

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 141/TT/2015

Coram:

**Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri P.K. Singh, Member**

Date of order: 03.07.2023

In the matter of:

Re-consideration of order dated 15.12.2017 in Petition No.141/TT/2015 pursuant to the directions of Appellate Tribunal for Electricity in common judgment dated 6.10.2022 in Appeal No. 73 of 2018 and Appeal No. 196 of 2019.

And in the matter of:

Power Grid Corporation of India Limited,
"Saudamini", Plot No. 2, Sector 29,
Gurgaon -122001.

..... **Petitioner**

vs.

1. Madhya Pradesh Power Trading Company Limited,
Shakti Bhawan, Rampur, Jabalpur-482 008.
2. MB Power (Madhya Pradesh) Limited,
Corporate Office, 235, Okhla Industrial Estate,
Phase-III, New Delhi-110 020.
3. Maharashtra State Electricity Distribution Company Limited,
Prakashgad, 4th Floor,
Andheri (East), Mumbai-400 052.
4. Gujarat Urja Vikas Nigam Limited,
Sardar Patel Vidyut Bhawan, Race Course Road,
Vadodara-390 007.
5. Electricity Department, Government of Goa,
Vidyut Bhawan, Panaji,
Near Mandvi Hotel, Goa-403 001.
6. Electricity Department,
Administration of Daman and Diu,



Daman-396 210.

7. Electricity Department,
Administration of Dadra Nagar Haveli,
U.T., Silvassa-396 230.
8. Chhattisgarh State Electricity Board,
P.O. Sunder Nagar,
Dangania, Raipur
Chhattisgarh-492 013.
9. Madhya Pradesh Audyogik Kendra Vikas Nigam (Indore) Limited,
3/54, Press Complex,
Agra-Bombay Road,
Indore-452 008.

...Respondents

For Petitioner: Ms. Swapna Seshadri, Advocate, PGCIL
Shri Anand K. Ganesan, Advocate, PGCIL
Ms. Neha Garg, Advocate, PGCIL
Ms. Surbhi Gupta, Advocate, PGCIL
Shri V. Srinivas, PGCIL
Shri V.C. Shekhar, PGCIL
Shri Mukesh Khanna, PGCIL
Shri Prashant Kumar, PGCIL
Shri Pankaj, PGCIL

For Respondents: Ms. Utkarsh Singh, Advocate, MB Power
Ms. Molshree Bhatnagar, Advocate, MB Power
Ms. Nimish Sha, MB Power

ORDER

Appellate Tribunal for Electricity (hereinafter referred to as 'APTEL') has remanded Petition No. 141/TT/2015 vide judgement dated 6.10.2022 in Appeal No. 73 of 2018 and Appeal No. 196 of 2019 for re-consideration of the order dated 15.12.2017 in Petition 141/TT/2015. The relevant portions of the judgment dated 6.10.2022 are as follows:

"55. It is clear that the Central Commission has held that the COD was achieved on 25.02.2015, date on which the Dedicated Transmission System was put to use due to drawl of startup power and injection of infirm power as the SCOD of the Generating Station was delayed, we are inclined to accept the said decision as the Dedicated Transmission System was ready to provide "Regular Service" of supplying the power to GoMP and for short term



sale, as already observed that the purpose of the Dedicated Transmission System is not limited to the power evacuated under the LTA for 392 MW only, therefore, it cannot be construed that the "Regular Service" shall be achieved only when the power under the said LTA is supplied to the beneficiaries. On the other side, in the light of the judgment, it can also be construed that the asset was ready only on the date the requisite meters (SEMs) were installed by PGCIL and WRLDC issued the certificate of charging i.e. 18.11.2014. Therefore, the Central Commission is bound to pass the order accordingly, thereby making a balance against the regular service provided by the Transmission Licensee for evacuation and supply of power from the Generator for the purpose as specified in the Agreement."

"58. Also, no asset can be used as freebees, therefore, appropriate charges are bound to be paid by the Generator, the issue is remitted to the Central Commission for review/re-examination and decide in accordance with law to the extent that the Dedicated Transmission Asset was ready to the extent of evacuating the power generated to the pooling point but limited to the extent of supplying power to other beneficiaries except the beneficiaries under the LTA."

2. Accordingly, Petition No.141/TT/2015 was re-opened and heard.

BACKGROUND

3. The Petitioner, Power Grid Corporation of India Limited (PGCIL), filed the present petition for determination of transmission charges from the date of commercial operation (COD) to 31.3.2019 in respect of MB TPS (Anuppur)-Jabalpur Pooling Station 400 kV D/C (triple snowbird) line only (hereinafter referred to as 'the transmission asset') under Transmission System for connectivity of MB Power (MP) Limited (hereinafter referred to as the 'MBPL') in Western Region as per the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as 'the 2014 Tariff Regulations'). The Commission vide order dated 15.12.2017 in Petition No. 141/TT/2015, approved the transmission tariff in respect of the transmission asset from COD to 31.3.2019 under the 2014 Tariff Regulations.

4. In exercise of powers under Section 38(1) of the Electricity Act, 2003 (for short, 'the Act'), the Government of India has notified the Petitioner as the Central Transmission Utility (CTU). The Ministry of Power, Government of India, vide Gazette Notification dated 9.3.2021 has notified Central Transmission of Utility of India Limited



(CTUIL), a Government Company and a wholly owned subsidiary of PGCIL, as the CTU under Section 38 of the Act. Accordingly, we have hereinafter used in this order, the expression 'CTUIL' in place of 'CTU'.

5. The Petitioner claimed COD of the transmission asset as 8.8.2014 under proviso (ii) to Regulation 4(3) of the 2014 Tariff Regulations as it could not be put into 'regular service' because of non-availability of bays at MBPL end. However, the Commission vide order dated 15.12.2017 in Petition No. 141/TT/2015, approved the COD of the transmission asset as 25.2.2015 observing as follows:

"25. The petitioner has prayed for approval of COD of assets covered in instant petition from 8.8.2014 under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations, since the instant asset could not be put into regular service because of non-readiness on the part of MBPL. CEA vide its certificate dated 31.7.2014 has granted approval for anti-theft charging of the line. It is indicated in CEA certificate dated 31.7.2014 that generator end switchyard was not ready as on 31.7.2014. Further, RLDC has issued trial run certificate dated 18.11.2014 indicating that the trial run was completed on 7.8.2014 on "no load" due to non-availability of bays at MBPL end. This implies that the petitioner was ready on 8.8.2014 but could not declare commercial operation of the line due to non-availability of bays at MBPL end.

26. The petitioner has been relying on the trial run certificate issued by RLDC showing that the trial run was completed on 7.8.2014 on "no load condition" due to non-availability of bays at MBPL end. In other words, the assets have not been put to use. Therefore, we are not inclined to consider COD of the assets with effect from 8.8.2014 under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations as the asset was not put into regular service on that date. It is further noticed that neither the petitioner nor the respondent has submitted documents as regards date on which switchyard at MBPL end was ready for use. However, on perusal of the DSM accounts available on the website of WRPC, we notice from the account for the week 23.2.2015 to 1.3.2015 issued by WRPC vide letter dated 18.7.2016, that the MBPL started drawing start up power with effect from 25.2.2015 which is possible when the switchyard at MBPL end was ready. Accordingly, we hold that the asset was put to regular service on 25.2.2015 i.e. date of drawl of start-up power by MBPL and the COD of the instant transmission line is approved as 25.2.2015. The IDC and IEDC for the period from 8.8.2014 to 24.2.2015 shall be borne by MBPL since the line despite being ready from 8.8.2014 could not be put to commercial operation due to non-availability of bays at MBPL end."

6. MBPL filed Appeal No.73 of 2018 against Commission's order dated 15.12.2017 in Petition No.141/TT/2015 before APTEL against the Commission's directions to pay IDC and IEDC charges for the period from 8.8.2014 to 24.2.2015 to PGCIL and transmission charges for the period from 25.2.2015 to 19.5.2015 to CTUIL. The APTEL



vide judgement dated 6.10.2022 (hereinafter referred to as 'the judgment dated 6.10.2022'), allowed Appeal No. 73 of 2018 and remitted back Petition No. 141/TT/2015 for re-consideration of the Commission.

7. Pursuant to remand, the matter was heard by the Commission on 12.1.2023, 7.2.2023 and 9.2.2023.

8. The Petitioner referring to the excerpts of the judgment dated 6.10.2022, made the following submissions vide affidavit dated 1.2.2023:

- a) In Appeal No. 73 of 2018, MBPL, amongst others, challenged the declaration of COD of Anuppur-Jabalpur line as 25.2.2015 and also contended that MBPL had no liability to pay any charges to the Petitioner either from 8.8.2014 or from 25.2.2015.
- b) However, the above contentions of MBPL were not accepted by APTEL. The APTEL in its judgment dated 6.10.2022, observed that there is no denial of the fact that dedicated transmission system to be executed by Petitioner was ready except installation of requisite number of SEMs on the part of Petitioner while the generating station (switchyard) was not ready on the part of generator as certified by Central Electricity Authority (CEA), a statutory body under the Act vested with function of electrical inspection.
- c) The APTEL in the judgment dated 6.10.2022 has also referred to the observation of the Commission's order dated 15.12.2017 in Petition No. 141/TT/2017, that the COD of the transmission asset in the present case was not considered by the Commission as 8.8.2014 under proviso (ii) to Regulation 4(3) of the 2014 Tariff Regulations as the transmission asset was not put into 'regular service' on that date. In other words, COD can be



declared once the transmission asset is put to 'regular service' or achieves the intended purpose of supplying power to the beneficiaries.

- d) The APTEL in its judgment dated 6.10.2022, acknowledged and accepted the COD approved by the Commission for the dedicated transmission system as 25.2.2015. The APTEL in the said judgment further observed that the purpose of said system is not only to evacuate power under the LTA but to service the electricity supply to GoMP for short term sale and the same could have been achieved if the generating station had been ready. Thus, default of the generator cannot be attributed to the Petitioner for the equivalent quantum as envisaged under the Agreement(s).
- e) On the issue of readiness of the dedicated transmission system, the APTEL in the judgment dated 6.10.2022, did not find any fault in the decision of the Commission, once certificate of charging even if for the purpose of 'anti-theft charging' has been issued by RLDC, except to the fact that whether the transmission asset should be considered as 'ready' from 8.8.2014 or from the date of issuance of certificate of charging by WRLDC on 18.11.2014.
- f) The judgment dated 6.10.2022, has recorded the submissions of MBPL that in terms of the APTEL's judgment dated 2.7.2012 in Appeal No. 123 of 2011, while deciding the COD of a transmission line, the following conditions are to be fulfilled:
 - i) The line has been charged successfully,
 - ii) its trial operation has been successfully carried out, and
 - iii) it is in regular service.



- g) The said judgment of APTEL dated 2.7.2012 also observes that merely charging of the line from one end without switchgear, protection and metering arrangements being ready at the other end, even if not in the scope of works of the transmission licensee, would not entitle the line for declaration of commercial operation.
- h) The judgment dated 6.10.2022, recorded the submissions of MBPL while assailing the COD of the transmission asset that the Central Commission has failed to appreciate that drawl of start-up power by the generator does not mean that the transmission asset was put to 'regular service', and declared COD on 25.2.2015 from the date of drawl of start-up power. It was contended by MBPL that the transmission asset was put to 'regular service' only when the power generated from the associated generating project of the generator started getting evacuated and transmitted to its beneficiaries. MBPL in the instant case simultaneously applied for connectivity as well as Long-term Open Access (LTA) on 25.2.2010, under the Central Electricity Regulatory Commission (Grant of Connectivity & Long-Term Access) Regulations 2009 (hereinafter referred to as 'the 2009 Connectivity Regulations') for end to end evacuation and transmission of power from its 1200 MW (2X600 MW) Anuppur Thermal Power Project, against the connectivity to the grid along with the LTA, cumulatively, was granted to the MBPL on 19.4.2010, identifying end to end Transmission System for evacuation of power from the Generating Project of MBPL to the beneficiaries. The judgment dated 6.10.2022, however, observed that the argument of MBPL needs to be examined in the light of supply of power as anticipated under the Agreements, which are as follows:



(i) 392 MW under LTA for WR and NR,

(ii) 393 MW for supply to GoMP, and

(iii) 337 MW for short term sale.

- i) MBPL on this connectivity line has imported up to about 20 MW of power from Jabalpur (from where it is connected to entire regional grid) and has availed the same for its start-up requirement and has also exported infirm power up to about 520 MW into the grid utilizing this connectivity line. Therefore, dedicated transmission asset was ready for connecting and supplying power to the beneficiaries other than the beneficiaries under the LTA.
- j) The APTEL in its judgment dated 6.10.2022, approved the decision of the Commission that COD of the transmission asset was achieved on 25.2.2015, on which date the dedicated transmission system was put to use due to drawl of start-up power and injection of infirm power as SCOD of the generating station was delayed. The APTEL in its said judgment further accepted the decision of the Commission that the dedicated transmission system was ready to provide 'regular service' for supplying power to GoMP and for short term sale. The APTEL in its said judgment observed that the purpose of dedicated transmission system is not limited to the power evacuated under LTA for 392 MW only and as such it cannot be construed that 'regular service' shall be achieved only when power under the said LTA is supplied to the beneficiaries. The APTEL in the said judgment further observed that in the light of the judgment, it can also be construed that the transmission asset was ready only on the date the requisite meters (SEMs) were installed by the Petitioner and WRLDC issued the certificate of charging i.e. 18.11.2014. Observing so, the APTEL opined that the Central



Commission is bound to pass the order accordingly by striking a balance between the 'regular service' provided by the Transmission Licensee for evacuation and supply of power from the generator for the purpose as specified in the Agreement.

- k) The judgment dated 6.10.2022, did not accept the contentions of MBPL that the transmission system did not achieve 'regular service' as it cannot be used for supplying power under the LTA and observed that contrary to it, the dedicated transmission system was used for drawl of start-up power and injection into the grid for supply to GoMP and for short term sale of power, if required.
- l) The APTEL in its judgement observed that transmission licensee cannot be penalized for the delay on the part of generator in executing its project and achieving its COD. The APTEL in paragraph 58 of the said judgment also held that the transmission assets cannot be used as a freebie and, therefore, appropriate charges are required to be paid by the generator. The issue, what these charges should be, has been remitted back to this Commission for its re-examination and decision in accordance with law.
- m) The premise of appeal of MBPL that transmission line has no utility and cannot be deemed to be under regular service on 25.2.2015 or any such other date till the entire LTA of MBPL is operationalised has been rejected by the APTEL.
- n) Thus, from 25.2.2015, the APTEL has accepted declaration of regular COD and, therefore, there is no dispute on the issue of payment of transmission charges from this date. The only issue which remains before the



Commission for decision is what should be the treatment for transmission line for the period from 8.8.2014 to 24.2.2015.

- o) The transmission line was ready from 8.8.2014 is evident from certificate dated 31.7.2014, issued by the Electrical Inspector in terms of Regulation 43 of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 (hereinafter referred to as '2010 CEA Regulations') providing approval for anti-theft charging of transmission line, notification dated 8.8.2014, issued by the Petitioner informing the readiness and declaration of COD of the transmission line for providing connectivity to the generating station of MBPL from the side of the Petitioner, WRLDC certificate dated 18.11.2014, indicating trial run in respect of the transmission line was completed on 7.8.2014 and was charged on 'no load' basis due to non-availability of bays at MBPL end which were under the scope of MBPL.
- p) Besides this, letter dated 13.11.2013, issued by WRLDC to MBPL stated that it was the responsibility of MBPL to co-ordinate with the Petitioner for procurement of 7 Nos. Special Energy Meters ('SEMs').
- q) A meeting was held on 30.7.2014 between the Petitioner and MBPL in respect of installation of meters. In fact, on 30.7.2014, two Special Energy Meters ('SEMs') were installed by the Petitioner on each end of the transmission line (at MBPL's end) which were sufficient to charge the line and record the power flow as per the Indian Electricity Grid Code Regulations, 2010 (hereinafter referred to as the '2010 Grid Code'). The same has been recorded in the Minutes of meeting dated 30.7.2014 between MBPL and the Petitioner.



- r) Only two SEMs could be installed initially in July, 2014. The line protection panels required for remaining 5 SEMs, under the scope of MBPL were not ready and, therefore, the balance meters could not be installed and this was not attributable to the Petitioner. MBPL was required to deposit the payment for the meters which was done by it only on 27.8.2014.
- s) The switchyard and the panels for remaining 5 SEMs were made ready by MBPL only on 1.11.2014. As soon as MBPL informed about the readiness of switchyard vide its letter dated 1.11.2014, the Petitioner installed the SEMs immediately, i.e. on 6.11.2014.
- t) According to the Petitioner, COD of the transmission line may be approved under proviso (ii) to Regulation 4(3) of the 2014 Tariff Regulations. APTEL has also observed that the transmission line could have been considered ready on the date of WRLDC certificate of charging i.e. on 18.11.2014. The contents of WRLDC certificate dated 18.11.2014 do not refer to any other date regarding the readiness. However, it only states that the transmission line was ready on 8.8.2014.
- u) The question which needs to be considered is as to what should be the treatment of amount to be paid to the Petitioner for the transmission line from its readiness i.e. 8.8.2014 since the Petitioner has completed its scope on 8.8.2014 and has submitted all documentary evidence. Hence, the Petitioner is entitled for transmission charges of the transmission line from 8.8.2014 onwards.
- v) MBPL was granted reverse transmission charges for the period from 20.5.2015 to 26.8.2015 for non-operationalisation of LTA. Therefore, there cannot be any other measure of the amount to be paid to the Petitioner for



the period from 8.8.2014 onwards. From 25.2.2015 onwards, there is no dispute that the transmission charges have to be paid by MBPL since the COD decided by this Commission has been upheld by the APTEL.

- w) MBPL had moved an Execution Petition, being EP No. 17 of 2022, wherein APTEL directed the Petitioner following:

“Suffice it, in these circumstances, to allow the Execution Petition directing PGCIL to pay the Petitioner proportionate transmission charges and CTU to pay the bank charges, as directed by this Tribunal in the Order in Appeal No. 196 of 2019 dated 06.10.2022, within one month from today. In this Execution Petition, the Petitioner has claimed Rs.25,10,43,783 towards transmission charges. Mrs. Swapna Seshadri, Learned Counsel for PGCIL, submits that the amount so claimed needs to be reconciled with their records. PGCIL shall make payment, as directed hereinabove, within one month from today subject to reconciliation in the interregnum.”

- x) The present petition may be decided by this Commission in order that final adjustments between the Petitioner and MBPL may be done subject to the outcome of the second Appeal filed by the Petitioner before the Hon’ble Supreme Court against the APTEL’s judgement dated 6.10.2022 being Civil Appeal No. 9055-9056 of 2022.

9. After remand of the matter, MBPL has made the following submissions in its written submissions:

- a) MBPL has filed Civil Appeal being Diary No.1483 of 2023, before the Hon’ble Supreme Court against the APTEL’s judgment dated 6.10.2022.
- b) MBPL applied for grant of connectivity and LTA vide common application dated 25.2.2010 against which CTUIL issued a common confirmation letter dated 19.4.2010 for grant of connectivity and LTA w.e.f. 1.2.2013 and 1.8.2013, respectively. The ‘intended purpose’ for grant of connectivity and LTA was for evacuation and transmission of power from MBPL’s thermal



generating plant having an installed capacity of 1200 MW (2x600) to its beneficiaries in the following manner:

- i. 200 MW was proposed to be evacuated to Western Region;
 - ii. 192 MW was proposed to be evacuated to Northern Region; and
 - iii. Balance power was proposed to be evacuated to Government of Madhya Pradesh and short-term sale.
- c) MBPL entered into Transmission Agreement dated 14.6.2010 with PGCIL as well as an LTA Agreement dated 17.6.2011 for 392 MW for evacuation and supply of power to the beneficiaries in Western and Northern Regions.
- d) On 13.7.2010, in furtherance of Clause 5 (b) of the Transmission Agreement dated 14.6.2010, MBPL furnished a bank guarantee of Rs. 60 crore (Rs. 5 lakh/MW for the entire Generation Project's installed capacity of 1200 MW) in favour of PGCIL.
- e) The scheduled date of execution of the transmission asset was 19.9.2013.
- f) Subsequently, MBPL signed a long-term Power Purchase Agreement (PPA) on 18.1.2014 with Uttar Pradesh Power Corporation Limited (UPPCL) through PTC India Limited (PTC) for supply of 361 MW from its Generating Station. MBPL alongwith its letter to the Petitioner on 21.1.2014 attached a copy of the said PPA and requested the Petitioner to formalize the LTA of 361 MW (on firm beneficiary basis for supply of power to the State of UP) from the LTA granted quantum of 392 MW.
- g) On 13.11.2013, WRLDC communicated to both PGCIL and MBPL about the requirement of Metering Scheme for the transmission asset in terms of the provisions of Clause 6.4.21 of the 2010 Grid Code 2010 and directed the Petitioner to install 7 SEMs.



- h) MBPL vide its letter dated 29.5.2014, requested PGCIL to formalize LTA from the third quarter of 2014-15 (i.e. by October-November 2014) to enable MBPL to supply power to UP under the said PPA and requested PGCIL to confirm the date of commencement of LTA for UP.
- i) The Petitioner had been constantly delaying original SCOD of the transmission asset and the reasons for delay as have been brought before the Commission during the proceedings were never intimated to MBPL.
- j) On 30.7.2014, the officials of the Petitioner visited the Generating Station and installed 2 SEMs. However, in terms of WRLDC's scheme, PGCIL was required to install 7 meters and the same were not installed till 7.11.2014. However, MBPL paid the cost of all 7 meters on 13.8.2014, on revised demand of the PGCIL.
- k) On 31.7.2014, a certificate for "anti-theft charging" of the transmission asset under Regulation 43 of the 2010 CEA Regulations was issued. PGCIL declared the COD of the transmission asset as 8.8.2014.
- l) On 18.11.2014, WRLDC issued a certificate of charging of the transmission element i.e. the transmission asset w.e.f. 8.8.2014. WRLDC in the said certificate clearly indicated that the transmission asset has been idle charged, and that there has been 'no-load' or synchronization of the elements. The said certificate re-emphasized that there were only two check meters that were installed till such date.
- m) In terms of the 'Procedure for issuance of a certificate by RLDC for successful trial operation of a transmission element' issued by POSOCO on 26.5.2014, Petitioner was required, amongst other things, to submit real time meter readings from the SEMs installed. The certificate dated



18.11.2014 indicates various communications exchanged between PGCIL and POSOCO/WRLDC. The Petitioner initially provided the said meter readings to WRLDC on 16.8.2014. However, till such time, the requisite meters were not installed. On 10.11.2014, upon installation of all SEMs on 7.11.2014, the Petitioner provided the information to WRLDC based on which the certificate of idle charging was issued by WRLDC on 18.11.2014.

- n) The transmission asset cannot be declared to be ready as on 8.8.2014 in view of the extant provisions of Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 (hereinafter referred to as the '2006 Metering Regulations') which mandates installation of meters by transmission licencees/generating companies and a certificate under Section 43 of the 2010 CEA Regulations prior to the commencement of supply of power.
- o) MBPL had applied for grant of Connectivity as well as Long-Term Access Agreement (LTA) for a quantum of 392 MW through a common application dated 25.2.2010 against which PGCIL/CTUIL issued a common confirmation letter dated 19.4.2010. Notably, grant of connectivity as well as LTA for a quantum of 392 MW, was for the 'intended purpose' of evacuation and supply of power from MBPL generating plant to the beneficiaries identified under the LTA Agreement dated 17.6.2011.
- p) The LTA for 392 MW was operationalized only with effect from 26.8.2015 with the execution of Gwalior-Jaipur 765 kV S/C (2nd) transmission line and Jaipur-Bhiwani 765 kV S/C transmission line. Grant of LTA was always subject to system strengthening and the same was issued subject to the availability of the common transmission system, which, inter alia, included



the aforesaid Gwalior-Jaipur 765 kV S/C (2nd) line. Since the said line was executed in August, 2015 and the same was a pre-cursor to the operationalization of the LTA, MBPL cannot be imposed with the transmission charges for the entire quantum of 392 MW prior to operationalization of the LTA.

- q) The transmission asset was an essential and integral part of the entire Transmission System which was required to be executed in a co-ordinated manner for the purpose of evacuation and supply of power under the LTA. As such, the transmission asset cannot be considered a distinct and isolated network for the purpose of levy of transmission charges.
- r) The transmission asset was required to be constructed by the Petitioner under Regulation 8 of the 2009 Connectivity Regulations by treating the said line as a part of the ISTS network. Allowing levy of transmission charges on COD of the so-called connecting transmission line without completing the rest of the transmission system will provide a negative and unfair incentive to the Petitioner to complete such line without completing the rest of the transmission system.
- s) The transmission charges are authorized to be levied under Section 62(b) of the Act for transmission of electricity. Section 2(74) of the Act says 'transmit' means conveyance of electricity by means of transmission lines and the expression 'transmission' shall be construed accordingly. Therefore, transmission of electricity involves the function of carriage of electricity and the Petitioner as a transmission licensee is required to construct the transmission system to facilitate such carriage of electricity.



- t) PGCIL/CTUIL has resorted to abuse of its dominant position and illegal gains by charging MBPL for an incomplete transmission system which is not serving its intended purpose till the time LTA granted to MBPL was operationalized.
- u) In terms of the Hon'ble Supreme Court judgment in the matter of NTPC Barh-Balia, a transmission asset could be considered as ready and in regular service when (i) such asset has been charged successfully; (ii) its trial operation has been successfully carried out, and (iii) it is in regular service. Regulation 3(53) of the 2014 Tariff Regulations defines 'Regular Service' which means putting into use a transmission system or element thereof after successful trial operation and a certificate to that effect has been issued by the concerned Regional Load Dispatch Centre.
- v) Since the transmission asset alongwith its associated systems was not in regular service and could only be utilized meaningfully in August, 2015 when transmission service could be facilitated, no transmission charges can be made applicable from any date prior to such date.
- w) With regard to declaration of COD of the transmission asset as 8.8.2014, the Petitioner in terms of Regulation 5(2) of the 2014 Tariff Regulations is required to show that the transmission system or its element is charged for 24 hours at continuous flow of power and communication signal from sending end to receiving end with requisite metering system, telemetry and protection system in service enclosing certificate to that effect.
- x) The Petitioner did not obtain the required certificate from the Electrical Inspector in terms of Regulation 43 of the 2010 CEA Regulations before the commencement of supply of any electrical installation exceeding 650 volts.



- y) Regulation 6.4.1 of the 2010 Grid Code mandates PGCIL/CTUIL to install SEMs at all inter-connection and other identified points.
- z) In terms of the Regulation 7 of the 2006 Metering Regulations, there was statutory requirement of installation of 7 meters. However, only 2 meters were installed by PGCIL as on 8.8.2014 (i.e. the alleged date of readiness of the transmission asset).
- aa) Hon'ble Supreme Court in the matter of PTC India Limited v. CERC & Ors. (2010) 4 SCC 603, has observed that in case a Regulation is made under Section 178 of the Act, then in that event framing of terms and conditions for determination of tariff under Section 61 of the Act has to be in consonance with the Regulations under Section 178 of the Act.
- bb) Therefore, the transmission asset may not be declared to be ready as on 8.8.2014 and subsequently cannot be declared to have achieved commercial operation w.e.f. 25.2.2015 since the essential pre-requisites prior to declaration of the transmission asset were never fulfilled by the Petitioner.
- cc) 'Regular Supply' for the purpose of evacuation and supply in terms of the LTA quantum of 392 MW was never achieved on 25.2.2015 or before. MBPL was denied and precluded from supply of 361 MW power from its generation project to Northern Region/UPPCL under a Long-Term Power Purchase Agreement dated 18.1.2014, on account of non-availability of 765 kV Gwalior-Jaipur Transmission Line. Unit-I of the Applicant/MBPL was under a forced shut-down on account of non-availability of 765 kV Gwalior-Jaipur Transmission Line despite having LTA with PGCIL/CTUIL on 17.6.2011. Further, in terms of Clause 6(d) of the LTA Agreement dated 17.6.2011, the



PGCIL/CTUIL was required to make alternate arrangement for dispatch/evacuation of power from the Applicant's/MBPL generating station in the event of delay in execution of associated Inter-State Transmission System.

- dd) Failure of CTUIL to undertake a co-ordinated and planned commissioning schedule is apparent from the Commission's order dated 10.5.2018 in Petition No. 96/MP/2018, wherein the Commission has observed that in the instant case, LTA was granted with the system strengthening, Petitioner should have planned the COD of system strengthening line as per the LTA commencement date granted to the Petitioner as per the LTA Agreement. Therefore, the Commission did not accept the contentions of the Petitioner.
- ee) The APTEL in its judgment dated 6.10.2022, observed that the Petitioner cannot deny the fact that generator signed the Agreement for the sole purpose of supplying power to its beneficiaries and as such the two Agreements have to be read together, as by providing mere connectivity, the power generated cannot be evacuated and supplied to the beneficiaries under the LTA. However, any quantum of power evacuated through the dedicated transmission system will attract the appropriate transmission charges limited to such an extent. The APTEL in the said judgment further observed that simple connectivity cannot serve the purpose of 'regular service' if no power is evacuated and supplied to the beneficiaries.

10. Pursuant to the APTEL's judgment dated 6.10.2022, the following issues fall for our consideration on remand:

- A. Whether requisite number of SEMs were installed by PGCIL on 8.8.2014 and when WRLDC issued the certificate under Regulation 5 of the 2014 Tariff Regulations for the transmission asset?



- B. What charges are required to be paid by the generator to PGCIL as per the directions of APTEL in paragraph nos. 57 and 58 of its judgment dated 6.10.2022?

11. We have heard learned counsel for the parties at length on 12.1.2023, 7.2.2023 and 9.2.2023 and have carefully perused the record including the written submissions filed by the Petitioner on 1.3.2023 and by the MBPL on 3.3.2023.

Issue No. A.

A. Whether requisite number of SEMs were installed by PGCIL on 8.8.2014 and when WRLDC issued the certificate under Regulation 5 of the 2014 Tariff Regulations for the transmission asset?

12. For proper redressal of this issue, we feel it necessary to refer to the observations of APTEL in its judgment dated 6.10.2022, and the same is as follows:

*“55. It is clear that the Central Commission has held that the COD was achieved on 25.02.2015, date on which the Dedicated Transmission System was put to use due to drawl of start-up power and injection of infirm power as the SCOD of the Generating Station was delayed, we are inclined to accept the said decision as the Dedicated Transmission System was ready to provide “Regular Service” of supplying the power to GoMP and for short term sale, as already observed that the purpose of the Dedicated Transmission System is not limited to the power evacuated under the LTA for 392 MW only, therefore, it cannot be construed that the “Regular Service” shall be achieved only when the power under the said LTA is supplied to the beneficiaries. On the other side, in the light of the judgment, it can also be construed that the asset was ready only on the date the requisite meters (SEMs) were installed by PGCIL and WRLDC issued the certificate of charging i.e. 18.11.2014. **Therefore, the Central Commission is bound to pass the order accordingly, thereby making a balance against the regular service provided by the Transmission Licensee for evacuation and supply of power from the Generator for the purpose as specified in the Agreement.**”*

13. In the light of APTEL’s judgment dated 6.10.2022, we now examine the readiness of the dedicated transmission asset with reference to installation of SEMs by the Petitioner and issuance of certificate of charging by WRLDC dated 18.11.2014.

14. Learned counsel for the Petitioner strenuously contended that Anuppur-Jabalpur Line was ready from 8.8.2014, as on this date it possessed certificate dated 31.7.2014 under Regulation 43 of 2010 CEA Regulations which provided approval for



anti-theft charging of Anuppur-Jabalpur Pooling Station Transmission Line, notification dated 8.8.2014 issued by the Petitioner informing the readiness and declaration of COD of the Anuppur-Jabalpur Line for providing connectivity to the generating station of MBPL, and that WRLDC certificate dated 18.11.2014 was issued under Regulation 5 of the 2014 Tariff Regulations which evinced that the transmission line was ready on 8.8.2014. As regards the SEMs, learned counsel contended that in July, 2014 two SEMs could be installed on both the circuit of the dedicated transmission line and balance 5 no SEMS, which were to be installed at generation switchyard panels, could be installed on 6.11.2014 as generation switchyard panel got ready by MBPL only on 1.11.2014. Learned counsel for the Petitioner contended that two SEMs installed by the Petitioner at each end of the transmission line were sufficient enough to charge the line and record the power flow as per 2010 Grid Code which is recorded in the minutes of meeting dated 30.7.2014 between MBPL and the Petitioner.

15. Per contra, learned counsel for MBPL contended that APTEL's judgement dated 6.10.2022, has decided commercial operation date and the date of readiness of the transmission asset as 25.2.2015 and 18.11.2014 respectively. Learned counsel further contended that the transmission asset cannot be declared to be ready as on 8.8.2014, as it is necessary to install meters by the transmission licensees/generating companies in view of the 2006 Metering Regulations and obtain certificate under Regulation 43 of the 2010 CEA Regulations prior to commencement of supply of power.

16. We have gone through the submissions of the Petitioner and MBPL and the issues are analysed in succeeding paragraphs.

17. As regards the installation of SEMs, the Petitioner has placed on record the Minutes of Meeting dated 30.7.2014 attended by the representatives of the Petitioner



and MBPL, vide affidavit dated 1.2.2023. The extracts of the said Minutes of the Meeting dated 30.7.2014, are as follows:

“Encl.-8

MOM Between M/S Mosearbear & M/S Power Grid on dt. 30/07/14

M/S Power Grid Engineer visited to Mosearbear Power Plant and following work has been carried out

- 1. Secure Make energy meter sr. No. NP 2960 A installed for 400 kV Anuppur-Jabalpur (PG) Ckt 1 in (Panel R&B)*
- 2. Secure Make energy meter sr. No. NP 2961 A installed for 400 kV Anuppur-Jabalpur (PG) Ckt 2 in (Panel R&B)*
- 3. CT and PT Ckt made through for both secure make energy meter sr. No. NP 2960 A & NP 2961 A.*
- 4. Energy meter is connected in series with BCU & TVM, 0.2 class metering core is being used OF Main/Tie bay CT*
- 5. Energy meter recording will be started after light up of Power Plant/ 400 kV switchyard of Mosearbear end.*

M/S Mosearbear

M/S Power Grid

sd/-

sd/-

*Mr. Nilesh Tiwari
Engineer*

*Mr. D. M. Shinde
Sr. Engineer (Testing)”*

18. It is contended by MBPL that only two number of SEMs were installed by the Petitioner on 8.8.2014 against the statutory requirement of installation of 7 number of SEMs, therefore, the transmission asset cannot be said to be ready on 8.8.2014 as it offends to Regulation 6.4.21 of the 2010 Grid Code/IEGC and Regulation 7 of the 2006 Metering Regulations. We, therefore, refer to the provisions of Regulation 6.4.21 of the 2010 Grid Code/IEGC and Regulation 7 of the 2006 Metering Regulations to examine the contentions of MBPL that requisite SEMs were required to be installed on the alleged date of readiness of the transmission asset i.e. on 8.8.2014. The provisions of Regulation 6.4.21 of the 2010 Grid Code and Regulation 7 of the 2006 Metering Regulations are as follows:



Regulation 6.4.21 of the 2010 Grid Code

“6.4.21. The CTU shall install special energy meters on all inter connections between the regional entities and other identified points for recording of actual net MWh interchanges and MVArh draws. The installation, operation and maintenance of special energy meters shall be in accordance with Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006. All concerned entities (in whose premises the special energy meters are installed) shall take weekly meter readings and transmit them to the RLDC by Tuesday noon. The SLDC must ensure that the meter data from all installations within their control area are transmitted to the RLDC within the above schedule.”

Regulation 7 of the 2006 Metering Regulations

“7. Locations of meters-

The location of interface meters, consumer meters and energy accounting and audit meters shall be as per the Table given below: Provided that the generating companies or licensees may install meters at additional locations in their systems depending upon the requirement.

Sl. No.	Stages	Main meter	Check meter	Standby meter
A.	Generating Station	On all outgoing feeders.	On all outgoing feeders.	i) High Voltage (HV) side of Generator Transformers (ii) High Voltage (HV) side of all Station Auxiliary Transformers
<i>Explanation: The location of main, check and standby meters installed at the existing generating stations shall not be changed unless permitted by the Authority.</i>				
B.	Transmission and Distribution System	At one end of the line between the sub-stations of the same licensee, and at both ends of the line between sub-stations of two different licensees. Meters at both ends shall be considered as main meters for respective licensees.	-	There shall be no separate standby meter. Meter installed at other end of the line in case of two different licensees shall work as standby meter.



C.	Inter-Connecting Transformer (ICT)	High Voltage (HV) side of ICT	-	Low Voltage (LV) side of ICT.
D.	Consumer directly connected to the Inter-State Transmission System or Intra-State Transmission System who have to be covered under ABT and have been permitted open access by the Appropriate Commission or any other system not covered above	As decided by the Appropriate Commission.		

(a) Interface Meters

(i) Consumers who have interconnection with the Inter-State Transmission System or Intra-State Transmission System and have been permitted open access by the Appropriate Commission shall be provided with interface meters.

(ii) For consumers connected to distribution system and permitted open access, provision of interface meters may be made as per the regulations or directions of the Appropriate Commission.

(iii) The scheme for location of interface meters shall be submitted to the CTU or the STU or the licensee by owner of the meter in advance, before the installation of the scheme.

(b) Consumer meters

(i) The consumer meter shall be installed by the licensee either at consumer premises or outside the consumer premises:

Provided that where the licensee installs the meter outside the premises of the consumer, then the licensee shall provide real time display unit at the consumer premises for his information to indicate the electricity consumed by the consumer:

Provided further that for the billing purpose, reading of consumer meter and not the display unit shall be taken into account.

(ii) In the event the Appropriate Commission allows supply of electricity directly from a generating company to consumer on a dedicated transmission system, the location of the meter will be as per their mutual agreement.

(c) Energy accounting and audit meters

Energy accounting and audit meters shall be installed at such locations so as to facilitate to account for the energy generated, transmitted, distributed and consumed in the various segments of the power system and the energy loss.

The location of these meters shall be as under:



(i)Generating Stations

- (1) at the stator terminal of the generator;*
- (2) on HV and LV sides of the station and the unit auxiliary transformers;*
- (3) on feeders to various auxiliaries.*

(ii)Transmission System

All incoming and out going feeders (If the interface meters do not exist).

(iii)Distribution System

- (1) all incoming feeders (11 kV and above);*
- (2) all outgoing feeders (11 kV and above);*
- (3) Sub-Station Transformer including Distribution Transformer – Licensee may provide the meter on primary or secondary side or both sides depending upon the requirement for energy accounting and audit.”*

19. On perusal of Minutes of Meeting dated 30.7.2014, as quoted above in this order, we find that 2 number of energy meters under the scope of PGCIL for 400 kV Anuppur-Jabalpur (PG) Circuit-1 and Circuit-2 were installed by the Petitioner in the Moser Bear Power Plant with CT and PT. It is also mentioned in the said Minutes of Meeting that energy meter recording will be started after lighting up of power plant/400 kV switchyard of Moser Bear and the same is signed by the representatives of Petitioner and Moser Bear. There is no mention in the said Minutes of Meeting dated 30.7.2014 that seven number of SEMs were required to be installed for the transmission asset as contended by the MBPL or that the same had been agreed between the parties.

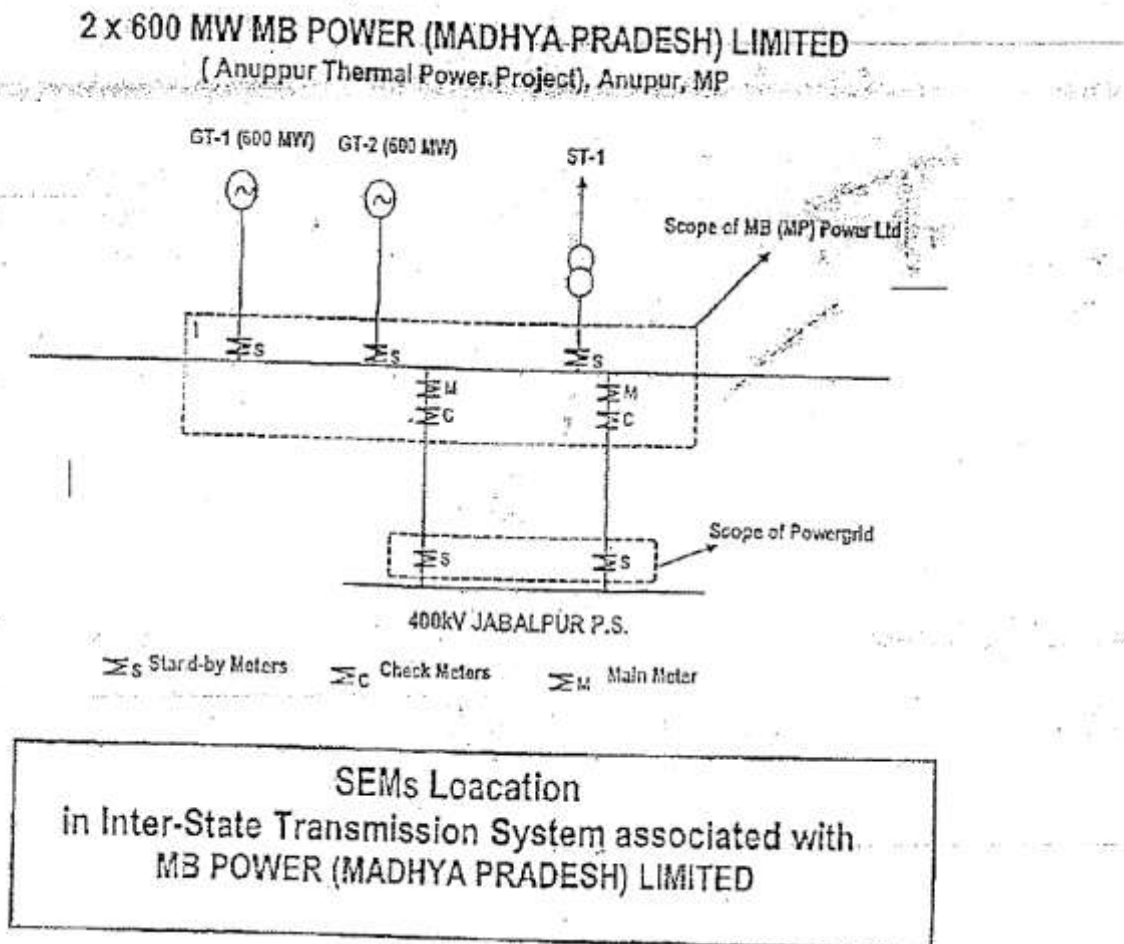
20. On perusal of Regulation 7 of the 2006 Metering Regulations, as extracted above in this order, we note that it speaks about the location, installation and operation of the meters.

21. Coming to the facts of the case at hand, we note that in total 7 number of SEMs were required to be installed by the Petitioner subject to payment by MBPL. The Petitioner has categorically stated that it installed 2 number of SEMs on 30.7.2014 on each end of the transmission line. The Petitioner has also submitted that panels



needed for remaining 5 SEMs under the scope of MBPL were not ready and, therefore, the balance meters could not be installed and this could not be attributable to the Petitioner. The Petitioner has also contended that MBPL deposited the payment for the meters on 27.8.2014, and the switchyard and panels for the remaining 5 SEMs were made ready by MBPL only on 1.11.2014. The Petitioner accordingly installed the SEMs immediately, i.e. on 6.11.2014.

22. The SLD showing the location of the SEMs in ISTS in respect of MB Power is as follows:



23. From the above, it is observed that out of the total seven SEMs, 2 SEMs are under the control of the PGCIL and the balance 5 SEMs are under the scope of MBPL.



The Petitioner has installed the 2 SEMs along with the transmission line which are sufficient for charging the transmission line.

24. Since MBPL did not complete the switchyard, the balance 5 number of SEMs could not be installed by the Petitioner in the capacity of CTUIL. When MBPL completed the switchyard, the Petitioner installed remaining 5 number of SEMs on 6.11.2014. In view of this, we are of the view that there is no delay on the part of the Petitioner in installation of the SEMs.

25. Based on the above, we concluded that PGCIL has installed the requisite number of SEMs on its part for charging the line and before declaring the readiness of the transmission line on 8.8.2014, and balance SEMs are also installed as per the availability of generation switchyard.

26. As regards, the 'idle charging' certificate issued by WRLDC on 18.11.2014 with reference to approval of readiness of the line on 8.8.2014, it is imperative for us refer to the provisions of Regulation 5(2) of the 2014 Tariff Regulations with reference to trial operation of the transmission asset. The relevant excerpts of the said regulation are as follows:

“5. Trial Run and Trial Operation

(1)

(2) *Trial operation in relation to a transmission system or an element thereof shall mean successful charging of the transmission system or an element thereof for 24 hours at continuous flow of power, and communication signal from sending end to receiving end and with requisite metering system, telemetry and protection system in service enclosing certificate to that effect from concerned Regional Local Dispatch Centre.”*


27. In terms of the said provision of Regulation 5 of the 2014 Tariff Regulations, the Petitioner has placed on record letter dated 18.11.2014 issued by WRLDC certifying the date and time of energization of commencement of trial run on 6.8.2014 and



completion of the trial run on idle charge (due to non-availability of the bays at MBPL end) on 7.8.2014 of the transmission asset. The certificate issued by the WRLDC with respect to the transmission asset is extracted hereunder:

End-11

पावर सिस्टम ऑपरेशन कारपोरेशन लिमिटेड
(शासकिक की पूर्ण स्वामित्व प्राप्त सहायक कंपनी)
POWER SYSTEM OPERATION CORPORATION LIMITED
(A wholly owned subsidiary of POWERGRID)



पश्चिम क्षेत्रीय भार प्रेषण केन्द्र
एन-३, सेक्टर रोड, एच.आई.डी.सी. एरिया, मरोल, अन्धेरी (पूर्व), मुंबई-400 093.
दूरभाष (O) : 022-28202690, 28203885, 28397634 • ई-मेल : wrldc@bol.net.in • फैक्स : 022 28235434, 28202630
WESTERN REGIONAL LOAD DESPATCH CENTRE
F-3, MIDC Area, Marol, Andheri (East), Mumbai - 400 093.
Phone (O) : 022-28202690, 28203885, 28397634 • E-mail : wrldc@bol.net.in • Fax : 022 - 28235434, 28202630

संदर्भ संख्या / Ref. No. Certificate Number: WRLDC/WR-II/020 Date: 18/11/14

Certificate of Charging of Transmission Element

400kv D/C Jabalpur Pool - MB TPS (Anuppur) ckt#1 & ckt#2 (Idle Charged from Jabalpur Pool end upto Section Tower (location no.001) near Anuppur end and no power flow due to Non Completion of bays at Switchyard of M/s Moser Baer Thermal Power Station (Anuppur))

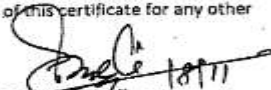
Reference:

- Communication dated 28/07/14 from WR-II (POWERGRID) to WRLDC in Format-I and IA.
- Communication from WRLDC dated 29/07/14 to WR-II (POWERGRID) in Format-II.
- Communication from WR-II (POWERGRID) to WRLDC dated 31/07/14 In Format III, IIIA, IIIB, IIIC and IIID.
- Provisional approval dated 01/08/14 from WRLDC to WR-II (POWERGRID) for charging in real time in Format-IV.
- Real time code Issued by WRLDC on dated 06/08/14 for idle charging from Jabalpur Pool end upto Section Tower (location no.001) near Anuppur end.
- Communication dated 16/08/14 & later on dtd 10/11/14 from WR-II (POWERGRID) In Format-V.

Based on the above reference, it is hereby certified that the following Transmission element has successfully completed the trial operation (for Idle charged from one end, Power flow not yet started):

Name of the Transmission Asset:	1. 400KV, Jabalpur Pool - MB TPS (Anuppur) ckt-1 2. 400KV, Jabalpur Pool - MB TPS (Anuppur) ckt-2 at 765kv Jabalpur Pool Substation (Idle charged from Jabalpur Pool end upto Section Tower (location no.001) near Anuppur end)
Owner of the Transmission Asset :	Power Grid Corporation of India Ltd.(WR-II)
Date and Time of Energization for commencement of successful trial run operation	First time Idle charged from Jabalpur Pool end upto Section Tower (location no.001) near Anuppur end at 19:07hrs & 19:40hrs on dtd 06/08/14 for Jabalpur Pool -MB TPS (Anuppur) ckt-1 & ckt-2 respectively. Lines not yet synchronised and power flow not yet started as bays at switchyard of MB TPS (Anuppur) not yet ready as Intimated by POWERGRID.
Date/time of completion of trial run operation of Idle charge of line only	1. Ckt-1: 07/08/14 19:06hrs 2. Ckt-2: 07/08/14 19:39hrs (After 2400hrs of idle charged from Jabalpur Pool end). Power Flow not yet started.

This certificate is being issued in accordance with Regulation 5 of CERC (Terms and Condition of Tariff) Regulations, 2014. The line is only idle charged from Jabalpur Pool end. Power Flow not yet started as other end i.e MB TPS bays (Anuppur) are not yet ready as Intimated by POWERGRID. Usage of this certificate for any other purpose is prohibited.


P. Mukhopadhyay
General Manager (WRLDC)

पी. मुखोपाध्याय / P. MUKHOPADHYAY
महाप्रबंधक / GENERAL MANAGER
पावर सिस्टम ऑपरेशन कारपोरेशन लिमिटेड.
POWER SYSTEM OPERATION CORPORATION LTD.
प.सि.भा.प्रे.के.मुंबई -93/WRLDC, MUMBAI-93

Place: WRLDC Mumbai
Copy to:
I. ED (WR-II) POWERGRID
II. Member Secretary, WRPC
III. ED NLDC

पंजीकृत एवं केंद्रीय कार्यालय: बी - 9, कुतब इंस्टीट्यूशनल एरिया, कटवाहिया सराय, नई दिल्ली 110 016. दूरभाष : 011-26536832, 26524522 फैक्स : 011-26524525, 26536901
Regd. & Corp. Office : B-9, Qutab Institutional Area, Kirtiwaria Sarai, New Delhi - 110 016. Tel.: 011-26536832, 26524522 Fax: 011-26524525, 26536901



28. On perusal of above "Certificate of Charging of Transmission Element" dated 18.11.2014 issued by WRLDC, it is noted that Circuit-1 and Circuit-2 of 400 kV Jabalpur Pool-MB TPS (Anuppur) was first time idle charged from Jabalpur Pool end upto Section Tower (location number 001) near Anuppur end at 19:07 hrs. and 19:40 hrs. on 6.8.2014 respectively and the trial run of Circuit-1 and Circuit-2 was completed, on idle charge, at 19:06 hrs. and 19:39 hrs. on 7.8.2014 respectively, after 24 hours of idle charge from Jabalpur Pool end. The said certificate also states that the certificate was issued under Regulation 5 of the 2014 Tariff Regulations. The certificate further states that power flow was not then started in the transmission line as at the other end MBTPS (Anuppur) was not ready. As such, as per RLDC charging certificate dated 18.11.2014, the transmission line was successfully charged fulfilling the conditions mentioned in the 2014 Tariff Regulations, before it was declared ready on 8.8.2018 by the Petitioner.

29. Based on the above, it is observed that the 'No-load' COD was claimed by the Petitioner as 8.8.2014 as per the applicable provisions of Regulation 4(3) of the 2014 tariff Regulations. The Respondent has also contended that there was no flow of power on the transmission line and as such there should not be imposition of IDC and IEDC on the Respondent from the idle charging date of the transmission line. Accordingly, we deem it proper to refer to the provisions Regulation 4(3) of the 2014 Tariff Regulations and the same are as follows:

"3) Date of commercial operation in relation to a transmission system shall mean the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service after successful trial operation for transmitting electricity and communication signal from sending end to receiving end:

Provided that:

i).....



ii) in case a transmission system or an element thereof is prevented from regular service for reasons not attributable to the transmission licensee or its supplier or its contractors but is on account of the delay in commissioning of the concerned generating station or in commissioning of the upstream or downstream transmission system, the transmission licensee shall approach the Commission through an appropriate application for approval of the date of commercial operation of such transmission system or an element thereof.”

30. As per proviso (ii) to Regulation 4(3) of the 2014 Tariff Regulations, COD of a transmission system or an element thereof may be declared if the said system has been prevented from being put to regular service for reasons not attributable to the transmission licensee. In terms of Regulation 4(3), the date of commercial operation for transmission system shall be the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service. However, proviso (ii) to Regulation 4(3) of the 2014 Tariff Regulations envisages that there may be a situation wherein the transmission system or an element thereof is prevented from regular services for reasons not attributable to the transmission licensee but on account of the delay in COD of the upstream or downstream transmission system and in such cases, the transmission licensee shall approach the Commission for approval of COD of such system or element thereof.

31. As regards the liability of transmission charges, the second proviso to Regulation 12(2) of the 2014 Tariff Regulations provides as follows:

“Provided further that if the generating station is not commissioned on the SCOD of the associated transmission system, the generating company shall bear the IDC or transmission charges if the transmission system is declared under commercial operation by the Commission in accordance with second proviso of Clause 3 of Regulation 4 of these regulations till the generating station is commissioned.”

32. From the above, the petitioner has installed 2 no of SEMs under the control of PGCIL and WRLDC certified that successful trial operation was completed on ‘no-load’ on 8.8.2014 and not in use due to non-readiness of associated generating station under the control of MBPL.



33. As per the second proviso to Regulation 4(3) of the 2014 Tariff Regulations, the Commission can declare deemed COD of the transmission system if it is ready to be put into use but it is prevented from doing so for reasons not attributable to the transmission licensee. Therefore, when the deemed COD has been declared as per the approval of the Commission, the transmission charges shall be paid by the generating company till the generating unit achieves COD. Further, after COD of the transmission system/element, IDC is not applicable as the capital cost is determined as on COD after considering Interest During Construction (IDC). Therefore, transmission charges are payable after COD of the transmission system/element.

34. In the instant case, the Commission has not approved the COD of the asset on 8.8.2014 under 4(3) (ii) of the 2014 tariff regulations. Accordingly, as per the Regulation 12(2) of the 2014 Tariff Regulations, the generating company in this MBPL is liable to pay IDC and IEDC upto COD of the asset. Therefore, the transmission licensee is entitled to IDC and IEDC from the generating station i.e. MBPL from 8.8.2014 upto COD due to non-commissioning of the generating station.

35. In view of above discussions, we are of the view that IDC and IEDC for the period from 8.8.2014 to 24.2.2015 shall be borne by MBPL as the line despite being ready from 8.8.2014 could not be put to commercial operation due to non-readiness of generating station.

Issue-B *What charges are required to be paid by the generator to PGCIL as per the directions of APTEL in paragraph nos. 57 and 58 of its judgment dated 6.10.2022?*

36. The Petitioner has contended that it is not seeking to re-open any issue from the original order dated 10.5.2019 in Petition No. 96/MP/2018 or go beyond the APTEL's judgment dated 6.10.2022. The Petitioner has accepted the COD of the transmission line as 25.2.2015. The limited contention of the Petitioner is that even for



the period from 8.8.2014 onwards, the Petitioner is entitled to receive its full transmission charges for Anuppur-Jabalpur line.

37. With regard to quantum of charges, MBPL has submitted that the installed capacity of Anuppur Thermal Power Project is 1200 MW (2x600 MW) with net exportable generation capacity of 1122 MW after taking into consideration the auxiliary consumption @6.5%. MBPL has further contended that at the most it can be made liable to pay transmission charges upto 26.8.2015 only for 730 MW i.e. 1122 MW-392 MW=730 MW.

38. With reference to payment of transmission charges from 25.2.2015 to 20.5.2015, MBPL has contended that the quantum of power for which MBPL at the most it can be made liable to pay transmission charges from 25.2.2015 (COD of the transmission asset) to 19.5.2015 (one day before the first unit of MBPL was commissioned) is to the extent of 730 MW.

39. The Petitioner has contended that it completed its scope on 8.8.2014 and submitted all documentary evidence to that effect and as such it is liable for payment of transmission charges of Anuppur-Jabalpur Line from 8.8.2014 onwards. The Petitioner has also contended that the contentions of MBPL that IDC and IEDC and transmission charges can be recovered only to the extent of 392 MW for which LTA was operationalized on 26.8.2015, has already been rejected by the APTEL in paragraph nos. 49, 55, 56, 57 and 58 of its judgement dated 6.10.2022.

40. On perusal of record, we notice that MBPL applied for grant of connectivity and LTA vide common application dated 25.2.2010, against which CTUIL issued a common confirmation letter dated 19.4.2010 for grant of connectivity and LTA w.e.f. 1.2.2013 and 1.8.2013, respectively. The grant of connectivity and LTA was for evacuation and



transmission of power from MBPL's thermal generating plant having an installed capacity of 1200 MW (2x600) to its beneficiaries in the following manner:

- i. 200 MW was proposed to be evacuated to Western Region;
- ii. 192 MW was proposed to be evacuated to Northern Region; and
- iii. Balance power was proposed to be evacuated to Government of Madhya Pradesh and short-term sale.

41. We have considered the contentions of the Petitioner and MBPL on the issue payment of transmission charges from 25.2.2015 to 19.5.2015 and have perused the record.

42. As per the minutes of the 30th SCM of WR held on 8.7.2010 wherein connectivity and Open Access (Medium Term and Long Term) cases were discussed and MB Power sought connectivity for 1122 MW and LTA for 392 MW on target region (WR 200 MW and NR-192 MW). Further, as per the minutes of the 12th Meeting of WR constituents regarding Connectivity /Open Access applications held on 8.7.2010 where MB Power sought connectivity for 1122 MW and LTA for 392 MW and balance power reserved for Government of Madhya Pradesh (393 MW) and Short Term Sale (337 MW).

43. The Petitioner and MB Power signed transmission agreement on 14.6.2010 and Annexure-I of the transmission agreement p mentions that the capacity (MW) for which connectivity is required is 1122 MW. LTA agreement was signed on 17.6.2011.

44. The transmission asset in the present case is a connectivity line as per LTA Agreement dated 17.6.2011 between the Petitioner and MBPL. Annexure 4 of the BPTA provides for transmission charges of the transmission system for the Petitioner's project and the same is as follows:

"The charges for the transmission system (other than the dedicated system) indicated at Annexure-3 would be borne by the applicant/generation developers in proportion to



capacity for which long term open access has been sought as per CERC norm. The transmission charges will be corresponding to phased development of transmission system and in each time frame, charges should be shared by all the applicants/generation developer/beneficiaries whose generation projects are scheduled to come up in that time frame or earlier.

.....
The composite transmission scheme would be developed in phases keeping in view the commissioning schedule of generation project. Depending upon the status of various generation projects as informed by different generation developers, the details of phasing of development of transmission system has been evolved. Details of staging are described as follows:

.....

1.2 Transmission System 1.21 Connectivity System

- MB TPS-Jabalpur Pooling Station 400 kV D/c (Triple)

1.22 Transmission System Strengthening for LTA for MB Power (MP) Ltd.

Part-A – being developed by POWERGRID

(I) Common transmission system to be shared by Maruti Clean Coal & Power Ltd.(300 MW), Dheeru Powergen (450 MW), Jaiprakash Power Ventures Ltd (1320 MW), Aryan M.P. Power Generation Pvt. Ltd. (1200 MW) Bina Power (500 MW), CSPTCL (432 MW) M B Power [MP] (1200 MW) along with IPPs in Orissa in proportion to allocation to NR.

a) Bina-Gwalior 765 kV S/c (3rd)

b) Gwalior-Jaipur 765 kV S/c (2nd)

c) Jaipur-Bhiwani 765 kV S/c

Commissioning schedule – As per the BPTA signed with IPPs Orissa for HCTCI.”

45. Regulation 8 of Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009, deals with grant of connectivity.

The relevant extracts of Regulation 8 is as follows :

“8. Grant of Connectivity

(1) The application for connectivity shall contain details such as, proposed geographical location of the applicant, quantum of power to be interchanged that is the quantum of power to be injected in the case of a generating station including a captive generating plant and quantum of power to be drawn in the case of a bulk consumer, with the inter-State transmission system and such other details as may be laid down by the Central Transmission Utility in the detailed procedure: Provided that in cases where once an application has been filed and thereafter there has been any material change in the location of the applicant or change, by more than 100 MW in the quantum of power to be interchanged with the inter-State transmission system, the applicant shall make a fresh application, which shall be considered in accordance with these regulations.

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



46. As per the above Regulation, the application for connectivity contains the quantum of power to be interchanged or injected in the grid. In the instant case, the Petitioner applied for connectivity for 1122 MW and can be able to transfer the power upto 1122 MW. As per the Connectivity Regulations the open access can be obtained by an entity upto its quantum of Connectivity since Connectivity is a prerequisite for access. Accordingly, the LTA, MTOA or STOA Access shall be granted for the Petitioner's project for 1122 MW only.

47. We note that the Petitioner had made two different applications i.e. application for connectivity and application for long term access. The Petitioner acquired both connectivity as well as long term access. For the purpose of connectivity, the Petitioner has entered into Transmission Agreement dated 14.6.2010, wherein the Petitioner has agreed to pay the transmission charges for 400 kV Anuppur-Jabalpur Transmission Line). The relevant extracts of Transmission Agreement is as follows:

"1. In accordance with Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Open Access in inter state transmission and related matters) regulation 2009 dated 07.08.2009 and Electricity Act 2003 (including amendment thereof, if any) and in accordance with the terms mentioned above, POWERGRID agrees to provide connectivity required by MBPMPL from the date and in the manner mentioned in the Annexure 1 of this agreement.

2. MBPMPL, its successor or assignee shall pay the transmission charges in accordance with the Tariff regulation/Tariff order issued by Central Electricity Regulatory Commission from time to time of POWERGRID transmission system mentioned at Annexure-2 from the date of commercial operation of the transmission system."

48. We are of the view that that the connectivity line and transmission lines under LTA are distinct and distinguishable. The charges towards the connectivity line/ dedicated transmission line constructed under ISTS for the capacity for which connectivity granted are not dependent upon the usage of long term access.

49. Clauses (5) of Regulation 8 of the Sharing Regulations provides as follows:



“(5) Where the Approved Withdrawal or Approved Injection in case of a DIC is not materializing either partly or fully for any reason whatsoever, the concerned DIC shall be obliged to pay the transmission allocated under these regulations:

Provided that in case the commissioning of a generating station or unit thereof is delayed, the generator shall be liable to pay withdrawal charges corresponding to its Long Term Access from the date the Long Term Access granted by CTU becomes effective. The Withdrawal Charges shall be at the average withdrawal rate of the target region:

Provided further that where the operationalization of LTA is contingent upon commissioning of several transmission lines or elements and only some of the transmission lines or elements have been declared commercial, the generator shall pay the transmission charges for LTA operationalized corresponding to the transmission system commissioned:

Provided also that where the construction of dedicated transmission line has been taken by the CTU or the Transmission Licensee, the transmission charges for such dedicated transmission line shall be payable by the generator as provided in the Regulation 8(8) of the Connectivity Regulations:

Provided also that during the period when a generating station draws start-up power or injects infirm power before commencement of LTA, withdrawal or injection charges corresponding to the actual injection or withdrawal shall be payable by the generating station and such amount shall be adjusted in the next quarter, from the ISTS transmission charges to be recovered through PoC mechanism from all DICs: Provided also that CTU shall maintain a separate account for the above amount received in a quarter and deduct the same from the transmission charges of ISTS considered in PoC calculation for the next application period.”

50. As such, according to the third proviso under Clause (5), where CTU or any transmission licensee executes the dedicated transmission line, the generator shall be liable for payment of the transmission charges of the said transmission line till the commissioning of the generating station or unit thereof in accordance with Regulation 8(8) of the 2009 Connectivity Regulations.

51. Regulation 8(8) of the 2009 Connectivity Regulations provides as follows:

“Provided also that the transmission charges for such dedicated transmission line shall be payable by the generator even if such generation project gets delayed or abandoned.”

52. This provision clearly puts beyond doubt that in case of delay in commissioning of the generation project, the generator will be required to pay the transmission charges of the dedicated transmission line or associated transmission system.

53. From the above, we conclude that the instant transmission line i.e. MB TPS



(Anuppur)-Jabalpur Pooling Station 400 kV D/C (Triple Snowbird) line is a connectivity line and it is dedicatedly connected from the generating station of MBPL and is constructed to evacuate 1122 MW (1200 MW-Auxiliary consumption @ 6.5%) power from the generating station. It is further observed that Unit No. 1 of the Project achieved COD on 20.5.2015 and Unit No. 2 of the Project achieved COD on 7.4.2016, and there is no bottleneck in evacuation of power from the generation project. In view of the above discussion, we are of the view that MBPL is liable to pay full transmission charges from 25.2.2015 i.e. COD of the transmission asset to 19.5.2015 (COD of Unit No.1 of MBPL).

54. This order disposes of Petition No. 141/TT/2015 (on remand).

**sd/-
(P.K. Singh)
Member**

**sd/-
(Arun Goyal)
Member**

**sd/-
(I.S. Jha)
Member**

