

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 245/MP/2016**

**Coram:**

**Shri A.K. Singhal, Member**

**Shri A.S. Bakshi, Member**

**Dr. M. K. Iyer, Member**

**Date of Order: 27<sup>th</sup> of March, 2018**

**In the matter of:**

Petition under Section 35 and 36 of the Electricity Act, 2003 read with the CERC (Rates, Charges and Terms and Conditions for use of Intervening Transmission Facilities) Regulations, 2010 seeking fixation of and adjudication on the transmission charges for the proposed use of PGCIL's Inter-State transmission facility of 400 kV Bhadravati S/s for conveyance of 200 MW power from GMR Warora Energy Limited in terms of the PPA dated 17.03.2010.

**And**

**In the matter of**

Maharashtra State Electricity Distribution Co. Ltd (MSEDCL)  
Prakashgad, Prof. Anant Kanekar Marg,  
Bandra (East), Mumbai – 400051

**....Petitioner**

Versus

1. Power Grid Corporation of India Limited  
Registered Officer:-B-9, Qutab Institutional Area,  
Katwaria Sarai, New Delhi-110016  
Corporate Office: SAUDAMINI, Plot No.2  
Sector-29, Gurgaon-122001(Haryana)
2. GMR Warora Energy Limited  
-Formerly known as EMCO Energy Ltd.  
701/704, 7th Floor, Naman Centre,- Wing,  
Bandra - Kurla Complex, Bandra, Mumbai – 400051
3. Maharashtra State Electricity Transmission Company Ltd,  
Prakashganga, Plot No.C-189, E-Block,  
Bandra Kurla Complex, Bandra (East),  
Mumbai – 400051

**....Respondents**

## ORDER

The present Petition is being filed by the Maharashtra State Electricity Distribution Company (MSEDCL) seeking long-term intervening transmission facilities on 400 KV Bhadrawati Chandrapur transmission line ("ISTS Network") owned and operated by Power Grid Corporation of India Ltd. (PGCIL) and application of transmission rates and losses as per CERC (Rates, Charges and Terms and Conditions for use of Intervening Transmission Facilities) Regulations, 2010 for evacuation of 200 MW Power from 2X300 MW generating station, situated at Warora, Maharashtra ("Power Plant") owned by GMR Warora Energy Limited (formerly known as EMCO Energy Limited) (GWEL). The Petitioner, the Maharashtra State Electricity Distribution Company (MSEDCL), is a distribution licensee and procurer for purchasing power from the Respondent No.2. The Respondent No.1, Power Grid Corporation of India Limited, is a Central Transmission Utility, responsible for planning and development of inter-state transmission system under Section 38 of the Act. The Respondent No.2, GMR Warora Energy Limited, is generating company supplying power to the Petitioner. The Respondent No.3, Maharashtra State Electricity Transmission Company Ltd, is State Transmission Utility, responsible for planning and development within the State under Section 39 of the Act.

2. The Petitioner has submitted that the following facts have led to the filing of the present petition:

- (a) MERC in its Order dated May 7, 2009 (Case No. 3 of 2009) had directed MSEDCL to initiate Competitive Bidding process in line with Standard Bidding Documents (SBD) notified by Ministry of Power (MoP). Accordingly, the

Petitioner initiated the procurement of 2000 MW power on long-term basis under Case1 bidding process and issued Request for Proposal on 15.5.2009. As per the Request for Proposal, the delivery point was STU interface within the region of the procurer and for generating station within the same State of the procurer, the STU interface was the bus bar of the generating station. The Respondent No.2, GWEL, was declared as a successful bidder and a Letter of Intent was issued in favour of GWEL on 20.11.2009. On 17.3.2010, PPA was executed between GWEL and MSEDCL for sale and supply of Aggregated Contracted Capacity of 200 MW by the Respondent No. 2 to the Petitioner. As per the PPA, the obligations to supply the power upto delivery point lied with the Respondent No.2 and evacuation of power from the delivery point lied with the Petitioner.

- (b) On 7.7.2010, the MSEDCL vide an application to MSETCL, applied for allotment of transmission capacity through long term open access under Maharashtra Electricity Regulatory Commission (Transmission Open Access) Regulations, 2005 for the evacuation of power of 200 MW from GWEL's Power Plant. Subsequently, the Petitioner vide letter dated 13.7.2012 and 1.9.2012 again wrote to MSETCL requesting confirmation on the evacuation system status for the contracted capacity of 200 MW.
- (c) On 15.9.2012, MSETCL wrote a letter to the MSEDCL vide which it granted LTOA to MSEDCL for 200 MW on the intra-state transmission system subject to submission of copy of PPA executed with GWEL and a copy of the revised BPTA. On 20.9.2012 the MSEDCL submitted a copy of the PPA to MSETCL

in compliance to the letter dated 15.9.2012. MSETCL further sought confirmation on the following aspects:-

- “(i) Power would be evacuated directly from Bus Bar of EMCO Energy Project to MSETCL S/s.
- (ii) The sub-station and voltage level at which power would be evacuated.
- (iii) Proposed arrangement of drawing power.”

(d) On 19.10.2012, MSEDCL wrote a letter to MSETCL stating that MSEDCL had applied for connectivity for 200 MW power from Warora Project of EMCO through STU only before synchronization. MSEDCL informed MSETCL that it is the responsibility of MSETCL to evacuate power from EMCO project bus bar and in case of delay in evacuation arrangement EMCO may claim penalty as per PPA towards non availability of power evacuation facility through STU. In that case, the responsibility of such delay and penalty (if any) due to delay will be with MSETCL.

(e) MSEDCL has entered into the Bulk Power Transmission Agreement (BPTA) with MSETCL on 12th January, 2009. However, STU had informed MSEDCL that EMCO is not connected to the STU network and requested EMCO energy to apply for the grid connectivity to STU network. MSEDCL had communicated the same to EMCO vide its letter dated April 1, 2013. MSEDCL stated that EMCO had obtained CTU connectivity for their 520 MW (2x135+1x250 MW) Power Plant (Warora) on 400 KV Bhadravati S/s at the 27th Standing Committee held at Indore on 30.7.2007. Further, EMCO signed a BPTA with CTU on 17.1.2009 for LTOA for 520 MW. However, the financial bid of eligible bidders for Case I bidding was opened on September 24, 2009. Thus, at the time of submitting RfP, EMCO Energy did not disclose about the Application of

CTU Connectivity as well as availability of the STU connectivity for 2 X 135 MW Warora power project.

- (f) Maharashtra Electricity Regulatory Commission's Order dated 17<sup>th</sup> March, 2011 as well as interim order dated 12<sup>th</sup> January, 2011 in Case No. 28 of 2010, it was decided that since no connectivity was granted to 2x300 MW generation of EMCO (revised configuration of generation units of EMCO); EMCO energy will have to apply afresh for connectivity, for their changed configuration [i.e., from 270 MW (2x135 MW) to 600 MW (2x300 MW)], as mandated in the CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in the inter-State Transmission and related matters) Regulations, 2009. However, EMCO still had not applied for connectivity with STU and although MSEDCL has been granted LTOA, the failure of EMCO to apply for grid connectivity had denied MSEDCL from utilizing the allotted LTOA of 200 MW.
- (g) On 6.3.2013, MSEDCL filed Petition No. 34 of 2013 before the Maharashtra Electricity Regulatory Commission ("MERC") and thereafter pursuant to the liberty sought by MERC, it filed amendment to the same petition on 3.5.2013 for directions to MSETCL to grant grid connectivity from GWEL's Power Plant directly through the intra state transmission system, which was allowed by the MERC and directed the STU to find least cost technical solutions to evacuate power from EMCO Generating Station to enable implementation of PPA signed with MSEDCL. Pursuant to the above directions, the following technical solutions have emerged from the discussions during this meeting with representatives of all concerned including POSOCO and WRPC:

- i) Existing case of CTU connectivity (Supplying 200 MW to MSEDCL through CTU) having financial impact of 64 Crore;
- ii) 400 KV line from EMCO-Warora (With and without split bus option) having financial impact of 45 Crore;
- iii) LILO of 400 KV EMCO-Bhadravati one ckt. at Warora with financial impact of 22 Crore.

(h) MERC in its Order dated 28.8.2013 in Petition No. 34 of 2013 held that GWEL was responsible for establishing connectivity and access to the state transmission network and execute necessary connectivity agreement with the transmission licensee. It also directed that the least cost technical solution of setting up of a LILO of 400 KV EMCO-Bhadravati one ckt at the 400 KV Warora sub-station of Respondent No.2 should be implemented by GWEL. EMCO filed an Appeal before the APTEL, being Appeal No.304 of 2013 impugning the Order dated 28.8.2013 passed by MERC in Petition No. 34 of 2013.

(i) On 11.2.2014, the APTEL vide Interim Order in Appeal No. 304 of 2013, directed the commencement of power supply by EMCO to the Petitioner through the inter-state transmission system using GWEL's 400 KV dedicated transmission line that is connected to the ISTS Network (Bhadrawati sub-station). Further, on 8.5.2015, the Tribunal set aside the Order dated 28.8.2013 of the MERC and held that in terms of the PPA, MSEDCL is responsible for evacuation of power from the bus bar of EMCO's Power Plant. The APTEL further directed as follows:

“Till the evacuation arrangement for the off-take of power from the bus bar of EMCO’s generating station is provided by MSEDCL, EMCO will supply power to MSEDCL through its dedicated transmission line through the inter-state transmission system. During the period of power supplied to MSEDCL through inter-State transmission system, MSEDCL shall bear the transmission charges and losses for use of inter-State transmission system. By the interim order dated 11.02.2014 this Tribunal without prejudice to the rights of the parties had permitted commencement of power supply from EMCO to MSEDCL through the inter-State transmission system. The charges for transmission system of PGCIL were to be borne by EMCO subject to the outcome of the Appeal. The charges for use of inter-State transmission system borne by EMCO as per the interim order shall be reimbursed to EMCO by MSEDCL within 30 days of passing of this judgment.”

- (j) As per the above directions, GWEL (EMCO) is currently paying ₹6.20 crore per month as PoC charges to the Respondent No. 1 for transmission of 200 MW power through 400 kV Bhadravati sub-station. Such charges borne by EMCO are being reimbursed by MSEDCL from time-to-time. MSEDCL and MSETCL filed Civil Appeal Nos. 5691 of 2015 and 6080 of 2015 respectively before the Hon’ble Supreme Court of India, challenging the findings of the judgment passed by the APTEL dated 8.5.2016 in Appeal No. 304 of 2013 which is pending at present.
- (k) At present, the evacuation arrangement is not developed by STU. MSETCL vide letter dated 12.6.2015 had taken a stand that neither GWEL nor MSEDCL can be granted connectivity to the ISTS network unless the existing CTU connectivity is surrendered. MSEDCL vide letter dated 3.7.2015 wrote to GWEL to surrender the existing connectivity to ISTS to CTU and to obtain Intra-state Transmission System connectivity. GWEL vide letter dated 23<sup>rd</sup> October, 2015 replied that surrender of CTU connectivity and obtaining connectivity from MSETCL is beyond the terms of the PPA and requested MSEDCL to withdraw the letter dated 3<sup>rd</sup> July, 2015 and comply with the terms of the PPA and APTEL Order. MSEDCL vide letter dated 16.6.2016, stated that 200 MW power is passing from ISTS line from

Bhadrawati up to Chandrapur STU substation and thus no significant part of ISTS line is being used for supply of 200 MW power.

- (l) GWEL has constructed and is maintaining the dedicated D/C 400 KV transmission line from Warora to Bhadravati. Thus, power is being supplied by GWEL to MSEDCL through GWEL's 400 KV dedicated transmission line from Warora to Bhadravati and PGCIL's 400 Kv transmission line from Bhadrawati to Chandrapur up to MSTECL's sub-station. GWEL is currently paying monthly transmission charges of ₹6.2 crore and about 80 lacs towards reliability support charge and HVDC charges to PGCIL which is reimbursed by MSEDCL. Further, as per APTEL's Order, MSEDCL has to arrange the evacuation of power from the bus bar of EMCO's power station. In view of implementation of the APTEL Order dated 8<sup>th</sup> May 2015 passed in Appeal No.304 No. 2013, MSEDCL seeks long term intervening transmission facility on the PGCIL 400 kV ISTS line from Bhadrawati to Chandrapur up to MSETCL's sub-station.

3. The Petitioner has submitted the following grounds in support of its claim:

- (a) The provisions contained in the National Electricity Policy notified by Central Government on 12.2.2005 which, inter-alia provide tariff mechanism for transmission to be sensitive to distance, direction and quantum of flow extracted below:

**National Electricity Policy**

"5.3.5 ..... To facilitate cost effective transmission of power across the region, a national transmission tariff framework needs to be implemented by CERC. The tariff mechanism would be sensitive to distance, direction and related to quantum of flow. As far as possible, consistency needs to be maintained in transmission pricing framework in inter-State and intra-State systems. Further it should be ensured that the present network deficiencies do not result in unreasonable transmission loss compensation requirements."

## **National Tariff Policy, 2016**

### **“7.1 Transmission pricing**

(1) A suitable transmission tariff framework for all inter-State transmission, including transmission of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to such interstate transmission, has been implemented with the objective of promoting effective utilization of all assets across the country and accelerated development of new transmission capacities that are required.

(2) The National Electricity Policy mandates that the national tariff framework implemented should be sensitive to distance, direction and related to quantum of power flow. This has been developed by CERC taking into consideration the advice of the CEA. Sharing of transmission charges shall be done in accordance with such tariff mechanism as amended from time to time.

(3) Transmission charges, under this framework, can be determined on MW per circuit kilometer basis, zonal postage stamp basis, or some other pragmatic variant, the ultimate objective being to get the transmission system users to share the total transmission cost in proportion to their respective utilization of the transmission system. The ‘utilization’ factor should duly capture the advantage of reliability reaped by all. The spread between minimum and maximum transmission rates should be such as not to inhibit planned development/augmentation of the transmission system but should discourage non-optimal transmission investment.”

(b) Section 35 and 36 of the Electricity Act, 2003 is reproduced 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.

#### **36. Charges for intervening transmission facilities:**

(1) Every licensee shall, on an order made under section 35, provided 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 electric lines can be utilized for transmitting

electricity for and on behalf of another licensee at his request and on payment of a tariff or charge.”

(c) PGCIL owns two numbers of 400 kV DC transmission line from Bhadravati to Chandrapur. One line has a length of 11 kms and another line having length of 17 kms. It is evident from the records that the power transmitted during peak months i.e. October, 2015 and May, 2016 from Bhadravati to Chandrapur is in the range of 100 MW for October, 2015 and the maximum power flow in May, 2016 is 900 MW. Further, generally and during these months also, at majority of the times, the power is flowing in reverse direction from Chandrapur to Bhadravati to cater to the load in Southern region through PGCIL’s HVDC system. Thus, MSEDCL submits that there is surplus capacity available in PGCIL transmission line for transmission of power from Bhadravati to Chandrapur. Further, GWEL has constructed and is maintaining the 400 kV DC dedicated transmission line from Warora to Bhadravati. The said line is dedicated for supply of power from GWEL’s Warora project which is having generation capacity of 600 MW. At present, the said quantum of 200 MW power is being transmitted through this dedicated transmission line.

(d) In view to implement APTEL Order and the fact that there is a surplus capacity available on the captioned line of PGCIL. MSEDCL has sought the permission of CERC to obtain grid connectivity for the transmission of 200 MW power through the CTU’s intervening transmission facility. MSEDCL states that the following arrangement would be used for the delivery of 200 MW power:

- a. GWEL’s dedicated 400 KV D/C transmission line from Warora to Bhadravati.

b. Transmission through PGCIL's two 400 KV double circuit lines from Bhadravati to Chandrapur.

(e) The transmission charges and losses for the use of the PGCIL's transmission line from Bhadravati to Chandrapur is being paid on the basis of PoC charges and losses under the CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 as amended from time to time. The current financial impact towards PoC is ₹6.2 crores per month. In addition to this, the MSEDCL is incurring reliability support charge and HVDC charge. Thus the total charge is about ₹7 crore per month for transmitting 200 MW for the use of small portion of PGCIL transmission line from Bhadravati to Chandrapur. MSEDCL submits that the current financial impact on MSEDCL is very high considering a small quantum of power i.e. 200 MW that is being transmitted through PGCIL's Bhadravati – Chandrapur transmission line.

(f) The CERC (Rates, Charges and Terms and Conditions for use of Intervening Transmission Facilities) Regulations, 2010 was published on September 23, 2010. As per this regulation, it shall come into force w.e.f. the date of application in the official gazette. Further, as per PPA, the scheduled delivery date (SDD) is March 17, 2014 and GWEL has commenced the power supply of 200 MW to MSEDCL from March 17, 2014. Thus, MSEDCL has requested to allow to avail intervening transmission facilities w.e.f. March 17, 2014.

(g) MSEDCL has submitted that using the current infrastructure of PGCIL line on the contract path from Bhadravati to Chandrapur is the best possible option under the CERC (Rates, Charges and Terms and Conditions for use of Intervening Transmission Facilities) Regulations, 2010. Hence, in line with

APTEL order and as a cost effective option, MSEDCL proposes to the Commission to provide permission for use of intervening transmission facility for contract path on PGCIL's transmission line from Bhadrawati to Chandrapur for the conveyance of 200 MW of power from EMCO's generating station.

(h) As per the provisions of Electricity Act, 2003, the National Electricity Policy and the National Tariff Policy, it is prima facie suggested by MSEDCL that present case falls in the category of intervening transmission facility as defined in the explanation to Section 36 of the Act. In the present case, the transmission facility of PGCIL at 400 kV transmission line from Bhadrawati to Chandrapur will be used for conveyance of 200 MW power to MSEDCL and other licensees and consumers. In general, the term used in the Act is 'transmission system' and only in two sections i.e. Section 35 and 36 the term 'transmission facility' has been mentioned. Thus it clearly implies that for the purpose of Sections 35 and 36, the transmission assets specifically used for the transaction have to be identified. Therefore, there is a need to identify applicable transmission elements which are used for conveyance of 200 MW power to MSEDCL. MSEDCL has submitted that the transmission assets and the contract path of Respondent, PGCIL used for the transmission of 200 MW power to MSEDCL have been identified and used in the inter-state transmission of electricity. The following transmission assets are being used for transmitting power to MSEDCL:

- a. Dedicated 400 kV double circuit transmission line from the generation project at Warora which is connected to PGCIL's 400 kV transmission line at Bhadrawati.

b. PGCIL's 400 KV transmission line from Bhadrawati to Chandrapur. The lines are two double –circuit lines having lengths of 11 kms and 17 kms.

(i) The Petitioner, with regard to application of Section 35 and 36 of the Electricity Act, 2003, relied upon the case of GETCOL versus DD & DNH and MSETCL versus Goa. GETCOL claimed that transmission charges and losses so determined are also applicable for conveyance of power to DD and DNH and accordingly, demanded payment of the transmission charges and adjustment for losses which was denied by DD and DNH. The Commission vide its order dated 3.2.2009 decided the methodology for determining the charges for conveyance of electricity through intervening transmission facilities of GETCO and directed WRPC to work out the charges based on the contract path method. The relevant para of the order is extracted as under:-

“32. We are conscious of the fact that in the interim order dated 21.7.2004 in Petition No 6/2004 in the matter related to determination of wheeling charges for the use of Orissa transmission system for transmission of power to MPSEB under the 2001 tariff Regulation for the period 2001-04, the Commission had stated that after implementation of open access regulations, charges shall be payable under those regulations. However, we are of the opinion that the matter relating to use of State transmission system for conveyance of power to other licensees is more appropriately covered under Sections 35 and 36 of the Act. These explicit statutory provisions cannot be ignored. We are therefore proceeding by specifying method of calculation of the transmission charges in the present case. In due course, the Commission will come out with draft regulations under Section 36 of the Act so as to deal with the issue of determination of transmission charges for intervening inter-State transmission facilities.

33. Above discussion leads one to the conclusion that it is appropriate to apply Contract Path method in preference to Postage Stamp method. The following distinct consideration in favour of this method cannot be overlooked:

- (a) This method fits in well with the philosophy contained in the National Electricity Policy and Tariff Policy.
- (b) It is in line with Sections 35 and 36 of the Act, which require determination of transmission charges for intervening transmission

facility. Therefore, these sections read with conclusion drawn by the Appellate Tribunal imply that in cases such as the present one, to the extent possible, specific transmission elements used in conveyance of power have to be identified.

- (c) The Contract Path method was the agreed arrangement for the period beginning 1992-93 till GETCO raised the issue in the form of Petition 94/2006 filed in August 2006.
- (d) Probably because the method is just and fair. In fact, the same was specified by the Commission in the 2001 regulations during the tariff period 2001-04 for determination of charges in case the parties were not able to reach to an agreement.

.....  
.....

38. Based on the above, we direct Member Secretary, Western Regional Power Committee to submit to the Commission detailed calculation of the transmission charges for transmission of power to DD and DNH within one month of issuance of this order. The calculations shall be made based on following guidelines:

- (a) The transmission assets used for transmitting power to DD and DNH shall be identified as under:"

.....  
.....

(j) The Tribunal, in Appeal No. 198 of 2009, upheld the above decision of the CERC to adopt the contract path method and directed WRPC to submit detailed calculations of the transmission charges for transmission of power to the DD and DNH. In case of Section 35 and 36 of Electricity Act, 2003, APTEL held that these are two distinct provisions enabling any licensee to use the transmission system of another licensee. Principles of harmonious construction of statute demand that these two provisions are to be interpreted in such a way that application of one must not make other provision otiose or redundant. Further, the APTE Lin the matter of Electricity Department, Government of Goa Versus Maharashtra Electricity regulatory Commission (MERC) being Appeal no. 150 of 2007 had taken a similar decision for the conveyance of electricity for Goa through the transmission system of Maharashtra Transmission Utility.

4. MSEDCL has submitted that MSEDCL had earlier applied for the evacuation of power from MSETCL which could not progress ahead since EMCO already had the CTU connectivity. The PGCIL line from Bhadrawati to Chandrapur is an existing line and is being currently used for transmission of power from the GWEL's dedicated transmission line. In the proceedings of the previous cases with MERC and the appeal with APTEL on the current case, MSEDCL had earlier not proposed to use the intervening transmission facilities as ISTS line from Bhadrawati to Chandrapur pending the judgement on the responsibility to transmit the power from GWEL's generating station at Warora. MSEDCL submits that in this case, the contract path method is the relevant method for pricing of transmission facility since as per this method beneficiary is supposed to draw power on specified path only. This means that the line should be in a position to carry required quantum of electricity from point of injection to point of drawal without there being any need to utilize other transmission network. MSEDCL proposes to use the PGCIL's transmission line from Bhadrawati to Chandrapur for the conveyance of 200 MW of power and the use of contract path method is relevant due to the following reasons:-

- a. This method fits in well with the philosophy contained in the National Electricity Policy and Tariff Policy.
- b. It is in line with Sections 35 and 35 of the Act, which require determination of transmission charges for intervening transmission facility.

5. MSEDCL has submitted that it is incurring a heavy cost of approximately ₹72 crore per year towards inter-state transmission charges which is incurred following the postage stamp method and in this case where the specific transmission assets

have been identified for the conveyance of 200 MW power, the contract path method is the best method for the calculation of transmission charges. Further, the contract path method is in line with the National Tariff Policy, Sections 35 and 36 of the Act.

6. MSEDCL has submitted to the Commission to refer to the CERC (Rates, Charges and Terms and Conditions for use of Intervening Transmission Facilities) Regulations, 2010 for the determination of the transmission charges for the use of intervening transmission facilities. The scope and applicability of the regulations are as below:

- (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.

7. The transmission charges and losses applicable as per the captioned regulations are as below. The rates and charges specified based on contract path are for a standard distance of 50 Km or a part thereof.

| Type                 | System       | Line Capacity | Charges for Long -term Access and Medium term OA | Charges for Short-term OA |
|----------------------|--------------|---------------|--|---------------------------|
| Transmission Charges | 400 kV (D/C) | 900           | 97,584   | 11.14                     |
| Losses               |              |               |  | 0.5%                      |

Provided that in case the annual revenue requirement of the contract path in question has already been determined by the Commission or State Electricity Regulatory Commission then the sharing of the transmission charges so determined, by the applicant, will be in the ratio of the average power flow in MW of the transaction determined on post-facto basis, to the peak capacity of the power flow in MW in the line as given in Schedule-II. The table given in Schedule II of the Regulations is as below:

| S. No. | VOLTAGE (kV) | Line loading capacity considered (MW) |
|--------|--------------|---------------------------------------|
| 1.     | 400          | 450                                   |
| 2.     | 220          | 250                                   |
| 3.     | 132          | 90                                    |
| 4.     | 66           | 27                                    |

8. In line with the above regulations, MSEDCL has submitted to allow long term intervening transmission facility on captioned PGCIL line w.e.f. 17.3.2014 and to apply the contract path method for the determination of transmission charges and losses. In line with the CERC (Rates, Charges and Terms and Conditions for use of Intervening Transmission Facilities) Regulations, 2010, the charges may be determined as per the rates as mentioned in the regulations or the ARR method for the contract path could be used for the purpose of determination of charge and losses for the intervening transmission facility and will be in ratio of average power flow in MW as decided by the Commission.

9. EMCO had obtained CTU connectivity for their 520 MW (2x135+1x250 MW) Power Plant (Warora) on 400 KV Bhadravati S/s at the 27th Standing Committee held at Indore on 30.7.2007 prior to the bid and signing of PPA with MSEDCL. Further, EMCO signed a BPTA with CTU on 17.1.2009 for LTOA for 520 MW. MSEDCL had written to GWEL dated July 3, 2015 to surrender the existing connectivity to ISTS to CTU and to obtain InSTS connectivity. However, GWEL did not surrender the CTU connectivity and accordingly the STU connectivity could not be established by MSEDCL.

10. MSEDCL has submitted that as per the Procedure for making application for Grant of connectivity in ISTS, the applicant (Generator/ bulk consumer) already connected to grid (regional or state grid) for which connectivity is already granted under the present arrangement, shall not be allowed to apply for additional connectivity for the same capacity. As per PPA, MSEDCL has to arrange the evacuation from GWEL's generating station. Now, MSEDCL is currently filing the present petition seeking use of intervening transmission facility w.e.f. 17.3.2014. Thus, GWEL may have to surrender 200 MW of long term transmission open access on the PGCIL line.

11. The Petitioner made an application for use of intervening facilities to PGCIL (CTU) on 3.9.2016 but the permission is not received yet from PGCIL (CTU).

12. Against the above background, the Petitioner has filed the present petition with the following prayers:

- a) To admit the Petition as per the provision of Section 35 and 36 of the Electricity Act, 2003 read with CERC (Rates, Charges and Terms and

Conditions for use of Intervening Transmission Facilities) Regulations, 2010;

b) Approve the PGCIL transmission line from Bhadravati to Chandrapur as long term intervening transmission facility from 17.03.2014 for the period of 25 years;

c) Direct GWEL to surrender 200 MW of long term transmission open access on the PGCIL line;

d) To approve the transmission charges and losses for the use of contract path from Bhadravati to Chandrapur either as per the CERC (Rates, Charges and Terms and Conditions for use of Intervening Transmission Facilities) Regulations, 2010 or as determine by the Hon'ble commission as per the ARR method for the contract path from Bhadravati to Chandrapur and will be in ratio of average power flow in MW;

e) Pass any other Order as this Hon'ble Commission deems fit in the facts and circumstances of the present case;

f) Condone any error/omission and to give opportunity to rectify the same;

g) To permit the Petitioner to make further submissions, addition and alternation to this petition as may be necessary from time to time.

13. Notices were issued to the respondents to file their replies. PGCIL and GWEL have filed their replies and Petitioner has filed rejoinder to the same.

14. PGCIL in its reply dated 10.3.2017 has submitted as under:

(a) The Petitioner is seeking to invoke the provisions of Section 35 and 36 of the Electricity Act, 2003 for the use of the transmission system of Respondent No. 1, Powergrid namely the 400 kV Bhadravati to Chandrapur on long term basis. It is submitted for such long and continued use, MSEDCL is required to follow the process of applying for and obtaining Long Term Access under the applicable Open Access Regulations notified by the Commission and cannot seek the intervening transmission facility under Sections 35 and 36 of the Electricity Act.

(b) In terms of the section 35 & 36 of the Electricity Act, 2003, the surplus capacity referred to is the capacity available in the relevant transmission system on a daily basis after meeting the requirements under Open Access, Long term Medium Term, Short Term, day ahead or periodic reservation for power exchange transmission etc. as the case may be. The intervening transmission system being allowed to be used under Sections 35 and 36 of the Electricity Act, 2003 is not by way of an alternate to those permitted under the Open Access Regulations notified by the Commission in terms of Section 38, 40 and 79(1)(c) and 91(d) read with Section 178 of the Electricity Act, 2003.

(c) The Respondent No. 2 (previously known as EMCO) had applied for Long Term Open Access (LTOA). EMCO was provided LTOA for 550 MW power transfer from its generating station and delivery to its beneficiaries including MSEDCL (200 MW) utilizing the Inter State Transmission System (ISTS). For this, all the beneficiaries drawing power utilizing ISTS network were required to pay the ISTS charges and losses in line with the regulations of the Hon'ble Commission. EMCO generating station being already connected with ISTS, the same generating units cannot be connected to STU network as per Regulations

of the Hon'ble Commission. In case EMCO seeks to connect to STU network, the generating station needs to be isolated and connected to STU network separately. In such case EMCO is required to relinquish relevant LTA quantum and pay applicable relinquishment charges in line with regulation of the Commission.

(d) Powergrid by letter dated 15.7.2016 clarified to EMCO with regard to applicability of ISTS charges. Further, vide letter dated 26.9.2016 Powergrid has responded to the application of MSEDCL for use of the Intervening Transmission facilities as under:

**“Sub : Application for use of intervening transmission facilities - reg.**

Dear Sir,

This is with reference to your application for use of intervening transmission facility vide letter no. ED/Comm/27450 dated 03.09.2016 of transfer of 200 MW power under long Term Access from GMR Warora Energy Limited (formerly EMCO Energy Limited) to Maharashtra State Electricity Distribution Limited. The application has been made under CERC (Rates, charges and Terms and conditions for use of intervening Transmission Facilities) Regulations, 2010.

The "Scope and Applicability" as per Regulation-3 of the referred regulations is as below:

“(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-station transmission** owned or operated by a licensee, are used for proposed to be used.....”

In this regard it may be mentioned that EMCO had earlier been granted LTA for 550 MW utilizing the ISTS Network for evacuation and delivery of power to its different beneficiaries viz. DNH - 200 MW, Tamil Nadu - 150 MW & MSEDCL - 200 MW. The 200 MW power under LTA is already being delivered to MSEDCL across entire State of Maharashtra (where MSEDCL has jurisdiction for supply of power) at large number of ISTS nodes of Western Region through ISTS transmission systems. Accordingly, a single contract path, as required for applicability of above referred Regulations, cannot be identified in the instant case.

Further the referred regulations are applicable where the intervening facilities that are incidental to ISTS (and not the ISTS per-se) are getting used, however in the instant case the LTA has been granted utilizing the ISTS Network. Therefore, there is no intervening transmission facilities incidental to ISTS is required for transfer of power. Accordingly, the instant case does not fulfil this applicability requirement of referred

Regulation. It is pertinent to mention here that the similar issue of applicability of referred Regulation has been dealt by Hon'ble CERC in the Suo-Moto Petition No. 10/SM/2014.

In view of the above, the referred application made for use of intervening transmission facilities is not acceptable and the same is not being considered further.

Further as intimated vide our letter dated 15.07.2016 on the issue transfer of power from EMCO to MSEDCL (copy enclosed for ready reference), you are liable for payment of PoC charges for use of ISTS network for the 200 MW power as per CERC Regulations.”

(e) It is wrong and denied that the APTEL in its order in the Appeal no. 304 of 2013 dated 08.05.2015 directed the Powergrid to provide the Intervening Transmission Facilities. The matter of connectivity of EMCO generation station to the STU Grid and power supply from EMCO to Maharashtra has also been extensively covered in the appeal and APTEL directed the following:

**Para-41**

“The State Commission has given directions to EMCO to LILO one of its dedicated line viz. 400 kV EMCO-Bhadravati at Warora sub-station of MSETCL at EMCO's cost. We feel that such directions changing the point of delivery of power after award of contract not only vitiate the bidding process undertaken by MSEDCL but also without any jurisdiction. The dedicated line of EMCO is connecting EMCO's power station to the sub-station of PGCIL for inter-State transmission of electricity. Such LILO has to be implemented only in coordination with CTU. Further, dedicated line for point to point transmission of power from a generating station to CTU system cannot be tapped at a STU sub-station. In such case, the portion of the dedicated transmission line from Warora sub-station to PGCIL's Bhadravati sub-station will not remain as a dedicated transmission line and will form a part of inter-State transmission line, in our opinion, State Commission had no authority to direct EMCO to LILO one of its dedicated transmission line from EMCO's power station to PGCIL's sub-station at MSETCL's substation.”

**Para-42**

“In view of above Appeal is allowed and impugned order is set aside. Till the evacuation arrangement for off-take of power from the bus bar of EMCO's generating station is provided by MSEDCL. EMCO will supply power to MSEDCL through its dedicated transmission line through the inter-State transmission system. During the period of power supplied to MSEDCL through inter-State transmission system, MSEDCL shall bear the transmission charges and losses for use of inter-State transmission system. By the interim order dated 11.02.2014 this Tribunal without prejudice to the rights of the parties had permitted commencement of power supply from EMCO to MSEDCL through the inter-State transmission system. The charges for transmission system of Powergrid were to be borne by EMCO subject to the outcome of the Appeal. The charges for use of inter-State transmission system borne by EMCO as per the interim order shall be reimbursed to EMCO by MSEDCL

within 30 days of passing of this judgment. Any delay beyond 30 days in reimbursement of the transmission charges for the inter-State transmission system by MSEDCL which was born by EMCO in the interim period, EMCO will be entitled to delayed payment surcharge as per the provisions of the PPA.”

From the Judgment it is clear that MSEDCL is taking its power through inter-State transmission system and MSEDCL shall bear the transmission charges and losses for use of inter-State transmission system, till the evacuation arrangement for off-take of power from the bus bar of EMCO's generating station.

15. GWEL in its reply dated 7.4.2017 has submitted as under:

(a) As per the terms of the RfP, the Bid Evaluation Report and the PPA, the obligation of establishing connectivity and accessing the transmission network is that of the Petitioner. In this regard, the GWEL relied on the judgment dated 8.5.2015 of the APTEL in Appeal No. 304 of 2013, wherein it was held that:-

- i) In case of the GWEL, the Injection Point and the Delivery Point are at the same point i.e. the power station bus-bar. This was also evident from GWEL's bid submitted to the Petitioner.
- ii) As per the PPA, the Petitioner is responsible for arranging open access from the bus- bar of GWEL's power station. All along the parties were proceeding on this basis. However, subsequently the Petitioner changed its position before the MERC.
- iii) Till the Petitioner provides for evacuation arrangement for off take of power from the bus bar of GWEL's power station, GWEL would supply power to the Petitioner through its dedicated line through the inter-state transmission system. The Petitioner will bear transmission charges and

losses for use of the inter-state transmission system.

(b) It is submitted that the APTEL had in the Order dated 8.5.2015 in Appeal No. 304 of 2013 held that the Petitioner was liable to arrange open access from the bus bar of GWEL'S power station to evacuate power. Consequently, there is no obligation on GWEL to arrange for evacuation of power beyond the Power Plant Bus Bar.

(c) Any arrangement for evacuation of power by the Petitioner should take into account the following:-

- (i) The Petitioner's obligation is evacuation of power from the Bus-Bar of the Power Station. In case any modality for delivery of power to MSEDCL is to be determined then the entire path from the bus-bar of GWEL's power station till Chandrapur will have to be considered. This will be in accordance with the APTEL's judgment dated 08.05.2015.
- (ii) Energy accounting has to be at the Bus-Bar of the Power Station in terms of the APTEL's judgment.
- (iii) Any arrangement / permission granted to the Petitioner ought to be revenue neutral to GWEL i.e. there should be no additional liability, either in terms of transmission charges or accounting of power.
- (iv) In case the arrangement proposed by the Petitioner results in any financial impact on GWEL, the Petitioner should make good such loss.

(d) It is submitted that the aforesaid is without prejudice to GWEL's rights in relation to Civil Appeal No. 5691 of 2015 filed by the Petitioner against the Order

dated 8.5.2015. He further clarified that STU connectivity obtained by GWEL in 2006 (and surrendered in 2011) was at the stage of planning/conceptualization of the Project. It has no bearing on the obligations of the Petitioner and GWEL which have been clearly stipulated in the PPA. In this regard, submissions made in Paragraphs Preliminary submissions of this Reply may be read. The Power Plant was connected to the ISTS system in October 2012 itself and the LTOA had been operationalized.

16. The Petitioner in its rejoinder dated 19.6.2017 to the reply filed by PGCIL has submitted as under:

(a) PGCIL contention that MSEDCL cannot seek the intervening transmission facility under Sections 35 and 36 of the Electricity Act, 2003 is misleading and contrary to law. The Central Electricity Regulatory Commission (Rates, Charges and terms and conditions for use of intervening transmission facilities) Regulation, 2010 is for the use of transmission line by any trading licensee or distribution licensee for transmission of power through long term access, medium term Open Access or Short Term Open Access.

(b) As per PPA signed between MSEDCL and GMR (EMCO), MSEDCL has to arrange the evacuation of power for 200 MW from their plant at Warora. Thus, the Petition is filed by MSEDCL for long term open access for 200 MW under use of intervening transmission facility as per Sections 35 and 36 of the Electricity Act, 2003 and not by way of alternate arrangement. The POWERGRID raising the contention that intervening transmission facilities cannot be granted to MSEDCL, it is submitted that the said Statement is a bad statement without any substantiation.

(c) MSEDCL vide letter dated 3.9.2016 has applied to POWERGRID for use of 400 KV Bhadravati - Chandrapur transmission line as an intervening transmission facilities for evacuation of 200 MW power. In response to this POWERGRID vide its letter dated 26.9.2016 has communicated as under:

"the referred application made for use of intervening transmission facilities is not acceptable and the same is not being considered further."

(d) While rejecting the application of MSEDCL, POWERGRID has referred that the regulations are applicable where the intervening transmission facilities that are incidental to ISTS are getting used. However in the instant case the LTA has been granted utilizing the ISTS network. In this connection it is submitted to the Commission that Section 35 of the Electricity Act, 2003 provides use of intervening transmission facilities to the extent of surplus capacity available with licensee and Section 36 of the Electricity Act, 2003 provides charges of use of intervening transmission facilities. Thus, the Act Provides uses of intervening transmission facilities for both ISTS and InSTS. Therefore the instant case fulfills the applicability of the conditions of Sections 35 and 36 of the Electricity Act, 2003.

(e) In the instant case Bhadravati - Chandrapur 400 KV D/C line was commissioned on 1.5.2006. The evacuation facility for the power from GMR (EMCO) Warora project was approved in 27<sup>th</sup> Standing Committee of CEA dated 6.9.2007. Further, as per PPA signed between MSEDCL and GMR (EMCO) the schedule delivery date was 17.3.2014. Thus the Bhadravati -Chandrapur 400 KV D/C transmission line was commissioned much before approval of transmission

line required for evacuation of power and schedule delivery date of GMR Warora project.

(f) Regarding CERC Order dated 30.6.2016, it is submitted that the investment approval for the Hassan-Mysore 400 KV D/C line was accorded by the PGCIL and the transmission line was planned as Associated Transmission System for evacuation of power from UPCL's generating station and Regional Strengthening Scheme. Considering this submission of PGCIL, the Hon'ble Commission has not considered the 400 KV Hassan - Mysore D/C transmission line as intervening transmission facilities for evacuation of power from UPCL generating station. The investment made on the Bhadravati - Chandrapur 400 KV D/C transmission line is not for the evacuation of GMR (EMCO) power. Therefore, the CERC Order under Suo Motu Petition 10/SM/2014 is not applicable in the instant case.

(g) The MSEDCL had vide its letter dated 5.4.2017 sought various factual details relating to the line particularly upon POWERGRID filing its reply dated 10.3.2017. However, the actual details are not made available to the Petitioner. This denial of information is contrary to the provisions of the Electricity Act, 2003.

(h) The information in the Public Realm under correct factual matrix would reveal the following:

- i) As of today, the said line is already catering to transmitting 200 MW Power. The said capacity is therefore fully catered. Therefore, there does not arise any occasion to substantiate any further the need to show surplus capacity as the same source, same line and same quantum has been duly catered to.

ii) While construing the capacity it is necessary to discern the design capacity. The maximum flow for the past one year can be duly obtained from the system.

iii) The line has been mainly created for the power flow from Chandrapur to Bhadravati and further to the South. In the present case, 200 MW power of GMR project Warora is flows from Bhadravati to Chandrapur And MSEDCL is drawing the power at Chandrapur end thereby MSEDCL is extending the support to the PGCIL by de-loading the transmission line.

(i) The intervening transmission facilities are used for Long Term Open Access, Medium Term Open Access and Short Term Open Access. The act does not segregate on this count. At present, there is a Surplus Capacity available for transmission of power from Bhadravati to Chandrapur. Further the same capacity is to be replaced from LTOA to long term intervening transmission facility as per act. Thus, the POWERGRID's contention that availability of capacity on 400 KV D/C line from Bhadravati to Chandrapur is required to be decided from time to time is untenable and contrary to law.

(j) With reference to the contentions relating to EMCO being connected to the CTU and not being connected to STU network it is submitted that the factual matrix relating to the RFP and the bidding conditions stipulated by the Petitioner are binding on EMCO. Additionally, the decision of the APTEL clearly recognizes the right of MSEDCL to provide its evacuation system. The present Petition is step in that direction.

(k) The decision of the APTEL does not in any manner dilute the conditions imposed for evacuation of power in the bid initiated by MSEDCL. Neither does the same in any manner dilute or obviate the conditions imposed in the PPA entered into between MSEDCL and EMCO. The pleadings in the earlier matter which culminated in the decision of the APTEL in Appeal No. 304 of 2013 bear a testimony to the fact that MSEDCL was kept in dark about the connectivity obtained by EMCO for utilization of ISTS network.

(l) The decision of the APTEL in Appeal No. 304 of 2013 has been pointed out only to show that MSEDCL is entitled to evolve its evacuation system in accordance with the terms of the PPA. This aspect becomes crucial when MSEDCL applies for Intervening Transmission Facilities under Section 35 and 36 of the Act. The Petitioner is in agreement with the Respondent that the decision of the APTEL dated 8.5.2015 in Appeal No. 304 of 2013 has a bearing till MSEDCL.

"till the evacuation arrangement for off-take of power from the bus bar of EMCO's generating station"

(m) It is submitted that there was a shortage of power in Southern region. The generating stations are mainly located in the Western region. Due to transmission constraints, it was difficult to transmit the power from Western to Southern region. Considering the geographical situation, the transmission line for evacuation of power to the Southern region is mainly passing through Maharashtra.

(n) The 400 KV D/C Bhadravati - Chandrapur Transmission line is mainly constructed for the evacuation of power to the southern region. It is requested

that this Commission be pleased to direct the POWERGRID to submit the investment approval of this line.

17. The Petitioner in its rejoinder dated 19.6.2017 to the reply filed by GWEL has submitted as under:

(a) The Judgement and Order dated 8.5.2015 of the APTEL in Appeal No. 304 of 2013 speaks for itself. The said judgement does not in any manner dilute or render nugatory the conditions relating to evacuation through STU. Neither does the said judgement have any bearing on the other issues including the present Petition seeking intervening transmission facilities under Sections 35 and 36 of the Electricity Act, 2003. The said judgement does not prevent or prohibit the Petitioner from approaching the Commission for the reliefs as desired in the present Petition. It is an admitted position that till the Petitioner provides for evacuation arrangements for off take of power from the bus bar of the power station of GWEL, the GWEL would supply power to the Petitioner through its dedicated line with the CTU connectivity. Inherent in this admitted position therefore is the right of the Petitioner to evolve its own evacuation system including taking steps in furtherance of its role in accordance with the provisions of the Act.

(b) The Petitioner has preferred the present Petition seeking declaration of intervening transmission facilities under Sections 35 and 36 of the Act without in any manner circumventing its obligations under the PPA or the import of the APTEL's Judgement dated 8.5.2015. However, the judgement dated 8.5.2015 cannot be read to curtail any rights that the Petitioner possesses to approach this Commission under Sections 35 and 36 of the Act.

- (c) The Judgement recognizes the transitory nature of the present arrangement of evacuation of power. The commercial terms between the Petitioner and the Respondent No. 2 are defined in the Agreement between both the parties and are not sought to be altered in the present Petition. The relief sought by the Petitioner is as provided under Sections 35 and 36 of the Act. The entitlement of the Petitioner for the said relief cannot be curtailed by the Respondent No. 2 contrary to the provisions of the Act.
- (d) All the parties are bound by all the consequences and incidental effects, if any, arising from the grant of relief to the Petitioner as prayed for in the present Petition. In this context, the conditions enumerated in the Paragraph under reference cannot be countenanced to consider the Petition of the Petitioner, MSEDCL. The Petition ought to be considered on its own merits in accordance with law.
- (e) It is denied that the Respondent No. 2 had informed the Petitioner about its CTU connectivity at the Bid stage itself. The Respondent No. 2 is called upon to substantiate the said averments. The reliance in Paragraph 8 of the Reply of GWEL speaks volumes of the conduct of GWEL in this regard. GWEL has admitted that the transaction between the parties contemplated connectivity and access through the State Transmission System.
- (f) The Respondent No. 2 has admitted to obtaining STU connectivity at the time of bidding. This becomes a crucial factor while considering the factual matrix of the case in its entirety.

18. The PGCIL in its reply dated 10.8.2017 has submitted the copy of investment approval, SCM for 400 kV D/C Bhadravati-Chandrapur Transmission Line. On the query whether the activities for commissioning the 400 kV D/C Bhadravati Chandrapur Transmission Line were advanced by Power Grid, it has submitted that in the 19<sup>th</sup> Standing Committee Meeting held on 23.12.2003, it was agreed that POWERGRID was required to take expeditious action for the above transmission line. Also, in the 1<sup>st</sup> WRPC meeting held on 31.5.2006, it was informed that as per the program of transmission capacity addition by PGCIL, 400 kV Chandrapur-Bhadravati D/c was expected to be commissioned by March, 2007. However, on the request of WR constituents, the activities for commissioning of this line were advanced by PGCIL. Both the circuits were commissioned by PGCIL and put into commercial operation w.e.f. 1.5.2006. Further, PGCIL regarding the System Studies conducted by Power Grid in respect of 400 kV D/C Bhadravati-Chandrapur Transmission Line has submitted that the discussion regarding augmentation of 400kV Chandrapur-Bhadravati section was held in the 19<sup>th</sup> SCM under "Transmission network strengthening scheme under Medium Term Measures/Plan". Studies were carried out considering outage of one circuit of existing 400kV Chandrapur-Bhadravati (1<sup>st</sup> D/c) (Twin Moose). The studies indicated overloading of the other circuit on the above n-1 contingency. Hence, 400kV Chandrapur-Bhadravati (2<sup>nd</sup> D/c) (Twin Moose) was proposed as a system strengthening scheme and also to enhance the import handling capacity of WR.

19. The Commission vide RoP dated 7.9.2017 directed PGCIL to file its reply with respect to identification of the single contracted path. In response, PGCIL vide affidavit dated 6.10.2017 has submitted as under:

- (a) The Power Generation Project of Respondent No 2 herein being 2X300 MW is situated at Warora in the State of Maharashtra. The said generating unit station of Respondent No 2 is connected to the Inter State Transmission Network of Powergrid's Substation at Bhadravati in the State of Maharashtra.
- (b) The Respondent No. 2 had applied for LTA and was granted such Long Term Access for 550 MW power transfer from its generating station and delivery to its beneficiaries namely MSEDCL (200 MW), TANGEDCO (150 MW) and Dadra Nagar Haveli (200 MW) utilizing the Inter State Transmission System (ISTS). The Bhadravati Substation of POWERGRID is connected to Chandrapur-I Substation of MSETCL.
- (c) That besides interconnection with the generating station of Respondent No 2 and Chandrapur-I Substation of MSETCL, Bhadravati substation is also interconnected with the rest of the Grid to Bhilai (CSPTCL), Raipur (PG), Parli (PG) and Dhariwal Generation Project through various 400kV ISTS lines. The Details of the lines emanating Bhadravati substation are as given below:
- a. Bhadravati - Raipur 400kV lines (3 ckts)
  - b. Bhadravati – Bhilai (CSPTCL) 400kV S/c line
  - c. Bhadaravati - Chandrapur (MSETCL) 400kV 2xD/c lines
  - d. Bhadravati – Parli (PG) 400kV line
  - e. Bhadravati - Dhariwal (IPP)-Parli (PG) 400kV S/c line
- (d) Bhadravati (WR) back to back HVDC link (2x500MW) interconnecting WR & SR grid.
- (e) On the aspect of typical power flow at Bhadravati Substation and lines connected thereto:

- i) Chhattisgarh is a power hub and in general, power tends to flow from Raipur and Bhilai substations in Chhattisgarh to Bhadravati & other Sub-Stations in Maharashtra through 400kV lines mentioned above.
  - ii) Chandrapur I & II are a major generation hub of Maharashtra with a total installed capacity of 3340 MW (4x210 + 5x500MW) and power generally tends to flow from Chandrapur-I to Bhadravati through 400kV lines at 6(c) when all the generation units at Chandrapur are in service. The power pooled at Bhadravati from the above sources tends to flow towards load centres near Parli through 400kV lines as well as towards SR through the HVDC back to back link.
  - iii) As the power generally tends to flow from Chandrapur-I to Bhadravati (when all the generating units at Chandrapur are in service) it may be seen that in general the Bhadravati - Chandrapur-I 400kV 2xD/c lines are being utilized to evacuate power from the Chandrapur I & II STPS of MAHAGENCO.
- (f) The Load Flow studies were carried out to simulate the nature of power flow on Bhadravati – Chnadrapur-1 400kV 2xD/c lines in the current time-frame and to study the sensitivity of power flow on the lines with variation of GWEL generation (injected at Bhadravati substation).
- (g) In the base case, it is observed that about 352MW power flows from Chandrapur-I to Bhadravati through the Chandrapur-I - Bhadravati 400kV 2xD/c lines. With additional 200MW injection of Respondent No 2 generation project at Bhadravati (for power transfer to MSEDCL) the power flow on

Chandrapur-I - Bhadravati 400kV 2xD/c lines reduces by 135MW (i.e. from 352 MW to 217MW). Accordingly, out of 200MW generation increase at Respondent No 2 project, 135MW power flows by displacement to Maharashtra through Bhadravati -Chandrapur-I 400kV 2xD/c lines and the balance 65MW power flows through other ISTS lines emanating from Bhadravati substation. In the premise, for a change in generation at the project of Respondent No 2 by 200MW, by displacement, about 67% power flows through Bhadravati -Chandrapur-I 400kV 2xD/c lines and the balance 33% power flows on the rest of the ISTS lines connected with Bhadravati substation. Hence, Bhadravati-Chandrapur-I 400kV 2 x D/c lines cannot be construed to be a single path between Respondent No 2 project and MSEDCL through which 100% of the power flows w.r.t the subject transaction as alleged by MSEDCL.

- (h) The Central Electricity Regulatory Commission (Rates, Charges and Terms and Conditions for use of Intervening Transmission Facilities) Regulations, 2010 apply only where a contract path can be identified. The definition of "Contract Path" as per the CERC regulations is quoted below: "Contract Path" means a transmission path that can be designated to form a single continuous electrical path between the parties to an agreement."
- (i) In terms of the above and the studies undertaken as mentioned above Bhadravati-Chandrapur-I 400kV 2 x D/c cannot be construed to be a contract path between Respondent No 2 project and MSEDCL and such a Contract Path cannot be identified for the transaction which is sought by the Respondent No 2.

- (j) In the circumstances mentioned above and as a contract path could not be identified from the studies carried out above, POWERGRID's Bhadravati - Chandrapur-I 400kV 2xD/c lines cannot be termed as "Intervening Transmission Facilities" for the subject power transfer.
- (k) Therefore, claim of the Petitioner for allowing the intervening transmission facilities as per sections 35 and 36 of the Electricity Act, 2003 is not correct.

20. The Petitioner in its rejoinder dated 17.10.2017 to the reply filed by PGCIL and in Written Submission has submitted as under:

- (a) MSEDCL's power gets generated in Maharashtra and is consumed within Maharashtra itself. The power is transmitted through PGCIL's line emanating from Bhadravati sub-station. PGCIL itself substantiates the case of the Petitioner that the PGCIL line emanating from Bhadravati is directly connected to the STU at Chandrapur Substation only.
- (b) Availing of Open Access on a line does not preclude a future application, to have a particular line in the same segment, being declared as intervening transmission facility, if it satisfies the criteria of Section 35 of the Electricity Act, 2003. In reality, the said line even today caters to the subject load (under Open Access). It therefore cannot be stated that there is no surplus capacity. Further, as per the submission made by the PGCIL, as the MSEDCL power is injected at Bhadravati, PGCIL's Bhadravati Chandrapur line gets de-loaded resulting into increase in the surplus capacity.

- (c) In fact, the APTEL judgment and order dated 8.5.2015 permits MSEDCL to undertake its own evacuation and directs that till the evacuation arrangement for takeoff of power is provided by MSEDCL, the arrangement as contained in the judgment will prevail.
- (d) Therefore, MSEDCL is not precluded in any manner from having its evacuation arrangement and if the same includes seeking a declaration of a particular segment of transmission facility, as intervening transmission facility, then the same amounts to exercise of the liberty conferred upon the Petitioner under Section 35 of the Electricity Act, 2003 read with the explanation to Section 36. Additionally, this point is no longer res integra. The APTEL in its decision in GETCO, Vadodara Vs. CERC & Ors.1 has dealt with this issue and referred to the Open Access and intervening transmission facilities being two different provisions. The relevant extract of the judgement is as under:

"34. The perusal of above sections would make it clear that the Act has made two distinct provisions enabling any licensee to use the transmission system of another licensee. Principles of harmonious construction of statute demand that these two provisions are to be interpreted in such a way that application of one must not make other provision otiose or redundant."

- (e) Further, the judgement of the APTEL dated 8.5.2015 in Appeal No. 304 of 2013 clearly provides that the present use of Open Access is not a permanent measure but a measure used in the interregnum till the Petitioner MSEDCL provides for its evacuation.
- (f) The usage of various lines emanating from Bhadravati sub-station is not only irrelevant for the purposes of construing application of Section

35 but clearly distorts the picture. PGCIL itself substantiates the case of the Petitioner that the PGCIL line emanating from Bhadravati is directly connected to the STU at Chandrapur Substation only.

- (g) It is an admitted position that the generation by the Respondent No.2 is in Maharashtra and the injection and drawal is also in Maharashtra. Even, Regulation 26 of the CERC (Grant of Connectivity, Long Term Access and Medium Term Open Access in inter State Transmission and related matters) Regulations, 2009 in its Regulation 26 takes into consideration and recognizes the need to factor in charges if any, under Section 36. This provision is incorporated as and by way of a proviso to Regulation 26 of the said Regulations, which is extracted for easy reference.

**"26. Transmission Charges**

The transmission charges for use of the inter-state transmission system shall be recovered from the long term customers and the medium-term customers in accordance with terms and conditions of tariff specified by the Commission from time to time:

Provided that if the State network is also being used in the access as a part of inter-state transmission system for 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, recovery of charges for such State network and terms and conditions thereof shall be in accordance with the regulation as may be specified by the Commission under section 36 of the Act for intervening transmission facilities, if such charges and terms and conditions cannot be mutually agreed upon the licensees:

Provided that any disagreement on transmission charges for such State network as specified above, shall not be the sole reason for denying access and either party may approach the Commission for determination of transmission charges for such State network."

The cognizance of charges determined under Section 36 is taken in the above provision as a proviso to the main Regulation. Therefore, it is necessarily an exception to the main Regulation. In S. Sundaram Pillai

& Ors. Vs. VR Pattabiraman and Ors.2 it has been held that a proviso has to be construed as being intended to limit the enacted provision. (Paragraph 37 and 43 of the said Judgment).

- (h) The line capacity of Bhadrawati - Chandrapur is about 1800 MW. In fact, as admitted by both the parties the line gets de-loaded and helps the system. The reliance on load flow study is bad in law for determination of the facility being an intervening transmission facility, as the said reliance seeks to distort the concept of determining contract path.
- (i) Section 35 read with the explanation to Section 36 of the Act deals with the declaration of a particular transmission facility as intervening transmission facility. However, Section 36 is a distinct provision dealing with determination of rates, charges, terms and conditions for use of intervening transmission facilities. Section 35 cannot be interpreted contrary to, ignoring and oblivious of other Statutory Provisions like, Section 38 (2)(c) or Section 39 (2)(c) where the objective is to ensure development of an efficient, coordinated and economical system of inter-state or intra state transmission lines for smooth flow of electricity from a generating station to the load centres, as the case may be. Even Section 40 which provides for the duties of - transmission licensees clearly speaks of the duty, to build, maintain and operate and efficient, coordinated and economical system of inter-state or intra state transmission lines, as the case may be.

(j) In respect of the APTEL judgement in the matter of Government of Goa Vs. MERC, Appeal No. 150 of 2007, the APTEL has held that the intervening transmission system of the licensee (MSETCL) is to be treated as a part of intervening transmission facilities for conveyance of power. The use of transmission line of MSETCL is incidental to the transmission of power from central generating Stations to Goa. In the Hon'ble APTEL Order in Appeal No. 198 of 2009 it was clearly established that the availability of the surplus capacity on following transmission lines was the only criteria for determination of the intervening transmission facility for the purpose of transmission of power to Daman & Diu and Dadra & Nagar Haveli:

- a. 220 kV Bhilad-Magarwada D/C
- b. 66 kV Vapi-Dabhel
- c. 66 kV Vapi-Kachigam

(k) Accordingly, the determination of the intervening transmission facility under Section 35 was the prior step and the subsequent judgment was for the purpose of calculation of transmission charges for usage of intervening transmission facility. In the said Order, the APTEL had upheld CERC Order dated 3.2.2009 in Petition No. 64/ 2008 and 67/ 2008 whereby the Hon'ble CERC had decided that the above mentioned lines (transmission assets) were a part of intervening transmission facilities and subsequently laid down the guidelines and principles for determination of charges to be paid for intervening transmission facilities. In that order, CERC had directed WRPC to do the calculation for the transmission charges which were decided vide CERC Order dated 31.7.2009.

(l) In line with the above, MSEDCL submits to the Commission to decide the matter of intervening transmission facilities under Section 35 of the Act. Further, it is submitted to make suitable Orders for the calculation of transmission charges in line with the principles laid down in Section 36 read with CERC (Rates, Charges and Terms and Conditions for use of Intervening Transmission Facilities) Regulations, 2010. It is submitted that the Commission may appoint an independent third party for the calculation of transmission charges in line with the CERC Order dated 3.2.2009 in Petition No. 64/ 2008 and 67/ 2008 which was upheld by Hon'ble APTEL in Appeal No. 198 of 2009. Accordingly, MSEDCL currently rejects the load flow studies submitted by PGCIL vide its affidavit dated October 6, 2017 as it lacks suitable and appropriate basis.

21. Written Submission filed by PGCIL vide affidavit dated 20.11.2017 is as under:

(a) MSEDCL is not claiming such Open Access under the provisions of Section 38 of the Electricity Act, 2003, namely, subsection (2) (d) (i). MSEDCL is desirous of using the said 400 KV Transmission Line outside the purview of Open Access provision by taking the position that the said line is an intervening transmission facility within the scope of Section 35 of the Electricity Act, 2003 and the charges for such intervening transmission facility are to be decided in terms of Section 36 of the Electricity Act, 2003.

(b) The entire scheme made by MSEDCL on the face of it is patently erroneous. MSEDCL is reading the provisions of Sections 35 and 36 of the Act as an

alternative to Open Access to be given on long term basis under Sections 38, 39, 40 and 42 of the Electricity Act read with the Open Access and other applicable Regulations notified by the Commission for the Inter State Transmission Line.

- (c) The scope of Sections 35 and 36 of the Act is limited. It deals with the surplus capacity available in a particular transmission line for a short period which has not been taken by any licensee or consumer under the Open Access on long term basis or medium term basis or on short term basis.
- (d) The use of the transmission system as an intervening transmission facility is restricted to the surplus capacity available after meeting the long term, medium term and short term open access sought for. By its very nature, the intervening transmission facility cannot be allowed to be used on a long term basis.
- (e) If every person is allowed to seek intervening transmission facility in regard to a transmission system under Sections 35 and 36 of the Electricity Act, 2003, in place of applying and obtaining the Long Term or Medium Term or Short Term, as the case may be, the relevant Open Access provisions of Sections 38, 39, 40 of the Electricity Act, 2003 will become redundant. Similarly, a very detailed Regulation notified by the Commission in regard to such Open Access to the Inter State Transmission System will get circumvented by persons making applications under Sections 35 and 36 of the Electricity Act, 2003.

(f) In the circumstances mentioned above MSEDCL is not entitled for the Intervening Transmission Facilities on Long Term basis.

(g) The contentions made by MSEDCL that Bhadrawati - Chandrapur Transmission Line being a single contract path is not correct. In this regard, Powergrid has placed before this Commission vide Affidavit filed on 9.10.2017 the technical details relating to the line and the Open Access sought for by MSEDCL. The salient aspects are as under:

- i) the power generation projects of GMR - Warora (Generating Company) (2 x 330 MW each) is situated at Warora in the State of Maharashtra;
- ii) the generating station is connected to the Inter State Transmission Network of Powergrid substation at Bhadrawati;
- iii) GMR - Warora had applied for and was granted long term for 550 MW power transfer to the beneficiaries, namely, MSEDCL (200 MW), TANGEDCO (150 MW) and Dadra, Nagar Haveli (200 MW) utilising the Inter State Transmission System;
- iv) The Bhadrawati substation of Powergrid is connected to Chandrapur substation of Maharashtra State Electricity Transmission Company Limited;
- v) Besides the above, the 400 KV connecting Chandpur substation and Bhadrawati substation is also inter-connected with the Grid line to Bhilai, Raipur, Parley and also connected to Dhariwal

generating station;

- vi) It has been specifically stated that the contract path could not be identified from the studies and Bhadrawati -Chandrapur 400KV D/C Line cannot be termed as an Intervening Transmission Facility having a single contract path for the transfer of power sought for by MSEDCL.

(h) The judgment relied upon by MSEDCL being Gujarat Energy Transmission Corporation Limited v. Central Electricity Regulatory Commission and ors 2011 ELR APTEL 1245 in fact fructifies the stand of the Powergrid that the intention for intervening transmission facility is only for surplus capacity for short period of time.

- (i) Further the prayer of MSEDCL for the approval of long term intervening transmission facility retrospectively from 17.3.2014 is untenable. It is further submitted that any surrender of long term open access (Prayer (c) sought by the MSEDCL) has to be as per the relinquishment provisions and on payment of relinquishment charges under the Open Access Regulations framed by the Commission.

### **Analysis and Decision**

22. We have considered the submissions of the Petitioner and the Respondents and perused the documents on record.

23. The Petitioner initiated the process for the procurement of 2000 MW power on long-term basis under Case 1 bidding process and issued Request for Proposal on 15.5.2009. The Petitioner has submitted that as per the Request for Proposal, the

delivery point was STU interface(s) within the region of the procurer and for generating station within the same State of the procurer, the STU interface was the bus bar of the generating station. GWEL who is located within the State of the Petitioner was selected as a successful bidder and entered into PPA dated 17.3.2011 with MSEDCL for supply of 200 MW power to MSEDCL. As per the PPA, the Procurer shall be responsible for ensuring availability of the inter-connection facilities and evacuation of power from the delivery point. The PPA of Schedule 1 defined delivery point as under:-

“Delivery Point- Power Station Switchyard bus-bar of EMCO energy’s Plant located at Warora”.

Thus, as per the PAP, the procurer shall be responsible for evacuation of the contacted capacity from the switchyard of the power station.

24. MSEDCL applied on 7.7.2010 to MSETCL for LTA and Connectivity for 200 MW from EMCO. MSETCL granted LTA to MSEDCL. As regards connectivity, MSETCL stated that EMCO is already connected to CTU and has LTOA for 520 MW of its capacity. According to MSEDCL, EMCO had obtained CTU connectivity for their 520 MW (2x135+1x250 MW) Power Plant (Warora) on 400 KV Bhadravati S/s at the 27th Standing Committee held at Indore on 30.7.2007 and signed a BPTA with CTU on 17.1.2009 for LTOA for 520 MW which were not disclosed at the time of submission of bids to MSEDCL. It is pertinent to mention that the financial bid of eligible bidders for Case I bidding was opened by MSEDCL on September 24, 2009. Thus, at the time of submitting the bids, EMCO Energy did not disclose to MSEDCL about the grant of connectivity by CTU for 520 MW which include 200 MW for supply of power to MSEDCL about the Application of CTU Connectivity as well as availability of the STU connectivity for 2 X 135 MW Warora power project.

25. The Petitioner has submitted that MERC in its Order dated 28.8.2013 in Petition No. 34 of 2013 has held that GWEL is responsible for establishing connectivity and access to the State transmission network and execute necessary connectivity agreement with the transmission licensee and the least cost technical solution of setting up of a LILO of 400 KV EMCO-Bhadravati one ckt at the 400 KV Warora sub-station of Respondent No.2 should be implemented by GWEL. GWEL filed an Appeal before the APTEL, being Appeal No.304 of 2013 against the Order dated 28.8.2013 passed by MERC in Petition No. 34 of 2013. On 11.2.2014, the APTEL vide Interim Order in Appeal No. 304 of 2013, has directed the commencement of power supply by GWEL to the Petitioner through the inter-state transmission system using GWEL's 400 KV dedicated transmission line which is connected to the ISTS Network (Bhadrawati substation).

26. The Petitioner has submitted that the APTEL vide judgment dated 8.5.2015 set aside the Order dated 28.8.2013 of the State Commission and held that in terms of the PPA between EMCO and MSEDCL, it is the responsibility of MSEDCL for evacuation of power from the bus bar of EMCO's Power Plant. The APTEL further directed as follows:

“Till the evacuation arrangement for the off-take of power from the bus bar of EMCO's generating station is provided by MSEDCL, EMCO will supply power to MSEDCL through its dedicated transmission line through the inter-state transmission system. During the period of power supplied to MSEDCL through inter-State transmission system, MSEDCL shall bear the transmission charges and losses for use of inter-State transmission system. By the interim order dated 11.02.2014 this Tribunal without prejudice to the rights of the parties had permitted commencement of power supply from EMCO to MSEDCL through the inter-State transmission system. The charges for transmission system of PGCIL were to be borne by EMCO subject to the outcome of the Appeal. The charges for use of inter-State transmission system borne by EMCO as per the interim order shall be reimbursed to EMCO by MSEDCL within 30 days of passing of this judgment.”

27. As per the above directions, GWEL is currently paying ₹6.20 crore per month as PoC charges to the Respondent No. 1 for transmission of 200 MW power through 400 kV Bhadravati sub-station. Such charges borne by EMCO are being reimbursed by MSEDCL from time-to-time. MSEDCL and MSETCL filed Civil Appeal Nos. 5691 of 2015 and 6080 of 2015 respectively before the Hon'ble Supreme Court of India, challenging the findings of the judgment passed by the Hon'ble APTEL dated 8.5.2016 in Appeal No. 304 of 2013 which is pending at present.

28. The Petitioner has submitted that GWEL has constructed and maintaining the dedicated D/C 400 KV transmission line from Warora to Bhadravati. Thus, power is being supplied by GWEL to MSEDCL through GWEL's 400 KV dedicated transmission line from Warora to Bhadravati and PGCIL's 400 kV transmission line from Bhadravati to Chandrapur up to MSTECL's sub-station.

29. As per the judgment of the Appellate Tribunal, MSEDCL has to arrange the evacuation of power from the bus bar of the generating station of GKEL in terms of the PPA between GWEL and MSEDCL. The Appellate Tribunal has directed that till the alternate arrangement is made, the power corresponding to MSEDCL share shall be evacuated through the 400 kV dedicated transmission line from Warora to Bhadravati and subsequently through the 400 kV transmission line of PGCUIL from Bhadravati to Chandrapur up to the MSETCL substation. The Petitioner instead of making independent arrangement for evacuation of power from the bus bar of the generation station of GWEL is seeking approval to treat the use of 400 kV Bhadravati-Chandrapur transmission line of PGCIL as intervening transmission system and pay the transmission charges as per the Central Electricity Regulatory Commission (Rules, Charges and Terms and Conditions for use of Intervening

Transmission Facilities) Regulations, 2010 for a period of 25 years. In fact, MSEDCL vide letter dated 3.9.2016 had applied to PGCIL for use of 400 kV Bhadravati-Chandrapur transmission line as an intervening transmission facilities for evacuation of 200 MW power. PGCIL vide its response dated 26.9.2016 informed the Petitioner that the referred application made for use of intervening transmission facilities is not acceptable and the same is not being considered further. PGCIL has clarified that the Commission's regulation on intervening facilities is applicable only where the intervening facilities which are incidental to ISTS are used whereas in the instant case, LTA has been granted to GWEL on the said transmission line. PGCIL has also referred to the decision of the Commission to the order in Petition No. 10/SM/2014.

30. MSEDCL has proposed that using the current infrastructure of PGCIL line on the contract path from Bhadrawati to Chandrapur is the best possible option under the CERC (Rates, Charges and Terms and Conditions for use of Intervening Transmission Facilities) Regulations, 2010. Hence, in line with APTEL order and as a cost effective option, MSEDCL has requested to provide permission for the use of intervening transmission facility for contract path on PGCIL's transmission line from Bhadrawati to Chandrapur for the conveyance of 200 MW of power from EMCO's generating station. MSEDCL has stated that the following arrangement would be used for the delivery of 200 MW power.

- a. GWEL's dedicated 400 KV D/C transmission line from Warora to Bhadravati.
- b. Transmission through PGCIL's two 400 KV double circuit lines from Bhadravati to Chandrapur.

31. Section 35 and 36 of the Act which deals with intervening transmission system provides 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.

**36. Charges for intervening transmission facilities:**

- (1) Every licensee shall, on an order made under section 35, provided 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 electric lines can be utilized for transmitting electricity for and on behalf of another licensee at his request and on payment of a tariff or charge.”

32. We have also perused Order dated 3.2.2009 & 31.7.2009 in Petition No. 64/2008 and 67/2008 in the case of Gujarat Energy Transmission Corporation Ltd (GETCO) versus DD & DNH referred to by the Petitioner. These petitions were filed by GETCO for fixation of transmission charges for use of Gujarat Transmission system for conveyance of central sector power to Union Territories of Daman & Diu (DD) and Dadra and Nagar Haveli (DNH). The Commission decided the methodology for determining the charges for conveyance of electricity through intervening transmission facilities of GETCO and directed WRPC to work out the charges based on the contract path method. The relevant para of the order is extracted as under:-

“28. It is clear that the National Electricity Policy mandates adoption of a mechanism sensitive to distance, direction and related to quantum of flow. The Tariff Policy reiterates the same and goes a step further to suggest some illustrative mechanism. As pointed out earlier, the conventional Postage Stamp method does not fulfill the

requirements specified in the aforesaid policies and therefore, should not be the first choice at least when it comes to inter-State - 19 - transmission. It is for this reason that the Commission, vide its order dated 28.3.2008 in Petition No, 85/2007, decided to restrict automatic pooling of new transmission elements (which would have resulted in inclusion of these elements in the existing regional postage stamp). The pooling of new elements is now optional. The Commission is also carrying out studies through a consulting agency to suggest a mechanism for transmission pricing (sharing of transmission charges). The transmission charges for conveyance of power to respondents No. 1 and 2 were not paid so far based on Postage Stamp rate for the Petitioner's system. Therefore it may not be justified to do so now in disregard of the provisions of the National Electricity Policy and the Tariff Policy.

.....  
32. We are conscious of the fact that in the interim order dated 21.7.2004 in Petition No 6/2004 in the matter related to determination of wheeling charges for the use of Orissa transmission system for transmission of power to MPSEB under the 2001 tariff Regulation for the period 2001-04, the Commission had stated that after implementation of open access regulations, charges shall be payable under those regulations. However, we are of the opinion that the matter relating to use of State transmission system for conveyance of power to other licensees is more appropriately covered under Sections 35 and 36 of the Act. These explicit statutory provisions cannot be ignored. We are therefore proceeding by specifying method of calculation of the transmission charges in the present case. In due course, the Commission will come out with draft regulations under Section 36 of the Act so as to deal with the issue of determination of transmission charges for intervening inter-State transmission facilities.

33. Above discussion leads one to the conclusion that it is appropriate to apply Contract Path method in preference to Postage Stamp method, The following distinct consideration in favour of this method cannot be overlooked:

- (a) This method fits in well with the philosophy contained in the National Electricity Policy and Tariff Policy.
- (b) It is in line with Sections 35 and 36 of the Act, which require determination of transmission charges for intervening transmission facility. Therefore, these sections read with conclusion drawn by the Appellate Tribunal imply that in cases such as the present one, to the extent possible, specific transmission elements used in conveyance of power have to be identified.
- (c) The Contract Path method was the agreed arrangement for the period beginning 1992-93 till GETCO raised the issue in the form of Petition 94/2006 filed in August 2006.
- (d) Probably because the method is just and fair. In fact, the same was specified by the Commission in the 2001 regulations during the tariff period 2001-04 for determination of charges in case the parties were not able to reach to an agreement.”

33. The above Order was passed in 2009 in the context that then applicable Postage Stamp method was not distance and direction sensitive as required under National Electricity Policy and National tariff Policy. Accordingly Section 35 and 36 were interpreted to arrive at a decision.

34. Further the issue of intervening facilities was raised by Karnataka Discom in Suo-Motu Order No. 10/SM/2014 wherein vide Order dated 30.6.2016 it was held 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. The relevant para is extracted as under:

“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 24<sup>th</sup> Standing Committee of constituents of Southern Region and 6<sup>th</sup> 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.”

35. CERC (Rates, Charges and Terms and Conditions for use of Intervening Transmission Facilities) Regulations, 2010 provides as under:

“2. Definitions.

(1) In these regulations, unless the context otherwise requires:

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(f) “Intervening transmission facilities” means the electric lines owned or operated by a transmission licensee or distribution licensee where such electric lines can be utilised for transmitting electricity, to the extent of surplus capacity available therein, for and on behalf of a transmission licensee or trading licensee or a distribution licensee at their request and on payment of a tariff or charge;

**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.”

36. The above said Regulations shall be applicable (i) where a contract path can be identified and (ii) where the intervening transmission facilities incidental to inter-

State transmission owned or operated by a licensee are used or proposed to be used.

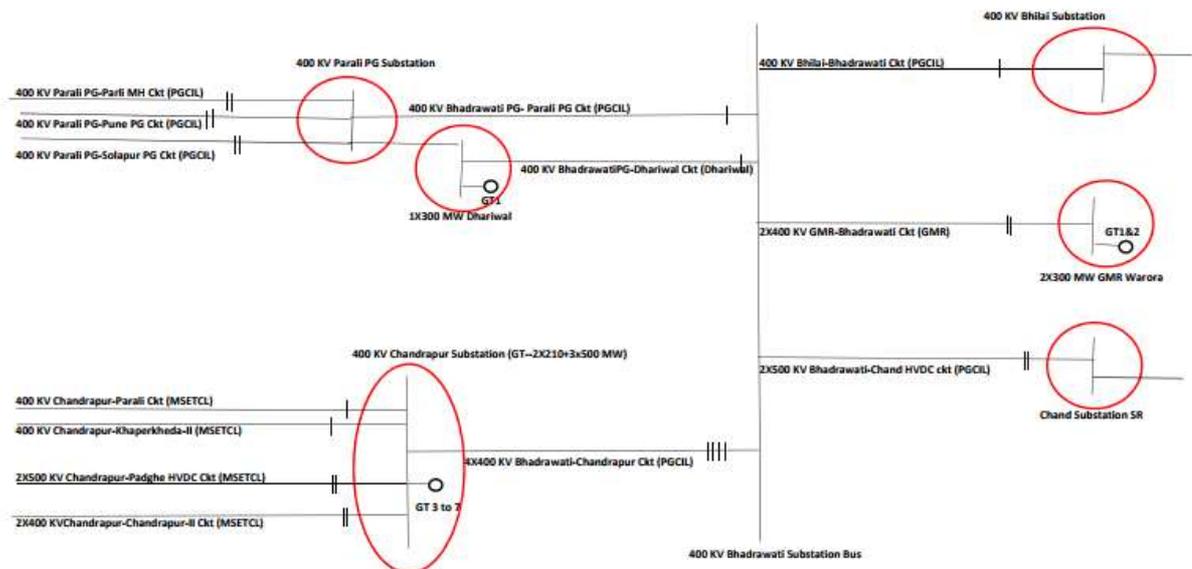
37. The above issue are dealt herewith:

#### A. Whether contract path can be identified

38. Central Electricity Regulatory Commission (Rates, Charges and term and conditions of Intervening Transmission Facilities) Regulations, 2010 provides at Regulation 2(1)(d) as follows:

“Contract Path” means a transmission path that can be designated to form a single continuous electrical path between the parties to an agreement.”

39. It is observed that GMR Warora (EMCO) had been granted LTA for 550 MW utilizing the ISTS Network for evacuation and delivery of power to its different beneficiaries viz. DNH - 200 MW, Tamil Nadu - 150 MW & MSEDCL - 200 MW. The Schematic of transmission system associated with GMR Warora is as given below:



40. It can be seen from the Schematic of transmission system that 400 kV D/c GMR-Bhadrawatickt. Line (proposed under intervening facility) is connected to the

400 kV Bhadrawati Substation Bus which in turn is connected to MSETCL lines and is also interconnected with the rest of the Grid to Bhilai (CSPTCL), Raipur(PG), Parli (PG) and Dhariwal Generation Project through various 400kV ISTS lines.

41. As per the power flow diagram submitted by CTU vide affidavit dated 6.10.2017 (attached as Annexure), it can be seen that power tends to flow from Raipur and Bhilai substations in Chhattisgarh to Bhadravati & other Sub-Stations in Maharashtra through 400kV lines. The power generally tends to flow from Chandrapur-I to Bhadravati. The power pooled at Bhadravati from the above sources tends to flow towards load centres near Parli through 400kV lines as well as towards SR through the HVDC back to back link

42. As the power generally tends to flow from Chandrapur-I to Bhadravati it may be seen that in general the Bhadravati - Chandrapur-I 400kV 2xD/c lines are being utilized to evacuate power from the Chandrapur I & II STPS of MAHAGENCO. Therefore, it is not possible to establish Contract Path for Maharashtra Share of 200 MW from GMR Warora station. Hence we do not agree to the contract path as proposed by Petitioner.

**B. Whether the proposed intervening transmission facilities is incidental to inter-State transmission**

43. The above Regulation applies for cases where the intervening transmission facilities incidental to inter-State transmission is proposed under contract path. In the instant case the proposed contract path is 400 kV Bhadravati-Chandrapur Transmission line which is an ISTS line. A line which is ISTS cannot be said to be incidental” to ISTS.

44. We observe that after the introduction of the CERC (Sharing of inter-state transmission charges and losses) Regulations, 2010 (Sharing Regulations), the sharing of inter-state transmission charges has been shifted to the principles of distance, direction and usage sensitive. Accordingly the ISTS lines being utilized by Petitioner are billed to Petitioner as per its utilization.

45. Accordingly we are of the view that CERC (Rates, Charges and Terms and Conditions for use of Intervening Transmission Facilities) Regulations, 2010 shall not be applicable in the instant case.

### **C. Consequential reliefs**

46. PGCIL has submitted that GWEL had applied for Long Term Open Access (LTOA). GWEL was provided Long Term Open Access for 550 MW power transfer from its generating station and delivery to its beneficiaries including MSEDCL (200 MW) utilizing the Inter State Transmission System (ISTS). For this, all the beneficiaries drawing power utilizing ISTS network are required to pay the ISTS charges and losses in line with the regulations of the Commission. According to PGCIL, Warora generating of GKEL station being already connected to ISTS, the station cannot be connected to STU network as per Regulations of the Commission. PGCIL has submitted that in case GWEL seeks to connect to STU network, the generating station needs to be isolated and connected to STU network separately. Further, GWEL is required to relinquish relevant LTA quantum and pay applicable relinquishment charges in line with regulation of the Hon'ble Commission.

47. We have considered the submission of PGCIL. GWEL has been granted connectivity by CTU for 525 MW (2X135 + 1X250 MW) at 400 kV Bhadravati substation in the 27<sup>th</sup> Standing Committee meeting held on 30.7.2017. GWEL has

also obtained LTA to ISTS for 520 MW which includes 200 MW for supply of power to MSEDCL. However, in terms of the PPA, GWEL has agreed to the terms and conditions for supply of power to MSEDCL from the bus bar of the generating station. The Appellate Tribunal has upheld the provisions of PPA and has directed MSEDCL to utilize the ISTS line in the interim period and pay tariff to the Petitioner. Thus, under its contractual obligations in terms of the PPA, GWEL is required to facilitate supply of power to MSEDCL from its bus bar by applying for connectivity to MSETCL for 200 MW of power. We have already held in our order dated 9.3.2018 in Petition No. 20/MP/2017 that an ISGS can be connected to both STU network and ISTS network for supply of powers to the beneficiaries within and outside the home State respectively. In such cases, the ISTS charges shall not be applicable on the conveyance of power on the State network. It is noticed that as per the Appellate Tribunal's judgment, GWEL is entitled to recover the ISTS charges for 200 MW from MSEDCL till the evacuation arrangement for off-take of power from the bus bar of Warora plant of GWEL is provided by MSEDCL. After the arrangement is made by MSEDCL, GWEL shall not be entitled to recover the ISTS charges for 200 MW from MSEDCL for which it had obtained LTA from PGCIL for supply of power to MSEDCL.

48. The petition is disposed of in terms of above.

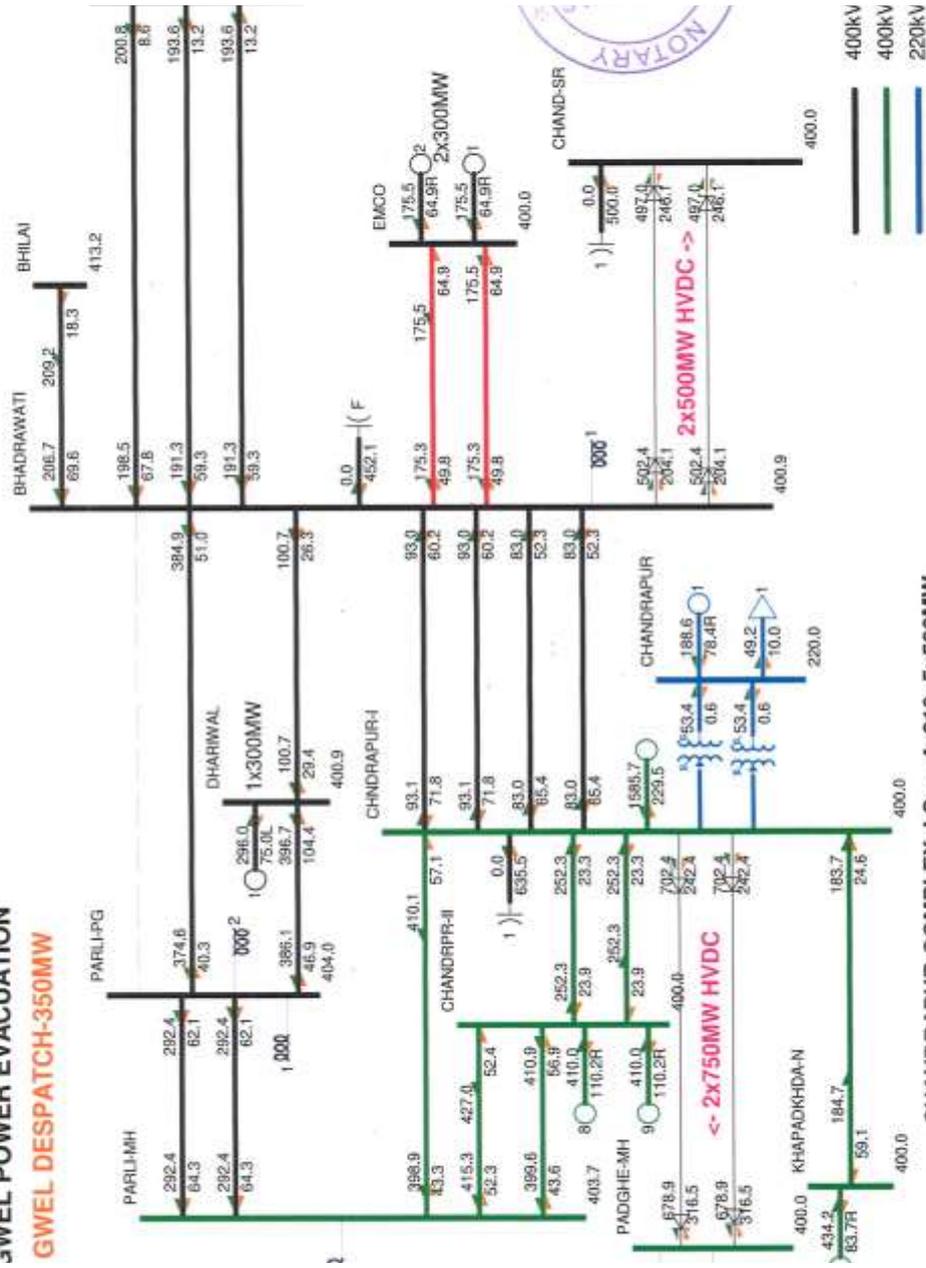
**sd/-**  
**(Dr. M.K. Iyer)**  
**Member**

**sd/-**  
**(A.S. Bakshi)**  
**Member**

**sd/-**  
**(A.K. Singhal)**  
**Member**

Anne

**GWEL POWER EVACUATION  
GWEL DESPATCH-350MW**



CHANDRAPUR COMPLEX I.C. - 4x210+5x500MW