

**In the Appellate Tribunal for Electricity,**  
**New Delhi**  
**(Appellate Jurisdiction)**

**Appeal No. 59 of 2015 & IA No. 274 of 2016**

**Dated: 18<sup>th</sup> April, 2017**

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson**  
**Hon'ble Mr. I.J. Kapoor, Technical Member**

**In the matter of :-**

**IL & FS Tamil Nadu Power Company Ltd.**  
**4<sup>th</sup> Floor, B Block, Navins Presidium,**  
**103, Nelson Manickam Road,**  
**Aminjilkari**  
**Chennai- 600029**

**... Appellant**

**Versus**

- 1. Central Electricity Regulatory Commission**  
**3rd & 4th Floor, Chanderlok Building**  
**36, Janpath, New Delhi- 110001** **...Respondent No 1**
  
- 2. Power Grid Corporation of India Ltd**  
**Saudamini, Plot No. 2,**  
**Sector-29, Gurgaon**  
**Haryana- 122001** **...Respondent No 2**
  
- 3. Tamil Nadu Electricity Board,**  
**6<sup>th</sup> Floor, Eastern Wing**  
**800, Anna Salai,**  
**Chennai- 600 002** **...Respondent No 3**
  
- 4. Transmission Corporation of Andhra**  
**Pradesh Ltd.,**  
**Vidyut Bhawan,**  
**Hyderabad** **...Respondent No 4**

5. **Karnataka State Power Transmission Corporation Ltd.,  
Cauvery Bhawan,  
Bangalore- 560009** ...Respondent No 5
6. **Kerala State Electricity Board,  
Vidyuthi Bhawanam,  
Pottom, P B No. 1028,  
Thiruvananthapuram - 695004** ...Respondent No 6
7. **Electricity Department,  
Gingy Salai,  
Puducherry- 605 001** ...Respondent No 7
8. **Southern Region Power Committee,  
29, Race Course Road,  
Bangalore- 560 009** ...Respondent No 8

**Counsel for the Appellant(s):** Mr. Sanjay Sen, Sr. Advocate  
Mr. Matrugupta Mishra  
Ms. Shikha Ohri  
Mr. Nimesh Jha  
Mr. Saahil Kaul  
Mr. Hemant Singh  
Ms. Ruth Elwin  
Mr. Tabrez Malawat  
Mr. Tushar Nagar

**Counsel for the Respondent(s):** Mr. Nikhil Nayyar  
Mr. Dhananjay Baijal  
Mr. Divyanshu Rai  
Mr. Sai Vinod for R-1  
  
Ms. Suparna Srivastava  
Ms. Anushka Arora for R-2  
  
Mr. S. Vallinayagam for R-3

## JUDGMENT

### PER HON'BLE MR. I.J. KAPOOR, TECHNICAL MEMBER

1. The present Appeal is being filed by M/s IL&FS Tamil Nadu Power Company Ltd. (herein after referred to as the “**Appellant**”) under Section 111 of the Electricity Act, 2003 challenging the Order dated 03.12.2014 (“**Impugned Order**”) passed by the Central Electricity Regulatory Commission (hereinafter referred to as the “**Central Commission**”), in Petition No. 81/TL/2014. The present Appeal is concerning about the denial of Transmission License to the Appellant for its 48 km dedicated transmission line from its Cuddalore thermal power project to Nagapattinam pooling station of Respondent No. 2.
2. The Appellant, M/s IL&FS Tamil Nadu Power Company Ltd. is a company incorporated under Companies Act, 1956, is implementing 2x600 MW thermal power project in Cuddalore district of Tamil Nadu.
3. The Respondent No.1, Central Electricity Regulatory Commission, is the Central Commission exercising jurisdiction and discharging functions in terms of the Electricity Act, 2003.
4. The Respondent No. 2, Power Grid Corporation of India Ltd. is the Govt. Company within the meaning of Companies Act, 1956 and also functions as the Central Transmission Utility (CTU) under Section 38 to the Electricity Act, 2003.

5. The Respondent No. 3, Tamil Nadu Electricity Board is a distribution licensee in the State of Tamil Nadu which has contracted 540 MW power from the Appellant under Case-1 bidding process.
6. The Respondents Nos. 4 to 7 are the other Southern Region constituents.
7. The Respondent No. 8 is the Southern Region Power Committee.

**8. Facts of the present Appeal:**

- a) The Appellant is implementing 2x600 MW Thermal Power Project in Cuddalore district of Tamil Nadu State. The Appellant is also implementing 48 km long 400 kV D/C quad moose dedicated transmission line from its project at Cuddalore to Nagapattinam 765/400 kV pooling station of Respondent No.2 including bays at Nagapattinam pooling station for termination of the line(hereinafter referred as the “**Subject Line**”).
- b) The Appellant on 3.11.2008, filed an application with the Respondent No. 2 for grant of open access under CERC (Open Access in Inter State Transmission), Regulations, 2004 (hereinafter referred as ‘**Regulations, 2004**’).
- c) On 16.11.2010, in the 11<sup>th</sup> meeting of Southern Region Constituents regarding Long Term Access (“**LTA**”) and Connectivity applications in Southern Region, it was decided that LTA of 1150 MW be granted to the Appellant along with the transmission system for Connectivity based on the application made under Regulations,

2004. The transmission system envisaged for connectivity was initially in the scope of the Respondent No. 2. In this meeting the Respondent No. 2 informed applicants about timelines for construction of connectivity lines as 9 months plus CERC time line as specified in CERC Tariff Regulations. The Respondent No. 2 also informed that if applicant desires to have connectivity before these timelines then they can construct the connectivity lines by themselves.

- d) The Respondent No. 2, vide letter dated 10.12.2010 granted Long Term Open Access (LTOA) to the Appellant for 1150 MW and also signed Bulk Power Transmission Agreement (BPTA) on 24.12.2010 for sharing of transmission charges. The Appellant on 15.4.2011 furnished bank guarantee in favour of the Respondent No. 2 as per the provisions of CERC (Grant of Connectivity, Long Term Open and Medium Term Open Access in Inter State Transmission and related matters) Regulations, 2009 (hereinafter referred as '**Regulations, 2009**').
- e) The Respondent No.2 filed petition no. 116 of 2011 before the Central Commission seeking direction regarding implementation of connectivity transmission systems by the generators due to paucity of time available with it. The Central Commission vide order dated 19.12.2011 held that due to paucity of time available with CTU, the applicants may require to implement dedicated transmission lines included in co-ordinated transmission planning as per main provision of Regulation 8(8) of Regulations, 2009. The Central Commission in this order has also clarified that the dedicated transmission lines developed by the generators will form part of

basic network if they are granted license as per the Transmission License Regulations. The Appellant was not a party to this petition.

- f) The Appellant has entered into PPA dated 12.12.2013 with Respondent No. 3 for supply of 540 MW after being selected under long term Case-I bidding process. Unit-I of the Appellant is declared under Commercial operation from 29.9.2015 and Unit-2 was to be declared under commercial operation from 30.4.2016. The Appellant has entered into Power Sales Agreement for the month of May, 2016 with various traders for sale of power to A.P., Tamil Nadu and Karnataka discoms. The Appellant is also selling power through Power Exchange.
- g) The Appellant relying on Regulation 8(8) of the Regulations, 2009 and Central Commission's order dated 19.12.2011 in petition no. 116 of 2011, filed petition no. 81/TL/2014 with the Central Commission for grant of transmission license under Regulation 6 (c) of CERC (Procedure, Terms and Conditions of Transmission License and other related matters) Regulations, 2009 (hereinafter referred as "**Transmission License Regulations**") for the subject Line.
- h) The Central Commission vide Impugned Order dated 3.12.2014 in petition no. 81/TL/2014 rejected the prayer of the Appellant for grant of transmission license for the subject Line.
- i) Aggrieved by the Impugned Order passed by the Central Commission, the Appellant has preferred the present appeal.

## **9. QUESTIONS OF LAW**

The Appellant has raised the following questions of law in the present appeal:

- a. Whether the Impugned Order renders Regulation 8(8) of the Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Open Access in Inter-State Transmission and related matters) Regulations, 2009 a nullity?**
- b. Whether the Hon'ble Commission while passing the Impugned Order erroneously ignored the fact that the Appellant intended to use the dedicated transmission line from its generating station to the Nagapattinam pooling station of PGCIL for sale of power to inter-State beneficiaries?**
- c. Whether the Hon'ble Commission erred in ignoring the fact that the Appellant intends to use the dedicated transmission line as main transmission line?**
- d. Whether the Hon'ble Commission has passed the Impugned Order in contravention of the provisions of Regulation 6(c) of CERC (Procedure, Terms and Conditions for grant of Transmission License and other related matters) Regulations, 2009?**
- e. Whether the Hon'ble Commission erred in ignoring the term "intends" appearing in Regulation 6 (c) of CERC (Procedure,**

**Terms and Conditions for grant of Transmission License and other related matters) Regulations, 2009?**

10. We have heard at length the learned counsel for the parties and considered carefully their written submissions, arguments put forth during the hearings etc. Gist of the same is discussed hereunder.
11. The learned senior counsel for the Appellant has made following arguments/submissions for our consideration on the issues raised by it:
  - a) The finding of the Central Commission based on 11<sup>th</sup> meeting of the Southern Region constituents that project developers may construct the connectivity lines by themselves, if they prefer to have connectivity before the timelines specified by the Respondent No. 2 is incorrect and is contrary to Regulation 8 (8) of Regulations, 2009 which provides that for thermal generation projects of 500 MW capacity and above, the developer shall not be required to construct the dedicated line to the point of interconnection and that such line shall be taken into account for coordinated transmission planning by CTU and CEA and would be executed by CTU. The Appellant executed the subject line due to inability of the Respondent No. 2 to construct the same in given time frame. In the present case the Appellant had executed the subject line on behalf of the Respondent No.2.
  - b) The Central Commission has made distinction of the subject line on the basis of its ownership i.e. the line is to be treated as ISTS if it is constructed by Respondent No. 2 (CTU) as per Section 2 (36) (iii) of



the Electricity Act, 2003 and if it is not owned, operated, maintained or controlled by CTU, it remains a dedicated transmission line. This is not in line with the Regulation 8(8) of the Regulations, 2009 which perceives the dedicated line as a part of ISTS for generating plants of capacities 500 MW and above and accordingly kept in the scope of Respondent No. 2 (CTU). The subject line was evolved on the basis of coordinated planning of CEA and CTU and is therefore deemed to be a part of ISTS.

- c) The Central Commission also relied on Section 10 of the Electricity Act, 2003 which deals with the construction of the dedicated transmission line from bus bar of the generating station till the pooling station of the Respondent No.2. CTU is required to build dedicated line in certain cases only. The Central Commission has further held that the provision under Regulations, 2009 carves out an exception to the main regulation and cannot control the provision of main regulation. Combined reading of Section 10 of the Electricity Act, 2003 and Regulation 8(8) of Regulations, 2009 reveals that the subject line was to be constructed by the Respondent No. 2.
- d) The Central Commission has observed that the subject line is used only for the purpose of evacuation of power from generating station of the Appellant and accordingly does not meet the twin criteria to be ISTS line i.e. use of transmission line as main transmission line and use of line as ISTS under Regulation 6 (c) of the Transmission License Regulations. The Central Commission has erred in interpreting the phrase “main transmission line” as a transmission line shared by two or more ISTS customer. The Electricity Act, 2003 does not define “main transmission line”. However, Section 2 (42) of

the Electricity Act, 2003 defines that “main” *means any electric supply – line through which electricity, is, or is intended to be, supplied.* The subject line is to be used as a main line through which inter-state electricity would be supplied to Nagapattinam pooling station for onward transmission and supply to Inter-State beneficiaries. The subject line also falls in the category of ISTS as per the Section 2 (36) (ii) of the Electricity Act, 2003 which defines Inter State Transmission System for conveyance of electricity within the state and intervening state.

- e) The Central Commission has also not considered the commercial implication on account of transmission charges and losses while denying transmission license to the Appellant. The Appellant would be burdened with the cost of the subject line which will make its tariff uncompetitive in the market.
- f) The subject line has been designed as per ‘n-1’ criteria and can be utilised for providing redundancy margins. The Appellant does not have any objection for using the subject line by any other generator/consumer and also intends to utilise the subject line for the purpose of Inter-State Transmission of electricity. Therefore, the Appellant is squarely covered under provision of Regulation 6 (c) of the Transmission License Regulations.
- g) The Central Commission has erred in ignoring the word “intends” appearing in Regulation 6 (c) of the Transmission License Regulations. In order to qualify for grant of Transmission License, the generator is required to only demonstrate its intention to use the

dedicated transmission line to be utilised as main transmission line and as a part of ISTS.

**12.** The learned counsel for the Respondent No. 1, 2 & 3 have made following arguments / submissions on the issues raised in the present Appeal for our consideration:

- a) As per the Section 15 (4) of the Electricity Act, 2003, the Respondent No. 2 is required to give its recommendations on the applications made by the applicants for grant of ISTS transmission license to the Central Commission. Accordingly, the Respondent No. 2 gave its recommendations dated 23.7.2014 in the Petition No. 81/TL/2014 filed by the Appellant before the Central Commission. The Respondent No. 2 recommended that the subject line of the Appellant being dedicated in nature does not require transmission license in terms of the Electricity [Removal of Difficulty] (fifth) Order, 2005. The subject line from the generating plant of the Appellant to the Nagapattinam pooling station was identified as a dedicated transmission line and was in the scope of the Appellant. The BPTA was also entered into with the Appellant by the Respondent No.2 on that basis only.
  
- b) From the Minutes of Meeting of 11<sup>th</sup> meeting of Southern Region Constituents, it is very clear that the subject line has been decided in the Standing Committee Meeting to be within the scope of the Appellant and it was not envisaged as a part of co-ordinated transmission planning of Respondent No.2. In the minutes of this meeting, the subject line does not appear in the elements to be developed by the Respondent No.2 as a part of system

strengthening. This aspect is the most fundamental for adjudication of the present controversy. Based on this decision in the Standing Committee, the Respondent No. 2 has granted LTA to the Appellant vide intimation dated 10.12.2010 considering the subject line for connectivity in the scope of the Appellant.

- c) Subsequently the Appellant had signed BPTA with Respondent No.2 on 24.12.2010 wherein the details regarding scope of work of the Appellant for subject line was reiterated and also there is a clear provision that the transmission charges of the subject line developed by the Appellant are to be borne by the Appellant only.
- d) The Respondent No. 2 while submitting the recommendations to the Central Commission reiterated the above position. The Appellant is wrongly contending that the subject line is to be treated as deemed part of coordinated transmission planning of Respondent No.2.
- e) Under Regulation 9 of the CERC (Open Access in Inter-State Transmission) Regulations, 2004 there is no separate provision for grant of connectivity and LTA as provided in Regulations, 2009. The said Regulation 9 does not contain any provision with respect to the construction of power evacuation line from generation project to the pooling sub-station, whether by the Appellant or by Respondent No.2. The scheme of power evacuation line for generation project 500 MW or above to be constructed by Respondent No. 2 by taking the same into account for coordinated transmission planning by CTU is thus not available under Regulations, 2004. Irrespective of the capacity of the generators, the connectivity/LTA provided under Regulations, 2004 are to be governed by such grant and the

Appellant cannot seek to alter the status of line by taking refuge under Regulations, 2009 which are not applicable to it.

- f) The Appellant has constructed the subject line in terms of LTA grant under Regulations, 2004 and not as a part of ISTS under coordinated transmission planning by Respondent No.2 under Regulations, 2009. The Appellant cannot claim the subject line to be “deemed built” by Respondent No. 2 under Regulation 8(8) of the Regulations, 2009. The overriding of the exception to principal enactment of Regulation 8(8) of the Regulations, 2009 cannot be permitted as sought by the Appellant.
- g) The Central Commission in its order dated 19.12.2011 in petition no. 110 of 2011 filed by the Respondent No. 2 has held that the generators may develop the dedicated transmission line if required by Respondent No.2 even if their generating capacity is 500 MW or above due to constraints faced by the Respondent No. 2. In case of the Appellant, the subject line is to be developed as a dedicated line both under LTA grant as well as BPTA. The Appellant cannot claim it to be a part of coordinated system planning of Respondent No.2.
- h) The Central Commission in order dated 19.11.2011 has also held that in the event that a dedicated transmission line is built by a generator under proviso to Regulation 8(8) of Regulations 2009, then in order to bring it under the pooled system for accounting of transmission charges/losses, the generator must first obtain transmission license under Transmission License Regulations after satisfying the conditions stipulated therein.

- i) The Regulations, 2009 have the provisions for treatment of LTA applications received under the Regulations, 2004. There was an option to the Appellant either to continue with Regulations, 2004 for grant of LTA/ connectivity or can adopt Regulations, 2009 but the Appellant never chose to migrate to Regulations, 2009. Accordingly, its application to connectivity had been treated under Regulations, 2004. Accordingly, the provisions of Regulations 8(8) of Regulations, 2009 are not available to the Appellant.
- j) The Electricity Act, 2003 does not include dedicated line in the scope of 'transmission license' under Section 2 (73). No license is envisaged under the Electricity Act, 2003 for dedicated transmission line which is meant for point to point connection from electric lines or electric plant of a generating station or captive generating station to any transmission lines or sub-stations or load centres. The Central Commission in the Impugned Order has observed that the subject line is not connected to any other transmission line or to any other generator. So, it is not be utilised by any other user and it is to be utilised by the Appellant only for evacuation of power from its generating station and cannot be treated as a (main) transmission line.
- k) From the provisions of Section 10(1) of the Electricity Act, 2003, it can be seen that the dedicated transmission line is an aspect of generation (and not of transmission) in as much as its establishment, operation and maintenance is done by generating company itself as a part of a statutory mandatory duty. Under the Electricity Act, 2003 there is no requirement of license for a dedicated transmission line. It has been clarified in the Electricity

(Removal of Difficulty) (fifth) Order, 2005 that dedicated transmission line is neither a transmission line nor a distribution system.

- l) As per provision 6 (c) of the Transmission License Regulations, a dedicated line to qualify for license, it is required that it must intend to use such dedicated line as the main transmission line and as a part of ISTS, which means that as a part of ISTS, power through this line flows in all directions as per laws of displacement.
  
- m) With the combined reading of the definitions of “main”, “transmission line” and “supply” in the Electricity Act, 2003, it is clear that a main transmission line is a high-pressure cable or overhead line together with all appurtenances mentioned in Section 2 (72) through which electricity is transmitted under commercial transaction of supply/sale to a licensee or a consumer. Thus, the nature of main transmission line is not point to point but it is part of the meshed network through which commercial transaction of supply takes place. The subject line also does not fulfil the conditions defined in Section 2 (36) (‘inter-State transmission system’) of the Electricity Act, 2003. In case of the subject line, the power evacuation continues to be point to point and thus within the scope of Section 10 (1) of the Electricity Act, 2003.
  
- n) The contention of the Appellant that since the subject line connected to the pooling station is for providing power to inter-State beneficiaries, it qualifies as a part of ISTS, is misconceived. This is because what is contemplated under Section 2 (36) of the Electricity Act, 2003 is a ‘main transmission line’ carrying power from one state

to the others and a dedicated line is outside its purview. If contention of the Appellant is accepted then all the intra state lines connected to ISTS meant for giving power outside state have also to be considered as a part of ISTS and as such will be violation of scheme of intra state and inter-State transmission as laid down in the Electricity Act, 2003.

- o) The Appellant was granted approval under Section 68 and 164 of the Electricity, Act 2003 for construction of dedicated transmission line from its Station to Nagapattinam pooling station. On the issue of including the subject line in the basic network calculation of Point of Connection (PoC) charges, the Central Commission in order to petition no. 116 of 2011 has held that as per Sharing Regulations, the dedicated transmission lines constructed, owned and operated by the generator cannot be considered as part of basic network.
- p) The Appellant had entered into PPA with the Respondent No. 3 for supply of 540 MW. As per the terms of the PPA, the point of interconnection is IL&FS power plant bus, the point of injection is Nagapattinam pooling station, point of delivery is TANGEDCO Grid. The Appellant was responsible for arranging transmission upto the delivery point i.e. TANGEDCO Grid and transmission charges for transmitting power for the same are to be borne by the Appellant and shall not be reimbursed by the Respondent No. 3 as per the provisions of the subject PPA.
- q) This Tribunal vide Judgement dated 23.5.2012 in Appeal No. 145 has held that dedicated transmission line is neither a transmission



line nor a distribution system. Thus, the subject line cannot be classified as ISTS.

- r) The Central Commission in the Impugned Order has also taken note of the primary reason for seeking license by the Appellant is for its commercial consideration i.e. transmission charges for the subject line are to be included in Point of Connection (PoC) charges under the Sharing Regulations. There is no infirmity in the Central Commission's Impugned Order for not granting Transmission License to the Appellant for the subject line.

**13. After having a careful examination of all the issues brought before us on all the aspects raised in Appeal and submissions made by the Appellant and the Respondents for our consideration, our observations are as follows:-**

- a. The present case pertains to decision of the Central Commission vide its Impugned Order regarding denial of Transmission License to the Appellant for the subject line.
- b. On Question No.9(a) i.e. Whether the Impugned Order renders Regulation 8(8) of the Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Open Access in inter-state Transmission and related matters) Regulations, 2009 a nullity?, we observe as follows:**
- i. This question needs to be analysed with complete facts and circumstances of the present appeal. The Appellant had applied for

LTA on 3.11.2008 as per Regulations, 2004. The Regulations, 2009 were issued by the Central Commission on 7.7.2009. Thereafter, the Central Commission vide its order approved detailed procedure for making applications for Grant of Long Term Access to ISTS as per the provisions of Regulations, 2009. The Regulations, 2009 were amended vide notifications No. L-1/(3)/2009-CERC dated 03.09.2010, 21.03.2012, 26.03.2013, 12.08.2014 etc.

- ii. These Regulations, 2009 provides for repeal and savings of Regulations, 2004 as below:

*“34. Repeal and Savings*

- (1) *On commencement of these regulations, Regulation No.’s 4(1)(a), 4(ii), 5(i), 6(i), 7, 8(i), 9, 10, 11, 12, 16(i), 18, as far as it applies to long-term customers, and 31(i) of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2004, shall stand repealed.*
- (2) *Notwithstanding anything contained in clause (1), long-term access granted in accordance with the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2004 shall continue to be valid till the expiry of the term of long-term access.”*

The detailed procedure for making applications for Grant of Long Term Access to ISTS as per the provisions of Regulations, 2009 provides as below:

*“31. TREATMENT OF PRESENT LONG TERM OPEN ACCESS APPLICATIONS ALREADY MADE TO CTU*

- 31.1. In line with the repealed regulations of Central Electricity Regulatory Commission (Open Access in Inter-state Transmission) Regulations, 2004, CTU has received numerous applications for Long Term Open Access.*

1. Long Term Open Access Application where no system strengthening is required:

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(iii) The Long term open access already granted and BPTA is yet to be signed shall have the option either to continue with the provisions of Regulations 2004 or to adopt the new Regulations, 2009. In such cases, if applicant opts for continuing with provisions of earlier regulation then he shall have to abide by clauses pertaining to Exit option, Early Relinquishment of Access Rights, Construction of dedicated line etc of the earlier Regulation, 2004 only. Further, the applicant shall have to sign BPTA within 3 months. However, in case applicant opts for adoption of provisions of new regulation, 2009 then he shall have to give declaration to this effect complying with provisions of the new regulation (without Application fees) within 3 months from approval of these procedures. In the event of failure to respond by applicant, in either of the cases, the already granted LTOA shall stand cancelled and they would be required to apply afresh as per the provision of the new Regulations, 2009.

2. Long Term Open Access Application where system strengthening is required:

A large number of LTOA applications were found to require strengthening of transmission system to enable transfer of power to the target/intended beneficiaries indicated by the applicants in their applications. Such transmission system strengthening was evolved after detailed studies in consultation with CEA, constituents of concerned regions and the applicants. The implementation of finalized transmission system require many pre-investment project preparation activities like survey, land identification, preparation of DPR including cost estimates, tendering activity like issuance of NIT, opening/evaluation of bids etc. These project preparation activities require substantial time for large number of IPPs coming in different area like Orissa, Sikkim, Chattisgarh, Andhra Pradesh, Tamil Nadu, POWERGRID have initiated such activities after grant of LTOA/finalization of transmission system so as to get lead time to enable unhindered

development of transmission system necessary for LTOA projects, POWERGRID have gone ahead with such activities with the tentative/target beneficiaries given by the LTOA applicants. Further, to ensure seriousness of IP developers for POWERGRID to undertake initial activities, POWERGRID have initialed the draft Long term Agreement, pending its finalization by CERC, incorporating provisions for furnishing BG by the applicants. However, now before initiating physical implementation and making actual investment it is necessary that firm beneficiaries are identified by the IPP developers so that POWERGRID may sign BPTA with the beneficiary States and take investment decisions. Accordingly, applications for which LTOA applications where strengthening of transmission system is envisaged are proposed to be treated in the following manner:

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(iii) Applications which are under process and who have already given the consultancy charges for evolution of transmission system strengthening shall be required to apply afresh without giving the application fees and clearly indicating the quantum of power for connectivity and/or for Long Term Access separately. They shall however, not be required to furnish application Bank Guarantee of Rs. 10,000/- per MW for the quantum of power for which Long term Access has been sought. However, they shall also be required to submit the various documents as prescribed in the detailed procedure for connectivity/Long term Access.

.....  
.....”

Now let us go through the relevant portion of minutes of 11<sup>th</sup> meeting of the Southern Region Constituents which was held on 16.11.2010 which is reproduced below:

“6.....  
.....

*Accordingly it was decided to grant of LTA to the following applicants as per above mentioned details alongwith the following system for Connectivity and LTA:*

*Transmission system for Connectivity application made under regulations 2004 (in the scope of respective generation developers):*

- (i) .....*
- (ii) .....*
- (iii) IL&FS Tamil Nadu Power Co. Ltd. (1150 MW)*
  - a. 400 kV quad D/c line to Nagapattinam pooling station*
  - b. 125 MVAR Bus Reactor at generation switchyard*

*Note: (1) The bays, works and bus reactor(s) at the generation switchyard and Nagapattinam Pooling station shall be under the scope of generation developers.*

*POWERGRID has informed to the applicants the timeline for construction of lines for connectivity shall be 9 months + CERC time line as specified in the tariff regulations, in case if the applicant desires to have connectivity before these time lines then they may construct the connectivity lines by themselves.”*

We observe from the perusal of all the relevant provisions as brought out above, based on the application of the Appellant under Regulations, 2004, the Respondent No. 2 vide intimation dated 10.12.2010 granted LTA to the Appellant for 1150 MW (575 MW allocation each in Southern and Western Region) making it effective from the date of commissioning of generation unit as indicated by the Appellant for the period of 25 years from the date of commencement of open access. As per this LTA grant intimation, the construction, operation and maintenance of the connectivity line i.e. the subject line was now stated to be in the scope of the Appellant. Further, from the scrutiny of the LTA intimation dated 10.12.2010 placed on record by the Appellant, it has been observed that at para 2 that the permission of LTA was with requirement of additional system strengthening which includes transmission system

strengthening in Southern Region, Western Region and Northern Region.

- iii. With the combined reading of the provisions quoted at para 13 b. i. & ii above, some issues emerged which need to be addressed. The LTA to the Appellant vide intimation dated 10.12.2010 was granted based on the application made by the Appellant in accordance with the provisions under Regulations, 2004 and shall continue to be valid till expiry of the term of the long term access. The Regulations, 2009 came into force w.e.f 01.01.2010 and under the approved procedure for making application for grant of long term access to ISTS, there is a provision for dealing with the applications received for LTA as per Regulations, 2004. The provisions of 31.1 1. of the procedure does not apply to the Appellant as per LTA grant to the Appellant is with the system strengthening requirement as brought out above. In our considered opinion, the applicability to the Appellant is as per provisions of 31.1 2. (iii) of the procedure, wherein the Appellant was required to apply afresh as per the said proviso. Having said so we are of the opinion that the procedure is the offshoot of the Central Commission's Regulations, 2009 and the Appellant after having not exercised the opportunity available to it under the procedure to adopt Regulations 2009, is bound by the LTA grant as per Regulations, 2004 and the terms and conditions as envisaged in Regulation 34 (Repeal and Savings) of the Regulations, 2009 are applicable to the Appellant. The signing of BPTA was provided under Regulation 11(*"A long-term customer shall enter into Bulk Power Transmission Agreement with the transmission licensee for use of inter-state transmission system."*) of Regulations, 2004.

- iv. It is clear from the above that LTA is granted in accordance with Regulations, 2004 and accordingly the Appellant had to construct, operate and maintain the subject line along with bays and bus reactors as per LTA intimation.
- v. The Appellant and the Respondent No. 2 signed the BPTA on 24.12.2010. According to the provisions of the BPTA also the subject line was to be implemented by the Appellant and the transmission charges of the said line are to be borne by the Appellant. BPTA was signed as per Regulations, 2009 and there is a continuity clause in Regulations, 2009 for LTA granted as per Regulations, 2004. This means that mention of terms and conditions as per Regulations, 2009 in BPTA is not out of place for the LTA granted as per Regulations, 2004, as Regulations, 2009 provides for the continuity clause for LTA granted as per Regulations, 2004. This does not mean that the LTA is granted under Regulations, 2009, as contested by the Appellant.
- vi. Regulation 8(8) of the Regulations, 2009 provides as below:

8 .....

.....

*(8) An applicant may be required by the Central Transmission Utility to construct a dedicated line to the point of connection to enable connectivity to the grid:*

*Provided that a thermal generating station of 500 MW and above and a hydro generating station of 250 MW and above, other than a captive generating plant, shall not be required to construct a dedicated line to the point of connection and such stations shall be*

*taken into account for coordinated transmission planning by the Central Transmission Utility and Central Electricity Authority.*

As per the proviso a thermal generating station of 500 MW and above other than captive generating plant will not be required to construct dedicated transmission line to the point of connection and the station is to be taken into account for coordinated transmission planning by CTU and CEA.

- vii. After examining Regulations, 2004 closely, we do not find any condition regarding construction of dedicated/ connectivity line by the generator or the Respondent No. 2 with respect to the capacity of the generator. Therefore, mention by the Respondent No. 2 regarding timelines for construction of connectivity/ dedicated transmission lines in the 11<sup>th</sup> meeting of the Southern Region Constituents has no repercussions regarding the construction of the subject line in case of the Appellant's generating station. Thus, the connectivity/LTA granted under Regulations, 2004 is valid along with the decisions of 11<sup>th</sup> meeting of the Southern Region Constituents and terms of BPTA. Accordingly, as per the connectivity/ LTA granted as per Regulations 2004, the Appellant is responsible for construction, operation and maintenance of the subject line and to bear its transmission charges. The subject line also cannot be said to be as deemed built by the Respondent No.2 as contested by the Appellant based on Regulation 8(8) of Regulations, 2009 which is not applicable to it.



viii. In view of the above, the question of the Appellant, Whether the Impugned Order renders Regulation 8(8) of Regulations, 2009 a nullity does not arise in context of the instant appeal.

ix. Even if we accept the contentions of the Appellant and irrespective of the applicability of the Regulations 2004 or Regulations 2009, still on examination of the network configuration related to evacuation and transmission of power from the generating stations located in Cuddalore / Nagapattinam area as submitted by the Respondents, it can be seen that the subject line emanates from Cuddalore Thermal Power Project of the Appellant and terminates at the Nagapattinam pooling station of the CTU and the subject line is nowhere connected to any other transmission line at any other point or to any other generating station. This means that the subject line is to be exclusively used by the Appellant for injecting power from its Cuddalore project or for drawl of start up power. The subject line is for exclusive use of the Appellant and it is not utilised by any other user in the system.

Thus, after analysing the network configuration it emerges that the subject line is only meant for point to point connection and does not form a part of the meshed network where power can flow through the subject line in any direction based on the principles of physics, which can be utilised by other users in the system. Accordingly, the subject line built, owned and operated by the Appellant cannot be treated as an ISTS.

x. This issue is decided against the Appellant.

**c. On Question No. 9(b) i.e. Whether the Hon'ble Commission while passing the Impugned Order erroneously ignored the fact**

**that the Appellant intended to use the dedicated transmission line from its generating station to the Nagapattinam pooling station of PGCIL for sale of power to inter-state beneficiaries? and Question No. 9(e) i.e. Whether the Hon'ble Commission erred in ignoring the term "intends" appearing in Regulation 6 (c) of CERC (Procedure, Terms and Conditions for grant of Transmission License and other related matters) Regulations, 2009?, we decide as below:**

- i. Regulation 6 of the Transmission License Regulations provides as below:

*"6. Eligibility for Grant of licence*

*No person shall be eligible for grant of licence unless it is—*

- (a) selected through the process under the guidelines for competitive bidding, or*
- (b) a state owned or controlled company identified as a project developer on or before 5.1.2011, or*
- (c) a generating company which has established the dedicated transmission line, and intends to use such dedicated transmission line as the main transmission line and part of the inter-State transmission system"*

The Appellant, in order to be eligible for grant of transmission license have to fulfil any one of the condition of Regulation 6 as brought out above. The Appellant does not fall in the category of 6 (a) or 6 (b). The grant of transmission license, if any, for Appellant is to be considered under Regulation 6 (c) (as the Appellant has established the dedicated transmission line), wherein two conditions are to be fulfilled for being eligible to get transmission license.

These two conditions are intention to use dedicated transmission line as the main transmission line and considering it to be a as a part of the inter-State transmission system.

ii. The Central Commission in Impugned Order has held as below:

*“16. In accordance with clause (c) of Regulation 6 of the Transmission Licence Regulations, when a dedicated transmission line constructed by a generating company is intended to be used as the main transmission line and part of the Inter State transmission system, the generating company may be considered for grant of transmission licence for such dedicated transmission line. The provision in clause (c) has been made to ensure optimum utilization of the transmission assets and is thus intended to promote economy and efficiency in the transmission segment in the power sector. Two conditions need to be fulfilled for grant of the transmission licence in such cases i.e. (a) use of the transmission line as a main transmission line and (b) treatment of the line as inter-State transmission system. The transmission line of the petitioner will be used only for the purpose of evacuation of power from its generating station. The bus bar of the generating station is not connected to any other transmission line or to other generator. Therefore, the transmission line is not being used by other users so as to be treated as a main transmission line. As regards the treatment of the transmission line as ISTS, it is noted that it does not fulfill any of the condition of Section 2 (36) of the Act. Therefore, the transmission line cannot be treated as ISTS.”*

After close examination of the Transmission License Regulations we found that there is no provision in Transmission License Regulations and in particular the Regulation 6 (c) for grant of transmission license to any applicant based on the intention to use the dedicated transmission line for sale of power to inter State beneficiaries. Accordingly, in our considered opinion the same has not been dealt with in the Impugned Order.

The Central Commission has rightly interpreted the conditions of grant of transmission license to any dedicated transmission line after satisfying both the conditions as per Regulation 6 (c) brought out above and mentioned in the Impugned Order. The Central Commission has dealt the issue in detail and at para 13 reproduced below, has held that the subject line is a dedicated line, only for evacuation of power from the Appellant's generating station and is not used by any other generator or user for transmission of power.

“.....

.....

*The petitioner has not been able to establish that the subject transmission line will be used by other generator(s) or user(s) for transmission of power except the generating station of the petitioner. Therefore, the subject transmission line remains a dedicated transmission line for evacuation of power from the generating station of the petitioner till the pooling station of PGCIL.”*

In view of the above, the contention of the Appellant that the Central Commission has ignored of the term “intends” is misplaced.

- iii. These issues are decided against the Appellant.
- d. **On Question No. 9 (c) i.e. Whether the Hon'ble Commission erred in ignoring the fact that the Appellant intends to use the dedicated transmission line as main transmission line?, we decide as below:**
- i. On close examination of the Petition No. 81/TL/2014 filed by the Appellant before the Central Commission, placed on record before this Tribunal, we find that the main argument for grant of transmission license is based on Regulation 8 (8) of the Regulations, 2009. At para 13 b. vii. above we have already decided that the Regulation 8 (8) of the Regulations, 2009 does not apply to the Appellant. Further, in the said petition we do not find any arguments pleaded before the Central Commission for considering the dedicated line as the main transmission line. Accordingly, it cannot be held that the Central Commission has erred in ignoring the fact that the Appellant intends to use the dedicated transmission line as the main transmission line. However, we proceed to deal with the arguments placed by the parties for dealing whether the subject line can be treated as main transmission line. The contention of the Appellant of the subject line as the main transmission line is actually to establish it as ISTS line.
- ii. Let us now analyse the nature of the subject line whether it is a dedicated line or an ISTS. The Appellant was granted approval from, Ministry of Power, Govt. of India under Section 68 and 164 of

the Electricity, Act 2003 for construction of the subject line as a dedicated line. Various related provisions related to transmission lines quoted by the Appellant and Respondents and other relevant sections of the Electricity Act, 2003 are reproduced below:

2 (42) *"main" means any electric supply- line through which electricity is, or is intended to be, supplied ;*

2 (72) *" transmission lines" means all high pressure cables and overhead lines(not being an essential part of the distribution system of a licensee)transmitting electricity from a generating station to another generatingstation or a sub-station, together with any step-up and step-downtransformers, switch-gear and other worksnecessary to and used for thecontrol of such cables or overhead lines, and such buildings or partthereof as may be required to accommodate such transformers, switchgearand other works;*

2 (16) *" Dedicated Transmission Lines " means any electric supply line forpoint to point transmission which are required for the purpose ofconnecting electric lines or electric plants of a captive generating plantreferred to in section 9 or generating station referred to in Section 10 to any transmission lines or sub-stations or generating stations or the loadcentre, as the case may be;*

10. (1) *Subject to the provisions of this Act, the duties of a generatingcompany shall be to establish, operate and maintain generating stations, tie-lines,sub-stations and dedicated transmission lines connected therewith in accordancewith the provisions of this Act or the rules or regulations made thereunder.*

The Electricity (Removal of Difficulties) Fifth Order, 2005 provides as below:

“ .....

.....

*And whereas such a dedicated transmission line is neither a transmission line in terms of sub-section (72) of section 2 of the Act nor it is a distribution system connecting the point of a connection to the installation of consumer in terms of sub-section (19) of section 2 of the Act;”*

.....

.....

2. *Establishment, operation or maintenance of dedicated transmission lines.-*

*A generating company or a person setting up a captive generating plant shall not be required to obtain license under the Act for establishing, operating or maintaining a dedicated transmission line if such company or person complies with the following:*

- (a) Grid code and standards of grid connectivity;*
- (b) Technical standards for construction of electrical lines;*
- (c) System of operation of such a dedicated transmission line as per the norms of system operation of the concerned State Load Despatch Centre (SLDC) or Regional Load Despatch Centre (RLDC). (d) Directions of concerned SLDC or RLDC regarding operation of the dedicated transmission line.*

This Tribunal in Judgement dated 23.5.2012 in Appeal No. 145 of 2011 at para 18 has held as below:

*“18. Reading of the above order would indicate the following features: -*

- 1) It is the duty of the generating company to establish a dedicated transmission line.*
  - 2) Dedicated transmission line is not a transmission line in terms of the definition under Section 2(72) of the Act. Similarly, the dedicated transmission line is not a distribution system in terms of the definition of Section 2(19) of the Act”*
- .....
- .....

We are of the considered opinion that dealing with the provisions of the dedicated line as per the Electricity Act, 2003 will make the picture clear. It is a fact that the subject line is a dedicated line of the Appellant. As per provisions of the Electricity Act, 2003 i.e. 2 (16), 10 (1) and as per the Electricity (Removal of Difficulties) Fifth Order, 2005 the dedicated line is not a transmission line in terms of Section 2 (72) of the Electricity Act, 2003 and there is no requirement of obtaining the license for the same. It means that the dedicated transmission line is considered as an aspect of the generation. Thus, the contention of the Appellant that it intends to use it as main transmission line is not valid.

- iii. The Appellant has also contended that the subject line falls in the category of the ISTS as per proviso 2 (36) (ii) of the Electricity Act, 2003 and the nature of the subject line being same, it should not be distinguished in terms of 2 (36) (iii) if it is established by CTU.

The Inter State Transmission System or ISTS under the Electricity Act, is defined as below:

*2 (36) “inter-State transmission system” includes –*

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



As discussed above that the subject line is a dedicated line based on Regulations, 2004 used by the Appellant only for point to point injection of power generated from its generating station at Cuddalore to Nagapattinam pooling substation of Respondent No.2. Thus the contention of treating as ISTS in terms of Section 2 (36) (ii) above does not sustain.

Further, as per the proviso 2 (36) (iii) above if any line in a state built, owned, operated, maintained or controlled by CTU, it becomes part of ISTS although the nature of the line may be similar to the dedicated transmission line built, owned, operated, and maintained by a generating company. This is by the virtue of the functions of the various entities defined under the Electricity Act, 2003.

- iv. Accordingly, this issue is decided against the Appellant.
- e. **On Question No. 9 (d) i.e. Whether the Hon'ble Commission has passed the Impugned Order in contravention of the provisions of Regulation 6(c) of CERC (Procedure, Terms and Conditions for grant of Transmission License and other related matters) Regulations, 2009?, we decide as below:**
  - i. In view of our discussions at 13 a. to d. it is clear that the twin provisions of Regulation 6 (c) i.e. use of transmission line as a main transmission line and treatment of line as ISTS of the Transmission License Regulations are not fulfilled by the Appellant for the grant of transmission license to it. Hence, the Impugned Order issued by the Central Commission is in order.
  - ii. Accordingly, this issue is also decided against the Appellant.

**ORDER**

We are of the considered opinion that the issues raised in the present appeal and IA have no merit as discussed above. The Appeal and I.A. are hereby dismissed.

The Impugned Order passed by the Central Commission is hereby upheld.

No order as to costs.

Pronounced in the Open Court on this **18<sup>th</sup> day of April, 2017.**

**(I.J. Kapoor)**  
**Technical Member**

✓

**REPORTABLE/NON-REPORTABLE**

mk

**(Mrs. Justice Ranjana P. Desai)**  
**Chairperson**