has been vested in the HVPNL which is discharging the function of SLDC in the State. This Commission through an amendment to the Connectivity Regulations provided that any renewable energy project located in the premises of a thermal generating station shall be granted connectivity and LTA to CTU if it is utilizing the electrical system of the generating station for evacuation of power. Accordingly, NTPC proposed to set up a 5 MW Solar Power Project (Solar Project) at Faridabad GPS. NTPC entered into a PPA with GRIDCO on 26.4.2011 for supply of entire 5 MW power from the Solar Project. The Solar Project was commissioned and declared under commercial operation on 31.3.2014 and has been supplying power to GRIDCO.

3. On 25.6.2013, the petitioner made an application to CTU for grant of the connectivity and LTA for 5 MW power from the project. CTU sought NOC from HVPNL in

accordance with Connectivity Regulations for grant of open access. The issue of grant of connectivity/LTA was discussed on 31.8.2013, 13.9.2013 and 23.12.2013 in the 32nd Standing Committee meeting, NRPC meeting and 33rd Standing Committee meeting respectively. In the said meetings, HVPNL insisted that the petitioner should obtain NOC from HVPNL since Faridabad GPS is under the control area jurisdiction of Haryana, SLDC. On 3.2.2014, PGCIL requested the petitioner to submit NOC from SLDC, Haryana for grant of LTA. Subsequently, PGCIL vide its letter dated 25.3.2014 requested NTPC to take up the matter with SLDC, Haryana for grant of NOC. HVPNL vide its letter dated 20.3.2014 asked the petitioner to submit the required connectivity and LTOA application along with fees as prescribed by the Haryana Electricity Regulatory Commission (HERC) for grant of concurrence to PGCIL. Accordingly, on 27.3.2014 and 28.3.2014, the petitioner entered into Connectivity Agreement and LTA Agreement respectively with HVPNL. On 28.3.2014, HVPNL granted standing clearance/NOC with the condition that the transmission charges and losses would be subject to approval of HERC. HVPNL vide its letter dated 17.6.2014 informed the petitioner to deposit the transmission charges with late payment charge as per LTA agreement. Aggrieved by the decision of HVPNL, the petitioner has filed the present petition.

Submission of the petitioner

4. The petitioner has submitted that certain important issues regarding grant of LTA, sharing of transmission charges and losses as well as the authority to exercise control over the scheduling and dispatch with regard to the solar power projects established with connectivity to ISTS are involved in the present petition. The petitioner

has submitted that in terms of the provisions of the Electricity Act, 2003, the regulation of inter-State transmission network is under the jurisdiction of the Commission. Neither the State Commission nor the State utilities can exercise any authority overriding the regulatory jurisdiction of this Commission.

5. The Commission directed the petitioner to file minutes of all LTA/RPC meetings in which the issue of grant of NOC was discussed which were filed by the petitioner vide affidavit dated 12.9.2014. The discussions and deliberations in these meetings are discussed briefly as under:

(a) In the LTA meeting and 32nd Standing Committee meeting held on 27.8.2013 and 31.8.2013 respectively, POSOCO informed that since the entire power from Faridabad GPS is allocated to Haryana and is being scheduled to Haryana, the proposed solar project would fall within the purview of SLDC, Haryana. In the said meetings, NTPC stated that since Faridabad GPS is an ISGS and transmission lines connected with it are owned and controlled by CTU, scheduling should be carried out by NRLDC. However, NLDC and HVPNL opined that since the project is embedded in the Haryana transmission system, its scheduling shall be done by SLDC, Haryana.

(b) In the 26th TCC and 29th NRPC meetings held on 12/13.9.2013, PGCIL submitted that the transmission lines emanating from Faridabad are not included in PoC charges and the scheduling would be done as per applicable regulations.

(c) In the Connectivity/LTA meeting held on 23.12.2013 along with 33rd Standing Committee meeting of Power System Planning of Northern Region, CTU informed that since the transmission lines are ISTS lines, connectivity to the project can be granted by CTU. Since Faridabad GPS which is the lead generator for Faridabad Solar is an intra-State entity and scheduling/metering, etc. are done by the State SLDC, connection agreement shall be signed in coordination with HVPNL to address the issue of communication, metering etc. All constituents including HVPNL agreed to the proposal.

5. Replies to the petition have been filed by the Northern Regional Load Despatch Centre, Power Grid Corporation of India Ltd. and Haryana Vidyut Prasaran Nigam Limited. The parties have also filed their written submissions.

6. Northern Regional Load Dispatch Centre vide its affidavit dated 12.9.2014 has submitted as under:

(a) The issue of grant of connectivity and LTA to the petitioner was discussed in various standing committee meetings and NRPC meetings wherein it was decided that the petitioner is required to obtain NOC from STU.

(b) CTU has granted LTA in ISTS from Haryana boundary to Odisha boundary. Based on the LTA, the project was embedded with Haryana system and scheduling, accounting and metering of Faridabad GPS is being done by SLDC, Haryana.

(c) As per the provisions of Sharing Regulations, no transmission charges or

losses are being levied for inter-State scheduling of the above inter-State transaction from State embedded solar generators including the petitioner's project.

(d) 220 kV D/C Faridabad-Samaypur and Faridabad-Palla transmission lines connected to the grid through Faridabad GPS are owned, controlled and operated by PGCIL. However, these transmission lines are considered as within the Haryana State boundary for the purpose of metering and accounting. Therefore, the above two lines are State lines for all practical purposes.

(e) Since the above lines are not included in the computation of PoC charges and entire transmission charges for these lines are paid by Haryana Utilities, these lines are not part of ISTS.

(f) Since Faridabad GPS would have to act as Principal Generator for the connectivity of the project to the grid, the jurisdiction of the SLDC, Haryana on the embedded generator would be the same as that of Principal Generator.

7. PGCIL in its reply dated 24.9.2014 has submitted as under:

(a) The petitioner made an application on 25.6.2013 to CTU for grant of LTA for 5 MW Solar Project with effect from 1.12.2013 till 1.12.2038. The issue of grant of Connectivity/LTA was discussed in various meetings. In the Connectivity/LTA meeting held on 23.12.2013, the following was agreed for grant connectivity to 5

MW Solar PV Plant of NTPC at Faridabad through existing transmission system
subject to:

- (i) Under ISTS, 2 nos. of 220 kV D/C lines, one line towards 220 kV Samaypur sub-station of BBMB and other line towards 220 kV Palla sub-station of HVPNL is available from Faridabad 220 kV switchyard.
- (ii) Presently metering and communication is under the purview of Haryana as lead generator is under the control area of Haryana;
- (iii) No new equipment is to be installed by CTU;
- (iv) Additional meters to be installed by Haryana;
- (v) Connection agreement is to be signed in co-ordination with HVPNL;
- (vi) Connectivity is subject to all applicable conditions.

(b) In the said meeting dated 23.12.2013, the following was discussed and agreed with regard to LTA:

- (i) Grant of LTA shall be subject to grant of Connectivity;
- (ii) Submission of NOC from State utility as per the Detailed Procedure approved under Connectivity Regulations.
- (iii) Signing of Long Term Access Agreement and Transmission Service Agreement for payment of the applicable transmission charges by GRIDCO in case of firm PPA with GRIDCO is available or by NTPC in case PPA is not available.

(c) The available transmission system can handle 5 MW Solar Project.

(d) CTU has never informed about signing of connection agreement of the petitioner with HVPNL and the issue of signing of LTA agreement is between the petitioner and HVPNL.

8. Haryana Vidyut Prasaran Nigam Limited (HVPNL) vide its reply dated 10.10.2014 has submitted as under:

(a) On 5.8.1996, a meeting was held between the erstwhile HSEB, PGCIL and NTPC with regard to execution of the associated transmission system for the gas based generating station set up by NTPC at Faridabad (430MW) in which HSEB had agreed to pay PGCIL the total transmission charges for the entire transmission evacuation system as the generating station was set up exclusively for supply of power to the State of Haryana. Thereafter, it was decided that PGCIL would execute the following transmission system for evacuation of power from the Faridabad GPS:-

- (i) 220 kV switchyard of Faridabad GPP
- (ii) 220 kV D/C Faridabad GPP-Samaypur line
- (iii) Two 220 kV bays at Samaypur for the above line
- (iv) 220 kV D/C Faridabad GPP-Palla line

(b) With regard to the transmission of power from the generating stations in Bhakra and Beas River basins, a BPTA dated 2.3.2000 was entered into between HVPNL and PGCIL. As on date, the charges for the above transmission system have been exclusively paid by the Haryana Utilities. Ministry of Power vide its

letter dated 31.8.2000, decided to transfer the ownership of control of the switchyard from PGCIL to NTPC for better management. This decision was across the board and the ownership of several switchyard set up by PGCIL was shifted to NTPC.

- (c) The tariff for 430 MW Faridabad GPS is determined by the Commission and the entire tariff of the generating station as well as the transmission asset is being paid exclusively by the Haryana utilities. Even after coming into force of the Sharing Regulations with effect from 1.7.2011, the transmission assets are not being pooled for determination of PoC charges and the transmission tariff is being paid by the Haryana utilities.
- (d) The petitioner's 5 MW Solar Power Project is not situated in the premises of the existing Faridabad GPS. However, it is situated at Jajru village at a distance of 12 km from the existing Faridabad GPS at Mujheri village and its connectivity, open access and scheduling is to be carried out by SLDC, Haryana. The petitioner's 5 MW Solar Power Project is a part of the intra-State transmission system and the metering and energy accounting is being carried out by HVPNL and not by PGCIL or NRLDC.
- (e) The petitioner has filed a single line diagram of the evacuation of power from the Solar Power Project. However, the petitioner has not placed the factual position. The 220 kV D/C Faridabad-Samaypur and Faridabad-Palla transmission lines have been constructed by PGCIL exclusively for HVPNL for evacuation of power from FGPGS whose entire share is allocated to Haryana and entire transmission

charges of these lines are being paid by the Haryana Utilities. The maintenance of these transmission lines is being carried out by Haryana through PGCIL as a contractor. Since no inter-State power is flowing on these transmission lines, the contention of the petitioner that these transmission lines are ISTS lines is not correct.

9. PGCIL in its written submission dated 5.12.2014 has submitted as under:

(a) As per Section 2 (36) (iii) of the Act, 'Inter State Transmission System' includes the transmission of electricity within the territory of a State on a system built, owned, operated, maintained or controlled by CTU. The petitioner's contention is that by virtue of the said provisions, connectivity and open access for transmission of power from the Solar Project through CTU lines is required to be granted by CTU.

(b) As per Section 30 of the Act, the State Commission is required to facilitate and promote transmission, wheeling or inter-connection arrangements within its territorial jurisdiction for the transmission and supply of electricity by economical and efficient utilization of the electricity. Section 32 (2)(a) entrusts the responsibility to SLDC for optimum scheduling and dispatch of electricity within the State in accordance with the contracts entered into with the licensees or the generating companies operating in that State. The contemplation again is the flow of electricity accruing within the State based upon the existing contractual arrangements with the licensees or generating companies. This scheme of power flow within a State is reiterated in the

Connectivity Regulations wherein an "intra-State entity" in the context of seeking connectivity and open access, has been defined as a person whose metering and accounting are done by SLDC or by any other authorized State utility. It emerges that so long as the power flow remains confined within the territories of a State, such flow is to be regulated for its metering, scheduling and energy accounting by the SLDC within the regulatory purview of the State Commission.

- (c) Regulation 8 of Connectivity Regulations provides that the RE generating station developed by the existing generating station can seek connectivity only if the existing generating station agrees to act as a "Principal Generator" and commits through a written agreement to undertake all operations and commercial responsibilities for RE generating station. It also provides that the connectivity is to be sought through the electrical system of the existing generating station.
- (d) Since the entire power generated from the Principal Generator is being transmitted within the State of Haryana, its scheduling, dispatch and metering is being done by SLDC, Haryana. Therefore, as per the provisions of Connectivity Regulations, the operational control over flow of power is under SLDC, Haryana.
- (e) NRLDC in its reply dated 12.9.2014 has confirmed the arrangement where under the 220 kV D/C Faridabad-Samaypur and Faridabad-Palla transmission lines of CTU have not been considered as part of ISTS even before the Sharing Regulations came into force.

(f) The petitioner, being fully aware that the 220 kV D/C Faridabad-Samaypur and Faridabad-Palla transmission lines are not part of PoC regime and having accepted the scheduling, metering and accounting for its Principal Generator to be under the purview of SLDC, Haryana /utilities, made an application on 27.3.2014 to CTU for grant of connectivity for evacuation of power from its RE project and use of the "HVPNL Transmission System" to transmit electricity from the RE generating station as per the provisions of the Haryana Electricity Regulatory Commission (Terms and Condition of Connectivity and Open Access) Regulations, 2012.

(g) On 28.3.2014, the petitioner entered into a LTA Agreement with HVPNL wherein it has categorically agreed and undertaken with HVNPL that it would share and pay all transmission charges in terms of HERC's Regulations.

10. HVPNL in its written submission dated 15.12.2014 has submitted as under:

(a) The evacuation facility created by PGCIL for Faridabad GPS is dedicated to the State of Haryana and the same has not been included under the scope of Sharing Regulations.

(b) The Commission vide order dated 2.6.2011 had taken a conscious view that the transmission lines, which are owned and controlled by PGCIL but are dedicated to supply electricity from a generating station to one particular State for consumption within the State, shall not be included in PoC mechanism. The said order dated 2.6.2011 specifically refers to the transmission lines in question.

When the said transmission lines are not included at all for the purposes of the Sharing Regulations, the question of the petitioner claiming an exemption under the provisions of Sharing Regulations does not apply.

(c) Since entire electricity is being procured by Haryana from Faridabad GPS at the bus-bar of the generating station, the total charges are paid for by Haryana utilities. However, when the petitioner seeks to use the line to supply electricity to third party, the transmission charges are to be paid for use of such lines.

(d) As per the provisions of Connectivity Regulations, the petitioner is an intra-State entity. Therefore, the contention of the petitioner that the NoC from SLDC, Haryana for grant of Open Access was not required is misplaced.

(e) In terms of fourth proviso to Regulation 10(1) of the Connectivity Regulations, when an intra-state entity applies for open access, the concurrence of SLDC is required to be obtained and submitted along with the application for LTA.

11. The petitioner in its written submission dated 25.2.2015 has submitted as under:

(a) NTPC signed the agreement after making various efforts. It is a known fact that power from Faridabad Solar Project can be evacuated to Odisha through Faridabad-Samaypur transmission line of PGCIL which in turn is connected to BBMB system. Effectively, the entire evacuation system from Faridabad to Odisha is part of ISTS system. In light of the above facts, PGCIL should clarify as to why CTU vide letter dated 25.3.2014 partly granted LTA only for the ISTS

portion and which portion of the evacuation system is not part of the ISTS system.

- (b) PGCIL and NRLDC ought to have facilitated the evacuation of the solar power from the Faridabad GPS without any need to ask for any No Objection for Haryana Transmission Utility. This was because no part of the transmission system of the Haryana Transmission Utility was proposed to be used by NTPC.
- (c) As per the minutes of meeting for Connectivity/LTA with NR constituents held on 23.12.2013, Haryana Transmission Utility agreed to grant NOC. However, when NTPC sought such NOC from Haryana Transmission Utility, the same was denied. On the contrary, HVPNL vide letter dated 20.3.2014 directed NTPC to seek connectivity and LTA from HVPNL failing which Faridabad Solar Project would not be despatched.
- (d) Haryana Transmission Utility insisted on NTPC for signing the connectivity agreement and Long Term Access agreement. Accordingly, NTPC entered into the Connectivity Agreement and LTA Agreement on 27.3.2014 and 28.3.2014 respectively with HVPNL and obtained NOC for connectivity on behalf of GRIDCO.
- (e) NTPC made an application for grant of open access based on the authorization given by GRIDCO. Similar application was made by NTPC in other cases in which CTU granted Open Access. Therefore, there is no reason for

differentiating NTPC for application made under due authorization from GRIDCO in the present case.

Analysis and Decision:

12. We have heard the learned counsel for the parties and examined the material on record. Based on the submissions, the following issues arise for our consideration:-

- (1) Whether the transmission lines connecting Faridabad Gas Power Generating Station to Palla and Samaypur are ISTS lines or State lines?**
- (2) Whether the transmission charges and losses should be payable in respect of generation from 5 MW Solar Plant?**
- (3) Whether condition of seeking connectivity to existing connection point with ISTS through electrical system of generating station in terms of Regulation 2(1)(b)(i)(e) of the Connectivity Regulations is satisfied in the present case?**
- (4) Whether SLDC, Haryana was correct in insisting that the petitioner should seek the LTA and connectivity from the STU as per HERC Regulations.**
- (5) What should be the treatment of Connectivity and Long Term Open Access Agreement entered into by the petitioner with HVPNL?**

The above issues have been dealt with as under:

Issue No. 1: Whether the transmission lines connecting Faridabad Gas Power Station to Palla and Samaypur are ISTS lines or State lines?

13. The petitioner has submitted that the transmission system being used for transfer/evacuation of power from the Faridabad GPS is owned, operated and maintained by CTU and is incidental to the transfer of power to Odisha which falls within the purview of Section 2 (36) of the Act. The petitioner has submitted that in the absence of any provision in the Act, there cannot be any question of treating such a system as intra-State system merely because the scheduling and dispatch control has

been given to SLDC, Haryana. HVPNL has submitted that the petitioner is using transmission system of HVPNL to transmit power from the Faridabad Solar Power Plant to GRIDCO through 33/220 kV transformer at 220 kV existing Faridabad Gas Power Station switchyard through an independent bay and transformer for injection of power. HVPNL has submitted that the petitioner has proceeded on the basic premise that the transmission line being used for evacuation of power from Faridabad GPS is a transmission system owned, controlled and operated by CTU. However, the petitioner has overlooked that the 220 kV D/C Faridabad-Samaypur lines and Faridabad-Palla transmission lines connecting 220 kV Palla sub-station is owned, operated and maintained by BBMB in which Haryana is a partner State and for all intent and purposes, Haryana system is being used for evacuation of power from Faridabad GPS and therefore, power from 5 MW Solar Project cannot flow without using Haryana network.

14. The petitioner has submitted that power from Faridabad Solar Project can be evacuated to Odisha through Faridabad-Samaypur transmission line of PGCIL, which in turn is connected to BBMB system. The petitioner has submitted that as per Regulation 1.3 of the Grid Code, transmission system of BBMB is a deemed ISTS system from which power can be evacuated through ISTS system to Odisha. Therefore, the entire evacuation system from Faridabad to Odisha is a part of the ISTS.

15. We have considered the submissions of the petitioner and the respondents. Section 2(36) of the Electricity Act, 2003 defines the inter-State Transmission System (ISTS) 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.”

As per the above provisions, ISTS includes the transmission of electricity within the territory of State on a system built, owned, operated, maintained or controlled by a CTU. It is noted that electricity from the Solar Project is proposed to be evacuated through 220 kV D/C Faridabad-Samaypur and Faridabad-Palla transmission lines emanating from Faridabad GPS and these transmission lines are owned, operated and maintained by PGCIL. Therefore, these transmission lines are ISTS lines in terms of Section 2(36) (iii) of the Act. Merely because these transmission lines are utilized to supply power within the State cannot render it an intra-State transmission line. Such a construction will do violence to the provisions of section 2(36)(iii) of the Act. Further, HVPNL has submitted that evacuation of power to Odisha has to use the 220 kV D/C Faridabad-Samaypur and Faridabad-Palla transmission lines which are connected to 220 kV Palla sub-station which is owned, operated and maintained by BBMB in which Haryana as a member State has share. In this connection, it is clarified that the Hon`ble Appellate Tribunal for Electricity in its judgment dated 14.12.2012 in Appeal No. 183 of 2011 has clearly held that BBMB lines and sub-stations form part of ISTS. Relevant portion of the judgment is extracted as under:

“22. It is thus clear without any shadow of doubt that (a) the surplus capacity of the transmission lines are utilized for the transmission of power of the Central Public Sector Utilities, (b) the BBMB's transmission system is recognised as Inter-State Transmission System by the Indian Electricity Grid Code, (c) the tariff for the BBMB transmission system has to be included and calculated in the YTC recovery under the regulations as mentioned above, (d) IEGC applies to all entities including users and consumers of electricity, and (e) in the circumstance the Central Electricity Regulatory Commission is the only authority and has exclusive jurisdiction with regard to regulation of inter-state transmission of electricity and determination of tariff for inter-state transmission of electricity. The BBMB admits that it is in a position to give the details of O&M expenditure for transmission system as per the Central Electricity Regulatory Commission norms as well as interest on working capital on the prescribed formats and that the Commission can take the depreciated value of the BBMB's transmission system in the books of the participating States as the capital value and these can be taken for determination of transmission charges relating to the non-ISTS lines. It is, of course, submitted that considering the nature of generation project, the projects managed by the BBMB are essentially irrigation project, generation being incidental thereto. There is no difficulty in saying that the BBMB is a deemed transmission licensee. The argument of learned counsel for the appellant that the BBMB is an agent of the participating Govt. is in the circumstances difficult to accept. The BBMB cannot be regarded to be a substitute for the Central Electricity Regulatory Commission as it is a creature of the Central Govt. by and under a statute to serve certain purposes including generation, distribution and transmission of power. The operation and maintenance expenses at least so far as the transmission chapter is concerned, has to come under the scrutiny of the Central Electricity Regulatory Commission. **Being it an inter-state transmission system, none of the State Commissions concerned, nor any of the participating States has any supervisory jurisdiction over the BBMB.** In fact, in response to the BBMB's letter dated 09.04.2011, the Power System Operation Corporation Ltd., asked the BBMB to approach the Central Commission to have the transmission tariff determined. With reference to section 2 (16) and section 10 of the Act, 2003 it has been contended by the BBMB that its lines are akin to dedicated transmission line. In the context of what has surfaced above, it is difficult to say now that the lines of the BBMB are really the dedicated transmission lines. The lines are in fact used for conveyance of power from one State to another for the sake of other utilities.....”

In view of the above decision, the transmission lines and sub-station of the BBMB are ISTS lines. The Solar Project of the petitioner is connected to the grid through the transmission system of CTU and BBMB which are ISTS lines. Therefore, the contention of HVPNL that the Solar Project of the petitioner is connected through the intra-State lines does not have merit and is accordingly rejected.

Issue No. 2: Whether the transmission charges and losses as per the regulations of the Haryana Commission should be payable in respect of generation from 5 MW Solar Project?

16. HVPNL has contended that the transmission lines of CTU connected the Faridabad GPS are not included for the purpose of computation of Point of Connection (PoC) charges under the Sharing Regulations since HVPNL is carrying out the scheduling and energy accounting of these lines. Therefore, the transmission charges and losses as per HERC Regulations should be paid for use of these lines. PGCIL in its written submission dated 5.12.2014 has submitted that as per the provisions of LTA Agreement dated 28.3.2014 entered between the petitioner and HVPNL, the petitioner is liable to pay all transmission charges as per HERC Regulations. CTU has contended that as per unequivocal contractual commitment on part of the petitioner, no question arises for the petitioner to rescind the agreement and claim not only connectivity and LTA with CTU but also claim exemption from payment of transmission charges and losses. CTU has submitted that there has been no coercion as alleged by the petitioner in signing the Connectivity and LTA Agreements with HVPNL. However, the petitioner has always been at liberty to seek remedy from this Commission for such alleged coercion. We have considered the submission of the parties. The decision for not including the transmission charges of the transmission assets built, owned and operated by CTU which are serving only one State has been discussed in the Commission's order in L-1/44/2010-CERC dated 2.6.2011 issued for removal of difficulty for operationalization of the Sharing Regulations. The relevant portion of the said order is extracted as under:

"We have examined the suggestion of the CTU. Though the definition of "Inter-State Transmission System" in Section 2(36)(iii) of the Electricity Act, 2003 includes "the

transmission of electricity within the territory of a State on a system built, owned, operated, maintained or controlled by Central Transmission Utility". The tariff of such lines owned by Powergrid for evacuation of power from a power station dedicated to any particular state is presently being borne only by the State concerned. These transmission lines are akin to the state lines except that it is owned, controlled and operated by Powergrid. Since the transmission charges of these lines are not shared by any other State, we are of the view that the existing arrangement should continue under the Sharing Regulations also."

17. The above decision of the Commission was in the context of the issue whether the transmission lines of CTU exclusively used for carrying the power within a State should be included for computation under PoC mechanism or not. In the said order, the Commission decided that these lines are akin to State lines and therefore, the existing arrangement should continue. The arrangement was a working solution for sharing of transmission charges of these lines. However, the said decision does not render the transmission lines built, owned and operated by CTU as intra-State lines. These lines continue to be inter-State transmission systems in terms of section 2(36)(iii) of the Act. Further, for operational purposes, the control area jurisdiction has been vested in the Haryana SLDC. The transmission charges and losses determined by this Commission are applicable to these lines. Merely because Haryana Utilities are paying the transmission charges and losses for these lines being the sole beneficiaries of the Faridabad GPS does not convert the transmission lines into intra-State lines. Therefore, the transmission charges and losses determined by the Haryana Electricity Regulatory Commission shall not be applicable in this case. Evacuation of power from the Solar Project of the petitioner to Odisha shall be through the 220 kV D/C Faridabad-Samaypur and Faridabad-Palla transmission lines which are connected to 220 kV Palla sub-station owned, operated and maintained by BBMB. As already discussed, the sub-station of BBMB forms part of the inter-State transmission system. Therefore, the petitioner is not

using any part of the intra-State transmission system for supply of power from the Solar Project to Odisha. That being the case, only the transmission charges for ISTS shall be applicable. It is pertinent to mention that in terms of Regulation 7 (1) (u) and (v) of the Sharing Regulations, transmission charges and losses are not applicable for use of ISTS network by the solar generating plants. Therefore, the petitioner's Solar Project is exempted from payment of transmission charges and losses in terms of Regulation 7 (1) (u) and (v) of the Sharing Regulations.

Issue No. 3: Whether condition of seeking connectivity to existing connection point with ISTS through electrical system of generating station in terms of Regulation 2(1)(b)(i)(e) of the Connectivity Regulations is satisfied in the present case?

17. HVPNL in its written submission has submitted that the petitioner's 5 MW solar project does not qualify for connectivity in terms of Regulation 2(1)(b)(i)(e) of the Connectivity Regulations as it is not situated in the premises of Faridabad GPS and is situated in Jajru village at a distance of 12 km from the existing location of Faridabad GPS at Mujheri village. According to HVPNL, the requirement of Regulation 2(1)(b)(i)(e) of the Connectivity Regulations is "connectivity to the existing connection point with inter-State transmission system of the generating station". This condition is not being fulfilled by the petitioner. If the connectivity is not sought through the electrical system of Faridabad GPS, there is question of the threshold criteria of the applicant being satisfied by NTPC in the first place. Therefore, the petitioner cannot claim any further application of the dispensation provided by the Commission. CTU has submitted that as per Regulation 8 of Connectivity Regulations, RE generating station developed by the existing generating station can seek connectivity, if the existing generating station agrees to act as a "Principal Generator" and

commits through a written agreement to undertake all operational and commercial responsibilities for RE generating station. It also provides that the connectivity is to be sought through the electrical system of the existing generating station.

18. The petitioner in its written submission dated 25.2.2015 has submitted that the site at which the Solar Project has been situated is a part of the land initially acquired for Faridabad GPS and is therefore, a part of the existing generating station. The petitioner has further submitted that there are several activities situated on separate lands at a distance which form a part of the generating station, namely pump house, intake channel, ash dykes, residential colony, railway siding, coal stockyard, etc., and the evacuation line connecting the Faridabad Solar Plant and switchyard of Faridabad Gas Power Plant is a dedicated line owned and operated by the petitioner.

19. We have considered the submissions of the petitioner and the respondents. Section 2(30) of the Act defines the 'Generating Station' as under:

“(30) "generating station" or "station" means any station for generating electricity, including any building and plant with step-up transformer, switchgear, switch yard, cables or other appurtenant equipment, if any, used for that purpose and the site thereof; a site intended to be used for a generating station, and any building used for housing the operating staff of a generating station, and where electricity is generated by water-power, includes penstocks, head and tail works, main and regulating reservoirs, dams and other hydraulic works, but does not in any case include any sub-station.”

The above definition of the generating station does not subscribe to the view that all elements of the generating station should be located in the same premises. It is sufficient that the land must have been acquired and owned by the generating company for the purpose of the various activities of the generating station.

20. Regulation 2(1)(b)(i)(e) of the Connectivity Regulations defines an applicant in respect of renewable energy generating station as under :

“2. Applicant means:

.....
(e) Any renewable energy generating station of 5 MW capacity and above but less than 50 MW capacity developed by a generating company in its existing generating station of the description referred to in sub-clauses (b)(i)(a) to (c) of this clause and seeking connectivity to the existing connection point with inter-State Transmission System through the electrical system of the generating station”

As per the above definition, any renewable generating station of 5 MW capacity and above but less than 50 MW capacity can be developed by a generating company within the premises of the existing generating station. If such a generating company seeks connectivity for the renewable energy generating station to the existing connection point of ISTS through the electrical system of the generating station, then it shall qualify as applicant for connectivity to ISTS, subject to fulfillment of other conditions prescribed in the Connectivity Regulations. Second proviso to Clause (1) of Regulation 8 of the Connectivity Regulations provides as under:

“Provided further that the application by the applicant defined under Regulation 2(1)(b)(i) (e) shall be considered by CTU only if the existing generating station agrees to act as the "Principal Generator" on behalf of the renewable energy generating station(s) seeking connectivity through the electrical system of the generating station and formalizes a written agreement/arrangement among them to undertake all operational and commercial responsibilities for the renewable energy generating station(s) in following the provisions of the Indian Electricity Grid Code and all other regulations of the Commission, such as grid security, scheduling and dispatch, collection and payment/adjustment of Transmission charges, UI charges, congestion and other charges etc., and submit a copy of the agreement to the CTU, along with the application for connectivity, with copy to the respective RLDC in whose control area it is located.”

As per the above provisions, the existing generating station agrees to act as the Principal Generator on behalf of the renewable energy generating station seeking connectivity

through the electrical system of the generating station which is formalized through a written agreement and arrangement. The responsibilities of the Principal Generator shall include undertaking all operational and commercial responsibilities for the renewable energy generating station(s) in following the provisions of the Indian Electricity Grid Code and all other regulations of the Commission, such as grid security, scheduling and dispatch, collection and payment/adjustment of Transmission charges, UI charges, congestion and other charges etc.

21. The petitioner's Solar Project, though located at a distance of about 12 km from its Faridabad GPS is situated on a land forming part of Faridabad GPS. Further, the solar power project has been connected to the switchyard of Faridabad GPS through a dedicated transmission line owned and operated by the petitioner. Section 2(16) of the Act defines dedicated transmission line as any electric supply line for point to point transmission required for the purpose of connecting the electric lines or electric plants of a generating station to any transmission lines or sub-stations or generating stations or load centers as the case may be. Therefore, one generating station can be connected with the switchyard of another generating station through a dedicated transmission line. The transmission line built and owned by the petitioner connecting the Solar Project with the switchyard of Faridabad GPS is a dedicated transmission line. We therefore do not agree with the contention of HVPNL that the said line is an intra-State line and is to be regulated by the regulations of the HERC. In our view, the petitioner's Solar Project is covered under Regulations 2(1)(b)(i)(e) read with proviso to clause (1) of Regulation 8 of the Connectivity

Regulations and therefore, is eligible for grant of connectivity and LTA under the said regulations.

Issue No. 4: Whether SLDC, Haryana was correct in insisting that the petitioner should seek the LTA and connectivity from the STU as per HERC Regulations.

22. PGCIL in its written submission dated 5.12.2014 has submitted that the petitioner is necessarily to operate its RE generating plant through the same mechanism as has been approved and adopted for the Principal Generator and for which the petitioner has entered into Connectivity Agreement and LTA Agreement on 27.3.2014 and 28.3.2014 respectively with HVNPL. The petitioner has submitted that in the connectivity/LTA meeting held on 23.12.2013, it is was agreed that connectivity would be granted subject to the submission of NOC from SLDC, Haryana as per the Detailed Procedure approved under Connectivity Regulations. Regulation 2(1)(j) of the Connectivity Regulations defines 'intra-State entity' as under:

"Intra-State entity" means a person whose metering and energy accounting are done by the State Load Despatch Centre or by any other authorized State utility;

Regulation 8 (2) of the Connectivity Regulations provides as under:

"On receipt of the application, the nodal agency shall, in consultation and through coordination with other agencies involved in inter-State transmission system to be used, including State Transmission Utility, if the State network is likely to be used, process the application and carry out the necessary interconnection study as specified in the Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007."

Under Regulation 4 of the Connectivity Regulations, CTU has been designated as the nodal agency for grant of connectivity, long term access and medium term open

access to the inter-State transmission system. As per the above provisions, the nodal agency is required to process the application, and carry out the necessary inter-connection study in terms of provisions of the Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007. Consultation and coordination with the State Transmission Utility is required only if State network is likely to be used. In the present case, no State network is used for evacuation of power from the Solar Project of the petitioner to Odisha. Therefore, system study by CTU does not require consultation and coordination with the State Transmission Utility of Haryana.

23. Clauses (1) to (3) of Regulation 10 of the Connectivity Regulations, which are extracted as under, provides that SLDC has to accord its concurrence or denial within 10 days of receipt of the LTA application:

"(1).....Provided also that if an intra-State entity is applying for long-term access or medium-term open access, concurrence of the State Load Despatch Centre shall be obtained in advance and submitted along with the application to the nodal agency. The concurrence of the State Load Despatch Centre shall be in such form as may be provided in the detailed procedure.

(2) Where necessary infrastructure required for energy metering and time-block-wise accounting already exists and required transmission capacity in the State network is available, the State Load Despatch Centre shall convey its concurrence to the applicant within ten working days of receipt of the application.

(3) In case SLDC decides not to give concurrence, the same shall be communicated to the applicant in writing, giving the reason for refusal within the above stipulated period."

Regulation 10 (1) of the Connectivity Regulations provides that whenever an intra-State entity is applying for long-term access, concurrence of the State Load Despatch Center is required to be obtained in advance and submitted alongwith the application to the CTU. Regulation 10 (2) provides that if necessary infrastructure required for energy metering and time-block-wise accounting already exists and

required transmission capacity in the State network is available, SLDC shall grant concurrence within 10 days of receipt of the application. In accordance with Regulation 10 (3), in case SLDC decides not to give concurrence, the same shall be communicated to the applicant in writing, giving reason for refusal within the stipulated time. The State Load Despatch Centre is required to check two requirements, namely, (a) infrastructure required for energy metering and time-block-wise accounting already exists; and (b) required transmission capacity in the State network is available.

24. In the present case, the petitioner is developing 5 MW solar power project in its existing generating station i.e. Faridabad GPS and accordingly, in terms of Regulation 8 of the Connectivity Regulations, the petitioner sought connectivity and LTA through the electrical system of the existing generating station. It is noted that the electrical system of Faridabad GPS as the Principal Generator is connected to ISTS. However, the metering and energy accounting of the Principal Generator is being done by the SLDC, Haryana as the entire power generated from the Principal Generator is supplied to Haryana. In terms of Regulation 2(1)(j) of the Connectivity Regulations, the petitioner's 5 MW Solar Project at Faridabad can be treated an intra-State entity. Accordingly, the petitioner approached SLDC, Haryana under Regulation 10(1) of the Connectivity Regulations for No Objection Certificate (NOC) for seeking Connectivity and LTA of 5 MW solar power project. As already stated, Haryana SLDC is required to check only two requirements, namely, (a) infrastructure required for energy metering and time-block-wise accounting already exists; and (b) required transmission capacity in the State network is available. In the present case, no intra-State system was involved and the metering and scheduling of activities in respect of Faridabad GPS are being carried out by Haryana

SLDC. Therefore, NOC should have been granted by Haryana SLDC to the petitioner in terms of Regulation 10(2) of the Connectivity Regulations. Merely because SLDC is undertaking the scheduling and metering of the generating station does not mean that the petitioner should be subjected to obtaining connectivity and LTA to the system of STU even though no part of STU transmission system is involved. In our view, insistence of Haryana SLDC on obtaining connectivity and LTA to State network as per the regulations of HERC is an extraneous consideration which is not permitted under Connectivity Regulations. Consequently, the Connectivity Agreement and LTA Agreement entered into by the petitioner with HVPNL have no legal basis. Since Haryana SLDC is already scheduling the power from Faridabad GPS and the Solar Project of the petitioner, there is certainly no constraint for scheduling the power from the Solar Project of the petitioner even after it is treated as being connected to ISTS. In the light of the above discussion, we direct Haryana SLDC to grant NOC to the petitioner only from the point of scheduling and metering to enable the petitioner to seek connectivity and LTA to ISTS. If NoC is not granted within 10 days from the date the petitioner approached for a fresh NoC, it shall be deemed that Haryana SLDC has no objection. Thereafter, the petitioner shall enter into Connectivity Agreement and LTA Agreement with CTU as per the Connectivity Regulations.

Issue No.5: What should be the treatment of Connectivity and Long Term Open Access Agreement entered into by the petitioner with HVPNL?

25. The petitioner has submitted that in view of urgency, it had no other option to arrange open access before 31.3.2014. Therefore, it signed the Connection Agreement

with transmission utility of Haryana for getting connectivity and agreed for payment of State transmission charges and losses subject to condition that 5 MW Solar Power Project would be commissioned before 31.3.2014. The petitioner in its written submission has submitted that as per minutes of meeting of the connectivity/LTA with NR constituents dated 23.12.2013, SLDC, Haryana had agreed to grant NOC to NTPC. However, SLDC, Haryana denied the same. The petitioner has submitted that the issue of grant of NOC was taken up with SLDC, Haryana through various letters. In response, HVPNL vide letter dated 20.3.2014 directed NTPC to seek Connectivity and LTA from SLDC, Haryana failing which power from Faridabad Solar Power project would not be despatched. The petitioner has further submitted that SLDC, Haryana insisted upon signing of Connection Agreement and Long Term Agreement with Haryana Transmission Utility on the dotted line failing which NTPC would not be granted the interconnectivity for transferring the solar power to Odisha. According to the petitioner, in view of the above compelling circumstances, on 27.3.2014 and 28.3.2014, NTPC signed the Connection Agreement and Long Term Agreement respectively and obtained NOC for connectivity on behalf of GRIDCO. The petitioner has submitted that as a matter of fact NOC was issued by SLDC, Haryana only on 28.3.2014 i.e. after NTPC signed Connectivity and LTA agreements with Haryana Transmission Utility. Had NTPC not been provided NOC by 31.3.2014, NTPC would not have been able to put the power station under commercial operation by 31.3.2014. The petitioner has submitted that the fact and circumstances of the case clearly show high handedness on the part of Haryana Transmission Utility.

26. We have considered the submission of the petitioner and respondents. We are of the view that since HVPNL system is not being used for evacuation of power from Faridabad Solar Project of the petitioner, there is no legal basis for HVPNL to insist on the petitioner to sign the Connection/LTA Agreement and to pay transmission charges and losses for its State system. It is clarified that power from the Faridabad GPS as well as Solar Project of the petitioner are evacuated through the inter-State Transmission system therefore, all relevant regulations pertaining to ISTS shall be applicable. Merely because the control area jurisdiction over the Faridabad GPS has been vested in Haryana SLDC does not mean that the evacuation systems from Faridabad GPS as well as Solar Project of the petitioner shall acquire intra-State character and shall be subject to the regulations of the HERC for the purpose of payment of transmission charges and losses. In our view, the Connection and LTA Agreements entered into by the petitioner with HVPNL are *non-est* in law and cannot be given effect to.

27. The petition is disposed of in terms of the above.

Sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson