

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

Appeal no. 6 of 2015

Dated: 13th October, 2015

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

In the matter of:

**Gujarat Electricity Transmission Corporation Ltd
Sardar Patel Vidyut Bhavan, Race Course
Vadodara – 390 007 (Gujarat)**

**...Appellant/
Petitioner**

Versus

**1. Gujarat Electricity Regulatory Commission
6th Floor, GIFT ONE
Road 5C, Zone 5, GIFT City
Gandhinagar – 382 355
Gujarat**

**2. M/s. OPGS Power Gujarat Private Limited
No. 6, Sardar Patel Road
Guindy, Chenenai – 600 032**

...Respondent(s)

**Counsel for the Appellant : Mr. M.G. Ramachandran
Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Anusha Bardhan
Ms. Ranjitha Ramachandran
Ms. Poorva Saigal
Mr. Shubham Arya**

**Counsel for the Respondent : Ms. Suparna Srivastava and
Mr. S.R. Panday (Rep.)
Ms. Anuska Arora
Mr. Neelmani Pant for R-1**

**Mr. Amit Kapur,
Ms. Poonam Verma and
Mr. Akshat Jain for R-2**

JUDGMENT

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

This is an Appeal under Section 111 (1) of the Electricity Act, 2003 filed by Gujarat Energy Transmission Corporation Ltd (hereinafter called, "**GETCO/APPELLANT**"), a State transmission company against the order dated 21.10.2014 passed by the Gujarat Electricity Regulatory Commission (hereinafter called the "**State Commission/RESPONDENT NO.1**") in Petition no. 1301 of 2013 filed by M/s. OPGS Power Gujarat Pvt. Ltd. (hereinafter called the "**OPG/RESPONDENT NO.2**"), for extension of effective date of Long Term Open Access (under Bulk Power Transmission Agreement dated 21.12.2010 entered into between the OPG and GETCO) from 30.03.2013 to 31.12.2014.

2. This Appeal no. 6 of 2015 is filed by the GETCO against the impugned order dated 21.10.2014 passed by the State Commission whereby the State Commission has revised the Long Term Open Access effective date from 30.03.2013 to 31.12.2014 in the Bulk Power Transmission Agreement (hereinafter called "**BPTA**") dated

21.12.2010 entered between GETCO and OPG. Subsequently, the State Commission has rejected the claim of GETCO for payment of transmission charges by OPG for the period from 30.03.2013 to 31.12.2014 as per the BPTA and has further directed the GETCO not to encash the bulk guarantee upto 31.12.2014

3. Facts of the case are broadly as below:-

- (a) The Appellant, GETCO is a company incorporated under the provisions of the Companies Act, 1956 and is engaged in the activities of transmission of electricity in the State of Gujarat. GETCO is also the State Transmission Utility ("**STU**") and performs the statutory functions of the State Load Despatch Centre ("**SLDC**") provided under the Electricity Act, 2003 for the State of Gujarat.
- (b) The OPG is the Respondent no.2 and is a generating company under the Electricity Act, 2003 and has set up a power plant of 2x150 MW = 300 MW located at Bhadreshwar District, Kutch, Gujarat.
- (c) OPG required the use of the transmission network of GETCO to transmit the electricity generated at their generating station at Bhadreshwar to the place of consumption/end use. For this

purpose OPG sought the interconnection of their generating station at Bhadreshwar from GETCO. OPG agreed to establish a dedicated transmission line for evacuation of power from the generating station at Bhadreshwar till the interconnection point of Varsana sub station of GETCO, also located in District Kutch at a distance of around 42 km from generating station.

- (d) GETCO was to provide the transmission services for such power delivered by OPG through their transmission line from the interconnection point of Varsana for conveyance within the State of Gujarat on certain terms and conditions. However, for setting up the dedicated transmission line from Bhadreshwar to Varsana was of the OPG.
- (e) On 21.12.2010, OPG entered into the Bulk Power Transmission Agreement (“**BPTA**”) with GETCO which governs the terms and conditions and GETCO agreed to provide long term open access on their transmission.
- (f) As per the BPTA, the Long Term Open Access (“**LTOA**”) was argued to be given to OPG in accordance with the State Commission Open Access Regulations, 2005 pertaining to Intra-State transmission which was notified on 29.09.2005 (hereinafter

referred to as Open Access Regulations 2005) as amended from time to time as governing Regulation.

- (g) The BPTA provides the effective date from which the Open Access was to be taken by OPG as 30.03.2013 for duration of 25 years. Clause 15 of the BPTA dealing with the Effective Date and Duration of the Agreement reads as under:

“15. Effective Date and Duration of Agreement:

This agreement shall be deemed to have come in force for all purpose and intends from the date of approval given by GETCO Dt. 30.3.2013 and shall remain operative up to Dt. 30.3.2038 provided this agreement is may be mutually extended, renewed or replaced by another agreement on such terms and conditions for such further period of time as the parties may mutually agree.”

Clause 3 of the BPTA, dealing with the tariff and terms and conditions interalia, provides as under:

“3 Tariff and Terms and Conditions:

The tariff applicable to OPG Power Gujarat Pvt. Ltd would be the tariff of the transmission system of GETCO in the Gujarat as approved by GERC from time to time from where the supply of power to beneficiaries of OPG Power Gujarat Pvt Ltd. is mentioned in the State Energy Accounts issued by SLDC. If any of the terms and conditions of the Agreement with beneficiaries differs from the corresponding specific provision of agreement, then terms and conditions of this Agreement shall prevail.

The transmission charges for the total State Transmission System shall be calculated on monthly basis and shall be leviable to each beneficiary as per the formula prescribed in the

GERC Notification or ARR issued from time to time. The transmission tariff and terms and conditions for transmission of power shall be as per the Notification issued by GERC from time to time or as may be agreed with the Long Term Open Access Customer and GETCO which shall also form an integral part of this Agreement which would be subject to determination/revision GERC from time to time. In case no beneficiary for the full or part quantum of committed evacuation of power 300 MW are found by OPG Power Gujarat Pvt. Ltd., the full transmission charges of 300 MW shall be payable by OPG Power Gujarat Pvt. Ltd. on monthly basis from the date mentioned under para 1 of this Agreement for the term of this Agreement.”

- (h) In view of the above provisions of BPTA, OPG was required to pay the transmission and other applicable charges with effect from 30.03.2013 (effective date) at the tariff as determined by the State Commission for Gujarat.
- (i) The generating station of OPG with a capacity of 300 MW was originally expected to be completed and commercial operation declared by the March 2013. In March 2013 OPG filed Petition No. 1301 of 2013 before the State Commission for an extension of the effective of the BPTA from 30.03.2013 to 31.12.2014 alleging that the extension of time had become necessary on account of (a) delay in grant of environment clearances to the said power project of the OPG, (b) delay in approval to the evacuation scheme attributable to GETCO, (c) time taken to revise

interconnection at Varsana sub station of GETCO from 400 KV to 220 KV attributable to GETCO and (d) delay on the part of the GETCO in obtaining statutory approvals.

- (j) OPG also disputed in their petition the payment of transmission charges to GETCO alleging that GETCO had not taken any specific strengthening work for providing the system transmission services to OPG. GETCO in the reply to the above petition of OPG stated that there was no force majeure event affecting the performance of the obligations of the OPG under the said BPTA and also that there were no events attributable to GETCO causing the delay in the implementation of evacuation system envisaged under the BPTA and further stated that the delay in the power project was for the reasons attributable to OPG. There is no delay on the part of the GETCO and it was the OPG's evacuation scheme revising such connectivity from 400 KV to 220 KV at Varsana sub station. GETCO further stated that there were no delays on the part of the GETCO for seeking any statutory approvals.

4. By the impugned order dated 21.10.2014, the State Commission has extended the commencement date of the LTOA in respect of Respondent no. 2, the OPG from the scheduled date of 30.03.2013 (as per BPTA) to 31.12.2014. The consequence of the above has been that the Respondent no.2's obligation to pay transmission charges to the Appellant, GETCO under the BPTA gets deferred till 31.12.2014. The Appellant is aggrieved by the above extension and has filed this Appeal detailing out the following;

- i) The Appellant is performing the role of State Transmission Utility ("**STU**") and it owns, operates and maintains the Intra-State Transmission Network in the State of Gujarat. The Appellant discharges the functions of the State Transmission Utility under Section 39 of the Electricity Act, 2003. The Appellant is also the State Load Despatch Centre and performing its functions under Section 32 and Section 33 of the Electricity Act, 2003.
- ii) The Respondent no.2 is a generating company and at the relevant time of the impugned order was in the process of establishing a generating station of 2 Units of 150 MW each

at Bhadreshwar, Kutch District, Gujarat. The Respondent no.2 had signed the BPTA dated 21.12.2010 with the Appellant for the long term access to the use of Intra-State Transmission Network of the Appellant for the transmission (conveyance) of the electricity generated from the power project of the Respondent no.2 within the State of Gujarat). For the above purpose, the connectivity to the Intra-State Transmission system of the Appellant was given at 400 KV sub station of the Appellant at Varsana, Gujarat at a distance of around 42 km as stated by the Appellant from the power plant at Bhadreshwar. The power generated at Bhadreshwar was to be transmitted/conveyed to the sub station of the Appellant at Varsana through a dedicated transmission line of the Respondent no.2.

- iii) The Respondent no.2 filed the Petition no.1301 of 2013 before the State Commission seeking time extension for the Long Term Access under the BPTA from the scheduled commencement date of 30.03.2013 to 31.12.2014 on two major grounds (a) the establishment and commercial

operation of 2x150 MW power plant of Respondent no.2 at Bhadreshwar got delayed on account of force majeure conditions, and (b) the establishment of dedicated transmission line from Bhadreshwar to Varsana sub station of the Appellant was delayed on account of reasons attributable to the Appellant, the State Transmission Utility.

5. In the impugned order dated 21.10.2014, the State Commission had framed two issues for consideration and dealt with the same broadly. The relevant portion of the impugned order in respect of State Commission's framing these two issues and consideration thereof, is reproduced below: -

“12.1 The petitioner has prayed for postponement of commencement of LTOA from 30.03.2013, i.e. the date mentioned in the BPTA to 31.12.2014 mainly on the following grounds:

- (i) Delay in commissioning of the power plant due to force majeure event, and*
- (ii) Delay in completion of transmission system from the petitioner plant to the 400 KV Varsana S/S of the GETCO due to the reasons attributable to the respondent.*

12.2 So far as the first ground of delay in commissioning of the power plant is concerned, we observe that the BPTA, is an agreement between the two parties for transmission of electricity to be generated from the petitioner's power plant to

the respondent GETCO's 400 KV Varsana S/S and onward transmission to various beneficiaries. The Construction of dedicated transmission system from the power plant to the specified sub-station of the respondent, i.e. 400 KV Varsana S/S is the responsibility of the petitioner, while the respondent GETCO is responsible to provide transmission network beyond the point of inter-connection. The construction of power plant, commissioning of it and achieving the commercial operation of the power plant is independent from the construction of transmission system. The delay in commissioning of the power plant itself has no role to play in the present dispute. As such the only issue to be addressed by the Commission is whether the delay in transmission system from the petitioner's power plant to the specified sub-station of the respondent, i.e. 400 KV Varsana S/S was due to any reason attributable to the respondent and whether the respondent's transmission network was ready to transmit this power to delivery points, i.e. drawal point of beneficiary of power injected into the grid from the power plant.”

On the second aspect i.e. delay in completion of transmission system, the observations and the conclusion reached by the State Commission as stated in the impugned order has been reproduced below: -

“12.3 To decide this issue, we have gone through the submissions made by the parties alongwith the various documents placed on record by both the parties. On the basis of the same, we arrive at the following sequence of important events.

(i) The petitioner approached the respondent with its application for grant of Long Term Open Access (LTOA) to the tune of 275 MW (300 MW – Auxiliary Consumption) for its proposed 300 MW plant at Bhadreshwar. He initially sought evacuation of power to the 220 KV Anjar sub-station of the respondent which was subsequently revised to 220 KV Kukma substation on 08.12.2008.

(ii) The respondent after preliminary examination observed that only 135 MW could be evacuated through 220 KV Kukma substation and the balance 135 MW could be evacuated through their proposed 220 KV Halvad substation. This was intimated to the petitioner on 16.01.2009.

(iii) Since the 220 KV Halvad substation was at that time in planning stage, the petitioner in consultation with the respondent, expressed its willingness to evacuate power from its plant to 400 KV Varsana substation vide its letter 17.06.2009.

(iv) Subsequently, as requested by the petitioner on 08.09.2009, the respondent conducted the system study for evacuation of power to 400 KV Varsana substation. On 30.12.2009, the respondent communicated the proposed dedicated system to the petitioner, as under:

a) 400 KV D/C line from the OPG Power Project to Varsana substation.

b) 2 Nos of 400 KV Bays at Varsana substation.

(v) In the said letter, it also conveyed that in addition to the dedicated system, the petitioner will also have to share cost of the associated system strengthening scheme comprising of 400 KV D/C Varsana – Halvad line, 400 KV D/C Halvad – Vadavi line and 400 KV Halvad substation.

(vi) The petitioner objected to sharing of the cost of the system strengthening scheme. However, it conveyed its willingness to

pay the transmission charges of the respondent vide letter dated 09.01.2010.

(vii) The respondent, on 31.05.2010, conveyed its in-principle agreement for LTOA with connectivity to 400 KV Varsana substation as mentioned above.

(viii) Consequently, the petitioner initiated the work of planning and designing of the transmission line. It submitted the preliminary route survey for the 400 KV line for approval of the respondent on 02.11.2010. The petitioner also requested for copy of the system study report on 14.12.2010.

(ix) On 21.12.2010, the Bulk Power Transmission Agreement (BPTA) was signed by both the parties which inter-alia, stipulated 30.03.2013 as the date of commencement of open access.

(x) In response to the letter dated 14.12.2010, the respondent provided copy of the system study report to the petitioner on 21.03.11, intimating that the finalized 400 KV evacuation scheme for the petitioner's plant at the cost of petitioner as under:

(xi) 400 KV D/C OPG Generating Station – Varsana (GETCO) line with ACSR Twin Moose conductor (approximately 45 RKM)

(xii) Construction of 2 Nos. of 400 KV feeder bays at Varsana (GETCO) substation.

(xiii) 400 KV, 1x80 MVAR switchable Bus Reader at OPG Generating station.

(xiv) Responding to the system study report, the petitioner on 15.04.2011 sought clarification / justification for the switchable Bus Reader.

(xv) LTOA was granted by the respondent on 12.09.2011, contemplating the dedicated line as 400 KV OPG Power Plant –

Varsana D/C line with associated 400 KV bays Power Project at Varsana, and submitting the estimate for carrying out the work.

(xvi) Route approval for the 400 KV line was granted by the respondent on 02.05.2012.

(xvii) After obtaining approval under section 68 of the Electricity Act, 2003 from the Government of Gujarat, the respondent issued necessary public notice regarding erection of the 400 KV OPG Power Plant – Varsana D/C line on 14.06.2012.

(xviii) In the meantime, in view of huge cost of 400 KV D/C line for evacuation of 270 MW, the petitioner was exploring other cost effective alternative for connecting its power plant to 400 KV Varsana substation. On request of the petitioner, the respondent undertook further studies and suggested a revised scheme on 07.08.2012, which included the following:

□ 220 KV D/C OPG Varsana Line

□ 220 KV split bus arrangement at 400 KV Varsana substation.

□ 400/220 KV, 1x500 MVA ICT or 2x315 MVA ICTs along with bay at Varsana substation.

(xix) The petitioner conveyed its consent for the above 220 KV evacuation arrangement on 16.08.12. It also initiated the work of route survey for the 220 KV line and submitted the detailed survey report to the respondent on 02.01.2013.

(xx) The respondent issued the route approval for 220 KV line on 09.02.2013 and issued the public notice regarding the line on 05.04.2013.”

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12.13 As per the BPTA which was signed on 21.12.2010 and the LTOA granted on 31.05.2010, the petitioner was required to

create the 400 KV transmission network from petitioner's plant to the respondent's 400 KV Varsana S/S. The same was revised on 7.08.2012 by allowing the petitioner to evacuate the power at 220 KV D/C line from the petitioner plant to 400 KV Varsana S/S and permission was granted by the respondent on 5.03.2013 to evacuate the power at 220 KV voltage level. The time allowed to the petitioner for creation of 400 KV transmission systems, as per the BPTA was more than 33 months. However, subsequently, the respondent itself revised the scheme on 7.08.2012, granted the route approval on 09.02.2013 and notified the scheme on 5.03.2013, thus leaving less than a month for completion of line by the petitioner. It is, therefore, unfair and unjust to compel the petitioner to achieve the effective date for evacuation of power envisaged in the BPTA. We, therefore, decide that the petitioner is entitled to the relief prayed for, i.e. extension of effective date of LTOA. Regarding period of extension, we observe that the petitioner has requested to extend the date upto 31.12.2014, i.e. about 22 months from the date of notification of the scheme by the respondent. This is much less than the period of 2 years and 10 months allowed in the BPTA and LTOA. As such, we decide to allow the prayer of the petitioner to extend the effective date upto 31.12.2014.

[13] In view of above observations, we decide that the present petition succeeds. The LTOA date in BPTA dated 21.12.2010 signed between the parties be revised as 31.12.2014 as decided in previous paras. The petitioner and the respondent are directed to revise effective dated of the LTOA as 31.12.2014 in the BPTA. We decide and direct the respondent not to encash the bank guarantee submitted by the petitioner in view of above finding upto 31.12.2014. However, if the same is required to be extended in terms of BPTA, the petitioner is directed to extend the same. The petitioner is not liable to pay any transmission charge from 30.03.2013 to 31.12.2014 to the respondent."

- 6) Aggrieved by the findings on the second issue of the State Commission as above, the Appellant, the State Transmission Utility

has filed this Appeal. The Respondent no.2 has not challenged the finding of the State Commission on the first issue in so far as the rejection of the claim of Respondent no.2 sought based on force majeure affecting the power plant.

7. The issue under our consideration is **whether the State Commission has erred in granting the extension of the effective date of the BPTA from 30.03.2013 upto 31.12.2014 in their impugned order dated 21.10.2014 thereby causing non payment of transmission and other related charges as applicable by OPG to GETO for this extended period?**
8. The Learned Counsel for the Appellant Shri M.G. Ramachandran, Learned Counsel for the Respondent no.1 Ms. Suparna Srivastava and Learned Counsel for Respondent no.2 Shri Amit Kapur were heard at length and the following deliberations were made for our consideration.
 - i) The Appellant has submitted that the findings of the State Commission that the Appellant had delayed completion of the dedicated transmission line from Bhadreshwar to Varsana is wrong. The Appellant's contention is that that the construction of the dedicated transmission line from Bhadreshwar to Varsana has

been the obligation of the Respondent no.2 and that the Respondent no.2 had not been taking steps in implementing the same for the reasons attributable to Respondent no.2. It is contended that the Respondent no.2 initially wanted the connectivity to 400 KV Varsana sub station of the Appellant through 400 KV DC line which could evacuate around 1500 MW of power from the power sub station at Bhadreshwar. This was in the background of the Respondent no.2 was initially planning an aggregate capacity of 1500 MW namely (additional 1200 MW in addition to 300 MW) with respect to which the Long Term Open Access was sought. The said proposal was being pursued by the Respondent no.2 till February 2012 and therefore the Respondent no.2 was desirous of the evacuation line from Bhadreshwar to Varsana of the capacity of 400 KV DC line and not the 220 KV line. It is only when the Respondent no.2 had to abandon the expansion scheme of the Power Project to an aggregate capacity of 1500 MW, the Respondent no.2 sought other alternatives including connection through 220 KV Mokha sub station of Appellant and finally sought the maintenance of the connectivity to Varsana substation and also sought the change in the dedicated

transmission lines through 220 KV line instead of 400 KV line. The Appellant referred to and relied on the detailed sequences of events from the year 2007 till 2014 and the documents and the communications between the parties and the Government of Gujarat in support of the above. In the circumstances, the Appellant's contention is that the conclusions of the State Commission that the Appellant did not advise the Respondent no.2 properly on the line capacity requirement to evacuate the power generated from 300 MW Power Project that which could have been done on 220 KV line instead of 400 KV line thereby optimizing the cost to the Respondent no.2, or that the Appellant delayed the route approval or the publication of notice under Section 164 of the Electricity Act, 2003 in regard to Right of Way etc. are all wrong and are contrary to the documents available on record before the State Commission. The real reason for delay is that the Respondent no.2 was pursuing with the State Government for additional 1200 MW clearance till February 2012 and it is only after the same did not materialize, the Respondent no.2 sought for completion of 400 KV DC line to 220 KV line and that too after exploring other alternatives and took steps for

implementation of the same. The Appellant has also contended that there was considerable delay on the part of the Respondent in fulfilling the conditions of BPTA as well as conditions concerning construction and connectivity to Varsana sub station.

- ii) The Respondent no. 1 and 2 on the other hand have contended that the Appellant did not fulfil its statutory obligation of advising the Respondent no.2 properly and the Appellant did not notify the availability of Mokha 220 KV sub station which was at a distance of only 10 km as stated by Respondent no.2 from Bhadreshwar for evacuation of the power and had subjected the Respondent no.2 to much higher cost, by insisting on connectivity to 400 KV Varsana sub station at a distance of around 42 km from Bhadreshwar through dedicated 400 KV DC line. Respondent no.2 further stated that the Appellant ought to have advised the Respondent no.2 about the coming into existence of 220 KV Mokha sub station at the relevant time which resulted in Respondent no.2 being forced to opt for 400 KV Varsana sub station. This was done by the Respondent no.2 without being aware of the proposal of the Appellant to establish the Mokha sub station. It has also been contended by the Respondent no.2 that the Appellant had sought

from the Respondent no.2 for furnishing the Bank Guarantee under the BPTA immediately after signing of the BPTA, though in terms of Clause 6(c) of the BPTA, the Bank Guarantee was required to be given only 6 months before the scheduled commencement date of the Long Term Open Access. It has been urged that the Appellant did not take due steps in time in regard to approval under Section 164 of the Electricity Act, 2003 and the public notice was given after much delay. It has also been urged that the Right of Way for the dedicated transmission line is the obligation of the Appellant. The Respondent no.2 further states that the Appellant had finally given approval to connect the dedicated transmission line to 220 KV Mokha sub station, which the Respondent no.2 always wanted. It has also been urged by the Respondent no.2 that the Respondent no.2 has not been using the Intra-State Transmission Network and in the absence of a stranded capacity, no transmission charges is payable by the Respondent no.2.

- iii) In response to the above submissions of the Respondent no.2 the Appellant has submitted that the role of the Appellant as a State Transmission Utility ("**STU**") is in regard to the Intra-State transmission of the electricity distinguished from the dedicated

transmission line as defined under Section 2(16) and dealt with in Sections 9 and 10 of the Electricity Act, 2003. While in respect of Intra-State transmission line, the Appellant acts as the entity which lays down the line. However, in case of dedicated transmission line, STU's role is of coordination, planning and other related activities including supervision. As regards connectivity to Mokha sub station being not advised by the Appellant to the Respondent no. 2 at the relevant time, it has been urged that the scheme has been for generating company to identify the sub station where the connectivity is required. The generating company decides on the sub station and then requires the Appellant to study and confirm availability. In any event the Mokha sub station was planned and has been implemented for evacuation on number of wind power projects in the Kutch, Gujarat area and is not intended and did not have the capacity to evacuate the power from the project of the Respondent no.2. It is denied by the Appellant that it had finally agreed and allowed the Respondent no.2 to evacuate the power from 300 MW project of the Respondent no.2 through Mokha sub station instead of Varsana sub station. The Appellant submitted that the evacuation

scheme continues to be through Varsana sub station. The reason why Respondent no.2 chose Varsana sub station for connectivity with 400 KV dedicated transmission line had been that the Respondent no.2 was desirous of evacuation of the power from its power project at Bhadreshwar initially for 300 MW but with a provision for additional 1200 MW. Even the 275 MW generated from the Bhadreshwar was not possible to be evacuated through Mokha sub station.

- iv) As regards non-furnishing of the Bank Guarantee, the Appellant had stated that the Bank Guarantee stated in the BPTA is for the transmission charges and the same needs to be furnished within 6 months prior to the scheduled commencement date of LTOA. In addition to the above there is also a Bank Guarantee to be given for the construction period including covering the system strengthening work. This is independent of the Bank Guarantee provided in Clause 6(c) of the BPTA and taken as per the consistent practice followed by transmission utility including Power Grid Corporation of India and was provided in the Regulations of CERC at Rs. 5 lacs per MW. Subsequently, the State Commission specified the same to be Rs. 10000 per MW. The Bank Guarantee

of Rs. 5 lacs per MW was returned to the Respondent no.2 against the receipt of Bank Guarantee of Rs. 10000 per MW.

- v) On the stranded capacity, the Appellant states that the Respondent no.2 is required to pay the transmission charges as per the BPTA and the Appellant had duly reserved the capacity of 275 MW for the Respondent no.2. The capacity has been booked for the Respondent no.2 and the charges are payable as per MW capacity reserved irrespective of the use.
- vi) The Appellant has also stated that the Respondent no.2 has raised number of new issues which have not been the basis of the decision of the State Commission in the impugned order. Though number of new issues have been raised in the proceedings before this Tribunal by the Respondent no.2 in regard to the functions of the Appellant as State Transmission Utility, in this Appeal this Tribunal is primarily required to consider the validity of the impugned order on the reasoning given by the State Commission. The State Commission has decided that the Appellant has been responsible for the delay in completion of the dedicated transmission line. The relevant portion of the impugned order is reproduced below: -

“12.4 The petitioner, in all seriousness had initiated route survey for the proposed 400 KV line, even before signing the BPTA, and submitted the preliminary survey report to the respondent on 02.11.2010, i.e. about one and a half month before the signing of the BPTA. But, the route approval was accorded by the respondent only on 02.05.2012. As such, the petitioner was left with a time gap of less than one year to design and erect the 400 KV D/C line. Moreover, the mandatory public notice for erection of the line was published by the respondent only 14.06.2012.

12.5 Since, the petitioner could not have started the actual work on the line without the mandatory public notice, it was not possible for him to complete the work by the scheduled date of 30.03.2013. As such, he cannot be held responsible for the delay in erection of the line.

12.6 The main plea of the petitioner in support of its prayer for extension of effective date of LTOA is the delay in implementations of dedicated transmission line caused delay in accordingly various approvals etc. by the respondent. On the other hand, the respondent has contended that the delay in implementation of the dedicated transmission system is solely attributable to the petitioner, as it continuously change its stand regarding voltage and route of the transmission line.

12.7 In order to decide this issue, we have gone through the sequence of events recorded at para 12.3 above. Though, initially the petitioner intended to evacuate power from its power plant at 220 KV, subsequently it agreed to evacuation to 400 KV Varsana S/S. Accordingly, the BPTA was signed on 21.12.2010, indicating the date of commencement of open access as 30.03.2013.

12.8 The respondent has also contended that even after signing of BPTA, the petitioner continued to raise objection to the proposed evacuation system and therefore, the respondent is not responsible for delay in according the route approval. However, on perusal of the letter date 15.04.2011, it is noted that the petitioner had sought clarification regarding provisions of suitable

bus reactor only and not on the 400 KV D/C line from the petitioner's power project to the 400 KV Varsana S/S. As such, it has no direct relation to the route approval.

12.9 The respondent has also contended that even after agreeing to evacuation at 400 KV, the petitioner again raised the issue regarding evacuation at 220 KV. The respondent had to undertake further system study, after which it agreed to revise the evacuation scheme. The revised scheme was consequently agreed by both the parties and the final notification of this line was issued only on 05.04.2013.

12.10 In our view, even if we consider this delay attributable to the petitioner, it cannot be denied that finalization and notification of the original 400 KV scheme was delayed upto 14.06.2012, which is not attributable to the petitioner. Even if the petitioner would have continued with the original 400 KV system, it was not possible to commission the line by 30.03.2013, i.e. within 9 months. It is well accepted fact that erection of 400 KV line can take anything between 18 to 24 months, and even the BPTA allowed a time period of 33 months for completion of the work. As such the petitioner's request for extension of effective date of BPTA to 31.12.2014 is justified.

12.11 The respondent and the petitioner have also advanced arguments and counter-arguments regarding stranding of transmission capacity of the respondent's network due to booking of LTOA in favour of the petitioner and consequent liability of the petitioner to pay the transmission charge w.e.f. from the originally agreed date of 30.03.2013. In our view, this issue is not material in the circumstances of the case, as we have already concluded that the delay in erection of the dedicated transmission system is attributable to the respondent only, and he cannot claim any relief or his own default.

12.12 We, further, note that the role of GETCO which is a STU as well as nodal agency for grant of long-term open access actions led to a situation that the petitioner was compelled to evacuate 270 MW of power at 400 KV voltage level by laying 400 KV D/C line from its plant to 400 KV Varsana S/S. GETCO itself

later on agreed to the request of petitioner to revise the evacuation of power by laying 220 KV line from the petitioner's plant to GETCO S/S. The above facts establish beyond doubt that there existed an alternate scheme for evacuation of power at 220 KV voltage level from petitioner plant to 400 KV Varsana S/S by splitting 220 KV bus at 400 KV Varsana S/S, which the respondent failed to conceive. The evacuation system proposed by the respondent initially was much costlier than the alternate scheme granted later on. The said option was either not considered by the respondent or not intimated by GETCO to the petitioner and compelled him to agree for evacuation of power at 400 KV voltage. The Act of respondent GETCO proves that it failed in its duty to plan the transmission system in the State in efficient and cost effective manner with optimum utilization of minimum resources.

12.13 As per the BPTA which was signed on 21.12.2010 and the LTOA granted on 31.05.2010, the petitioner was required to create the 400 KV transmission network from petitioner's plant to the respondent's 400 KV Varsana S/S. The same was revised on 7.08.2012 by allowing the petitioner to evacuate the power at 220 KV D/C line from the petitioner plant to 400 KV Varsana S/S and permission was granted by the respondent on 5.03.2013 to evacuate the power at 220 KV voltage level. The time allowed to the petitioner for creation of 400 KV transmission systems, as per the BPTA was more than 33 months. However, subsequently, the respondent itself revised the scheme on 7.08.2012, granted the route approval on 09.02.2013 and notified the scheme on 5.03.2013, thus leaving less than a month for completion of line by the petitioner. It is, therefore, unfair and unjust to compel the petitioner to achieve the effective date for evacuation of power envisaged in the BPTA. We, therefore, decide that the petitioner is entitled to the relief prayed for, i.e. extension of effective date of LTOA. Regarding period of extension, we observe that the petitioner has requested to extend the date upto 31.12.2014, i.e. about 22 months from the date of notification of the scheme by the respondent. This is much less than the period of 2 years and 10 months allowed in the BPTA and LTOA. As such, we decide to allow the prayer of the petitioner to extend the effective date upto 31.12.2014.

[13] In view of above observations, we decide that the present petition succeeds. The LTOA date in BPTA dated 21.12.2010 signed between the parties be revised as 31.12.2014 as decided in previous paras. The petitioner and the respondent are directed to revise effective dated of the LTOA as 31.12.2014 in the BPTA. We decide and direct the respondent not to encash the bank guarantee submitted by the petitioner in view of above finding upto 31.12.2014. However, if the same is required to be extended in terms of BPTA, the petitioner is directed to extend the same. The petitioner is not liable to pay any transmission charge from 30.03.2013 to 31.12.2014 to the respondent.”

9. After going through all the relevant documents and written submissions and hearing the arguments of Learned Counsel of the Appellant as well as the Respondents, our observations are as follows:-
- i) The State Commission has proceeded on the basis that delay in the dedicated transmission line to be laid down from the power plant of Respondent no.2 to Varsana sub station is attributable to the Appellant. The State Commission has found against the Appellant that it has failed in his duty as STU to have properly advised Respondent no.2 in regard to the nature of the line to be laid down namely 220 KV line instead of 400 KV DC line to Varsana sub station. The delay in route approval and other

studies for connectivity to Varsana sub station, and the delay in approval under Section 164 of the Electricity Act, 2003 and publishing of public notice are all attributable to GETCO. Further, the State Commission has proceeded on the basis of the connectivity of the power plant through the dedicated line upto Varsana sub station was that of the Appellant. It amounts to as if the Appellant should have itself laid down the transmission line to Bhadreshwar power plant in the discharge of its functions as the State Transmission Utility under Section 39 of the Electricity Act, 2003 or as State Load Despatch Centre under Section 32 and Section 33 of the Electricity Act, 2003 as now sought to be urged by the Respondent no.2. The observations in paragraphs 12.12 and 12.13 of the impugned order dated 21.10.2014 relate only to conversion of the 400 KV DC line upto Varsana substation to 220 KV line upto Varsana sub station and not with regard to function of the Appellant to give connectivity at the bus bar of the Bhadreshwar power plant.

- ii) Accordingly, the issue which arise for consideration in the present Appeal is on the findings recorded in the above quoted paragraphs of the impugned order on the delays or default

attributed to the Appellant in regard to the construction of the dedicated transmission line. In this regard, the State Commission in para 12.3 of the impugned order has set out a sequence of events and thereafter in para 12.4 and onwards of the same impugned order have considered the issue. The Appellant has placed before this Tribunal a detailed sequence of events with reference to the specific documents which were part of the records of the State Commission. The Appellant has also referred to the summary of the sequence of events given in reply filed before the State Commission.

- iii) The perusal of the sequence of events and related documents shows that Respondent no.2 which had identified from time to time the specific sub station of the Appellant to which it required the connectivity, particularly, in the context of the quantum of power it desired to evacuate from the Bhadreshwar power plant. The open access was sought for 275 MW out of the 300 MW capacity of the Bhadreshwar power plant. Further in the context of the Respondent no.2 expanding the total capacity of the power plant to 1500 MW with an additional 1200 MW as initially

envisaged by him for which it had approached the Government of Gujarat. In this regard, Respondent no.2 had approached the Appellant for the connectivity first to Anjar sub station, then to Kukma sub station and thereafter to the Halvad sub station and finally to Varsana sub station. The evacuation through Anjar sub station/Kukma sub station was not possible for both the generating units as these sub stations are restricted to the capacity of 1 MW up to 135 MW only.

- iv) The identification of the each of the above sub station Anjar, Kukuma, Halvad, Varsana etc. were by the Respondent no.2, as would be clear from the communications dated 23.10.2007, 16.01.2009 and 14.05.2009. These communications show that it is the Respondent no.2 which had identified the substation to which it was desirous of connecting to and sought from the Appellant to undertake the requisite System Study, Route Approval etc.

- v) Finally, it was the decision of the Respondent no.2 to have evacuation through the 400 KV Varsana sub station through the

connectivity through their dedicated 400 KV DC line in the context of the evacuation, firstly, of the power from both the units of 150 MW each and also in the context of Respondent no.2 having approached the Government of Gujarat for setting up an additional generating capacity at the same Bhadreshwar power plant of 1200 MW in addition to 300 MW. By communication dated 17.06.2009, the Respondent no.2 had, in fact, withdrawn its earlier request for evacuation through the 220 KV sub station of the Appellant at Kukma and confined the connectivity of the dedicated transmission line and evacuation through the 400 KV substation of the Appellant at Varsana.

- vi) After identification of Varsana sub station by Respondent no.2's communication dated 17.06.2009 including the evacuation line from the Bhadreshwar power plant to Varsana being 400 KV DC line, there was no further change of request by the Respondent no.2 till February 2012. Both the parties had proceeded on the basis of Respondent no.2 requiring connectivity to the 400 KV Varsana sub station and evacuation line being also 400 KV DC line. In the meantime, Respondent no.2 was pursuing with the

Government of Gujarat and the environmental authorities for approval to the setting up of another 1200 MW. Admittedly, if the power plant with another 1200 MW was allowed to be established, there was a necessity for the 400 KV DC line connectivity to Varsana sub station as the entire power available from the power plant would have been 1500 MW and this could only be evacuated through the 400 KV DC line. The 220 KV DC line could not evacuate the above quantum of power.

- vii) Thus, between the periods from 2009 till February 2012, the respondent no.2 proceeded on the basis that it would require the connectivity to 400 KV sub station at Varsana and also laying down 400 KV DC line from Bhadreshwar to Varsana sub station. It was only on 12.02.2012 that the Respondent no.2 requested for a change in the connectivity from the 400 KV Varsana sub station to 220 KV Mokha sub station coming nearer to Bhadreshwar power plant. In this communication, there was no allegation by the Respondent no.2 that the Appellant had not advised Respondent no.2 on the establishment of the Mokha sub station at an earlier point of time. The connectivity to the 220 KV Mokha sub station

was not allowed by the Appellant on 15.02.2012 through a written communication on the basis of System Study. Thereafter, by communications dated 21.04.2012 and 28.06.2012, Respondent no.2 sought for extension of commencement of the Long Term Open Access (“LTOA”) from 30.03.2013 specifically stating that the power project of the Respondent no.2 had got delayed due to the environmental clearance and also on account of non grant of permission to expand the capacity of the power plant. In the letter of Respondent no.2 dated 21.04.2012, they stated that *“later environment and other related clearances have been delayed due to one or other reasons. We have been denied further expansion of the project by the Environment Department. Due to delay, the said project has time overrun as well as cost overrun. We require you to request for extension of commissioning of the 1st Unit in March-June 2014 instead of March 2013 committed earlier”*. In view of the change, in this letter the Respondent no.2 also sought for connectivity to the 220 KV Mokha sub station instead of the 400 KV Varsana sub station. Subsequently, in communication dated 28.06.2012, the Respondent no.2 reiterated its request and again confirmed the reason for the change as *“since we have now*

due to environmental issue decided to restrict size of the project limited to present capacity of 2x150 MW, it is kindly requested to please consider our above request and oblige”.

viii) Till this stage, there was no allegation that the Appellant had caused the delay in the establishment of the dedicated transmission line. The reasons for the delay have been stated by the Respondent no.2 itself as being the delay in the construction and completion of the power project. The Respondent no.2 had sought extension of the commencement date of LTOA specifically stated the delay being on account of delay in establishing the power project. In paragraph 12.3, the State Commission had rejected this claim on the grounds that the delay even on account of force majeure in establishing the project cannot be a ground for releasing Respondent no.2 to pay the transmission charges under the BPTA.

ix) It was then found by the Appellant that the 220 KV Mokha sub station could not evacuate the power of 270 MW from Bhadreshwar plant. Further, Mokha sub station was essentially for

the evacuation of power from the wind projects being commissioned in the Kutch area. Thereafter, in order to mitigate the total cost, Respondent no.2 and the Appellant agreed that the Respondent no.2 may install a dedicated 220 KV line from Bhadreshwar to Varsana, partly along with the another 220 KV line being established by the Appellant from Mokha to Varsana, install a split bus bar and get connectivity to the 400 KV sub station at Varsana of the Appellant. This was pursuant to the Respondent's request vide communication dated 28.06.2012 and finally agreed to by the Appellant on 07.08.2012. The Appellant had set out the terms and conditions for allowing the above namely conversion of the dedicated line from 400 KV DC line to 220 KV line from Bhadreshwar to Varsana along with laying down of another Mokha line of the Appellant to Varsana, split bus bar etc. vide communications dated 07.08.2012 and 29.08.2012. Thereafter, a detailed survey report was carried out and approval was granted on 08.01.2013.

- x) In the above context, the Appellant could take up the issue of converting 400 KV DC line to 220 KV line only after the decision

made by the Respondent no.2 in April/June 2012 of not requiring 400 KV DC line from Bhadreshwar to Varsana, consequent upon the expansion project to 1500 MW being not approved by the environmental authorities, as admitted by the Respondent no.2 itself in its communication. It is, therefore, not open to the Respondent no.2 to blame the Appellant for not advising on the connectivity to the 220 KV Mokha sub station or not advising on the adequacy of a 220 KV line from Bhadreshwar to Varsana till June, 2012. The decision to have the 400 KV DC line to Varsana from Bhadreshwar was of the Respondent no.2 consciously in the context of evacuation of power that may be required in future namely, upon sanction being granted to 1500 MW capacity at Bhadreshwar.

- xi) The State Commission in the impugned order dated 21.10.2014 has completely overlooked the above important events. The sequence of events given in para 12.3 of the impugned order show that the State Commission has not adverted to the above communication and various other letters and documents which have been given in the sequence of events of the Appellant. The

State Commission has proceeded on the wrong basis that it was the Appellant which had insisted on 400 KV DC line from Bhadreshwar to Varsana from the beginning instead of advising Respondent no.2 to lay down only 220 KV line to Varsana, which would be sufficient to evacuate the 275 MW power. The State Commission has overlooked that the expansion of the capacity which the Respondent no.2 had been planning since beginning and the reason for seeking a change in the later part of 2012 was on account of such expansion of capacity of the power project not being allowed due to environmental consideration.

- xii) Accordingly, the delay alleged on the part of the Appellant till 07.08.2012 and the failure on the part of the Appellant in properly advising the Respondent no.2 on the nature of evacuation line referred to by the State Commission in para 12.4 of the impugned order onwards are contrary to the documents on record and cannot be sustained. The State Commission ought to have analyzed the correspondences between the parties and more particularly the clear admission on the part of the Respondent nos.2 with reference to the implication of 1500 MW power project

proposed initially and the environmental reasons for which it was not allowed.

- xiii) The BPTA was signed on 21.12.2010. In the BPTA the Respondent had agreed to the commencement of LTA to be 30.03.2013 with the liability to pay transmission charges from the said date. Thus, irrespective of what had happened prior to 21st December 2010, both parties had agreed to the commencement of the LTOA effective from 30.03.2013 and both the parties are also bound by the same. The sequence of events need to be examined to see whether the Appellant was responsible for the delay as mentioned above. As would be clear from the sequence of events from 21.12.2010 till later part of 2012, there was no such allegation made by the Respondent no.2 that the Appellant was in any way responsible. The allegation of the delays on the part of the Appellant was in fact due to delay by Respondent no.2 in deciding its evacuation from the bus bar of its power plant at Bhadreshwar to the interconnection point of the Appellant's transmission network as it appears from the documents placed before us.

xiv) The State Commission has overlooked these aspects when it had concluded that the Appellant had delayed the laying down of 400 KV DC line between Bhadreshwar to Varsana when the Respondent no.2 itself had accepted the cause of delay being the delay in establishment of the power project due to delay in environmental and other approvals. These have been stated by the Respondent no.2 in their letters dated 21.04.2012 and 28.06.2012. It is, therefore, obvious that the steps were not being taken by the Respondent no.2 in regard to the dedicated transmission line till the issues regarding establishment of the power project at Bhadreshwar got sorted out. In this regard by letter dated 07.10.2011 the Respondent no.2 wrote as under:-

“We are in receipt of estimate ref ACE(RC)/EE-C/2927 dated 12th September 2011 and would like to humbly state the following.

We are glad to inform GETCO that we have received the CRZ clearance from Ministry of Environment and Forest on 16th September, 2011, copy of the clearance enclosed.

We would request that if GETCO can allow us to pay the estimate charges in installments in the schedule listed below”

- xv. For the benefit of our assessment of the whole issue, the following documents/correspondences exchanged between the Respondent no.2 and the Appellant have been perused:-
- a) Respondent no.2's letter dated 23/10/2007 seeking connectivity through the Anjar 220 KV sub station for their Bhadreshwar power plant and agreeing for completing the transmission line from the project site to Anjar 220 KV sub station.
 - b) Respondent no.2's letter dated 06.11.2008 mentioning therein that in addition to the existing 2x150 MW power plant at Bhadreshwar they are proposing to set up a 1200 MW power project at a site contiguous to present site.
 - c) Respondent No. 2's letter dated 05/12/2008 requesting evacuation through Kukma sub station and for the proposed expansion, requesting for using the Halvad sub station in addition to Kukma.
 - d) Appellant's letter dated 16.01.2009 informing the Respondent no.2 about their analysis of system study results with respect to Kukma sub station and Halvad sub station.
 - e) Respondent no.2's letter dated 14.05.2009 seeking connectivity for 2nd unit of 135 MW since he Respondent no.2 can only evacuate 135 MW power at 220 KV Kukma sub station.

- f) Respondent no.2's letter dated 17.06.2009 seeking approval for connectivity to 400 KV sub station at Varsana of the Appellant and withdrawing all their earlier requests for evacuation from initially proposed sub stations.
- g) Respondent no.2's letter dated 02.11.2010 informing therein that they have conducted preliminary survey for the proposed 400 KV DC dedicated line of Respondent no.2 from Bhadreshwar plant to Varsana.
- h) Respondent no.2's letter dated 26.11.2010 enclosing therewith the Preliminary Survey Report of Respondent no.2's 400 KV DC transmission line from Bhadreshwar to Varsana.
- i) Appellant's letter dated 26.11.2010 conveying in principle approval for LTOA of 275 MW (300 MW Auxiliary Consumption) with the condition that the Respondent no.2 shall pay to them the transmission charges from the agreed date as per BPTA.
- j) Respondent no.2's letter dated 21.12.2010 informing therein that their construction activities of 400 KV transmission line from Bhadreshwar to Varsana yet to start.

- k) Respondent no.2's letter dated 07/10/2011 informing therein that they have received the CRZ clearance from Ministry of Environment and Forest on 16.09.2011.
- l) Respondent no.2's letter dated 07.12.2011 seeking prior approval of Government of Gujarat to install their dedicated transmission line from their power plant at Bhadreshwar to Varsana sub station under Section 68 Indian Electricity Act, 2003
- m) Government of Gujarat vide letter dated 15.12.2011 sought Appellant's detailed views enabling granting of publication under Section 68(1) of the Electricity Act, 2003'.
- n) Appellant vide letter 31.12.2011 to Government of Gujarat conveyed their concurrence for providing LTOA to Respondent no.2 with stipulation that construction of dedicated line from their Bhadreshwar plant to Varsana to be executed by the Respondent no. 2, thereby allowing open access for 25 years for 275 MW (from the generating plant at the approved rate of GERC as per MYT of the Appellant).
- o) Respondent no.2 vide letter dated 12.02.2012 sought change from 400 KV to 220 KV sub station being planned at village Mokha and requested Appellant to explore possibility for evacuation of generated power at 220 KV system through Mokha sub station.

- p) Appellant's letter dated 15.02.2012 informing that the evacuation is proposed on 400 KV only as per their analysis and denying thereby connectivity at 220 KV network instead of 400 KV network as requested by Respondent no.2.
- q) Respondent no.2 vide letter dated 21.04.2012 confirmed that they have been denied future expansion of the project by the Environment Department and further stated that due to delay, the said project has time overrun as well as cost overrun and requested Appellant for extension of commencement date of LTOA instead of March 2013 to March-June, 2014 and again further requested Appellant for exploring feasibility of providing connectivity for evacuation of 275 MW power through 220 KV Mokha sub station instead of 400 KV Varsana sub station.
- r) Appellant vide letter dated 26.04.2012 informing Respondent no.2 that as an outcome of the system study, the evacuation is proposed on 400 KV only as there is congestion in the 220 KV network.
- s) Respondent no.2 vide letter dated 01.06.2012 made a request to the Appellant to allow them to evacuate their 275 MW power along with 300 MW power from the proposed Mokha sub station to Varsana and

agreed to bear the cost of additional arrangement if required to connect at 400 KV Varsana sub station.

- t) Appellant vide letter dated 05.06.2012 requested Respondent no.2 to take up the work without any further loss of time and there would be no extension of the commencement date of LTOA.
- u) Respondent no.2 vide letter dated 28.06.2012 again informed the Appellant that due to environmental issue, they have decided to restrict the project to present capacity of 2x150 MW only and further requested for Appellant's permission to wheel the power through 220 KV DC Mokha – Varsana transmission line.
- v) Appellant vide letter dated 29.08.2012 allowed Respondent no.2 that to save time for obtaining Right of Way, the Respondent no.2 is permitted to lay their dedicated line along with the existing 220 KV Mokha lines in light of the Appellant's earlier letter dated 07.08.2012 informing Respondent no.2 that the existing 220 KV lines are getting critically loaded with the prevailing power evacuation load and further stated that with the 220 KV split bus bar arrangement proposed to be carried out by Respondent no.2 at 400 KV Varsana sub station, it could be feasible.

All the communications brought out above were placed before the State Commission, as stated by the Learned Counsels of the Appellant and the Respondent no.2 respectively.

xvi. From the above, it is apparently clear that it was Respondent no.2 which initially sought frequent changes in the requirement of sub station through which the power from Bhadreshwar power plant was to be transmitted through the dedicated transmission line which was initially proposed by the Respondent no.2 as 400 KV more rightly keeping in view their proposed expansion by another 1200 MW in addition to 300 MW which could have been possible only through 400 KV dedicated DC line upto interconnection point i.e. Varsana sub station. It is evident that there is no apparent delay on the part of the Appellant in carrying out the system study as and when sought by the Respondent no.2 and conveying their analysis without any loss of time.

xvii) It is evident from Respondent no.2's letter dated 12.02.2012 wherein for the first time they sought their connectivity through Mokha sub station. Appellant denied connectivity through Mokha sub station on account of congestion in 220 KV network. However the Respondent

no.2 vide their letters dated 21.04.2012 and 28.06.2012 sought extension in commencement of LTOA on account of delay in obtaining environmental clearance and also categorically accepted that the proposed expansion of the 1200 MW has not been granted by Government of Gujarat and kept insisting for conversion from 400 KV initially and planned for evacuation from the bus bar of the Bhadreshwar plant to 220 KV system.

xviii) Keeping in view the interest of stockholders and the system study outcome, vide letter dated 07.08.2012 Appellant agreed for conversion to 220 KV line with certain technical requirements/modifications to be carried out by the Respondent no.2 and subsequently vide letter dated 29.08.2012 even allowed laying of their line along with the existing Mokha lines upto Varsana sub station to save Respondent no.2's time on obtaining Right of Way for their dedicated line after Respondent no.2 agreed for split bus bar arrangement.

xix) As regards the contention of the Respondent no.2 that the Appellant has not discharged its statutory obligation under Section 32 and 39 of the Electricity Act, 2003 and it was the obligation of the Appellant to provide the transmission facilities for evacuation of power from the

bus bar of the generating station at Bhadreshwar. Since, the Appellant is STU in the State of Gujarat, let us look at the functions of the STU under Section 39(2) of the Electricity Act, 2003 which *interalia*, reads as under

- “39(2) *The functions of the State Transmission Utility shall be--*
- (a) to undertake transmission of electricity through intra-State transmission system;*
 - (b) to discharge all functions of planning and co-ordination relating to intra-State transmission system with--*
 - (i) Central Transmission Utility;*
 - (ii) State Governments;*
 - (iii) generating companies;*
 - (iv) Regional Power Committees;*
 - (v) Authority;*
 - (vi) licensees;*
 - (vii) any other person notified by the State Government in this behalf;*
 - (c) to ensure development of an efficient, co-ordinated and economical system of intra-State transmission lines for smooth flow of electricity from a generating station to the load centres;*
 - (d) to provide non-discriminatory open access to its transmission system for use by--*
 - (i) any licensee or generating company on payment of the transmission charges; or*
 - (ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission.”*

Since the Respondent no.2 has also made a mention to Section 32 of the Electricity Act, 2003 dealing with the functions of the State

Load Despatch Center, we have referred to Section 32 (2) of the Electricity Act, 2003 which reads as under:-

“32(2) Functions of State Load Despatch Centres.- (1) *The State Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in a State.*

(2) *The State Load Despatch Centre shall--*

- (a) *be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State;*
- (b) *monitor grid operations;*
- (c) *keep accounts of the quantity of electricity transmitted through the State grid;*
- (d) *exercise supervision and control over the intra-State transmission system; and*
- (e) *be responsible for carrying out real time operations for grid control and dispatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code.”*

It appears from the arguments put forth by the learned Counsel of Respondent no.2 that the Appellant ought to have acted in accordance with the above statutory obligations and functions as mentioned in Section 32 and 39 of the Electricity Act, 2003 as quoted above and provided the transmission system upto to the bus bar of the generating station instead of asking the Respondent no.2 to

construct any dedicated line upto Varsana sub station from Bhadreshwar power plant i.e. dedicated transmission line.

Even Para 12.12 of the impugned order deals with the deficiencies on the part of the above STU in acting as nodal agency in the context of the STU having not advised the Respondent no.2 to construct the 220 KV dedicated line and having advised construction of 400 KV DC line for evacuation of power from Bhadreshwar to Varsana and thereby subjecting the Respondent no.2 to higher cost.

The above contentions of Respondent no. 2 and the findings of the State Commission are not correct as the Respondent no.2 wanted specifically the interconnection through Varsana sub station of the Appellant through their 400 KV DC dedicated line upto Varsana sub station. This was in the context of Respondent no.2 planning construction of an additional 1200 MW power plant i.e. aggregate capacity of 1500 MW including 300 MW being established. The Respondent no.2 continued to maintain the above till February 2012. The claim for conversion to 220 KV line from the 400 KV DC line occurred only after the above. Accordingly, the Appellant cannot be

held accountable for not having advised the construction of a 220 KV line from the beginning. In any event, it is a choice of generating station to decide on the nature of the dedicated transmission line. The Respondent no.2 had specifically sought for the 400 KV DC line connecting to Varsana sub station.

xx) In any case, a perusal of Section 32 of the Electricity Act, 2003 dealing with the functions of the SLDC shows that these functions become relevant upon commercial operation of the power plant and associated facilities including dedicated transmission line. The functions under Section 32 of the Electricity Act, 2003 are optimum scheduling and dispatch of electricity, monitoring, grid operation, measurement of the quantum of the electricity transmitted, supervision and control of the Intra-State Transmission System and the real time operation. These have no bearing till the commercial operation of the generating plant of the Respondent no.2.

xxi) As regards Section 39 of the Electricity Act, 2003, the functions relating to laying down of the transmission line etc. is with reference to Varsana sub station and beyond. It does not deal with the dedicated transmission line. The other functions specified under Section 39 of the Electricity Act, 2003 relate to the planning and

coordination and development of efficient, coordinated system of the Intra-State Transmission line for smooth flow of electricity. The function specified under Section 39 {2(c)} relating to the development of the efficient coordinated system is to be read harmoniously with Section 10 of the Electricity Act, 2003 which provides for the dedicated transmission line as the duty of the generating company. It cannot be that in terms of Section 39 of the Electricity Act, 2003, it is the function of the STU to lay down the transmission line connecting the bus bar of each generating station. The STU has overall functions of Intra-State transmission of electricity. The very purpose of providing for the dedicated transmission line is that the generating company undertakes the construction of the transmission line from the place of generation to the nearest possible Interconnection point of the Intra State transmission. The failure alleged against the Appellant in regard to not fulfilling the statutory obligations is not correct. In any event, the allegation is of general nature and it does not arise in the context of the present case where the Respondent no.2 has sought for connection through a dedicated transmission line to Varsana sub station and had entered into BPTA for use of the Intra State Transmission System beyond Varsana sub station. The

issue at present is delay in commissioning of the dedicated transmission line and whether the transmission charges payable for the MW capacity contracted on the Intra-State transmission line should not be claimed by extending commencement of the BPTA to 31.12.2014. Accordingly, the claim made by Respondent no.2 based on Section 32 and 39 of the Electricity Act, 2003 is liable to be rejected.

- xxii) On 7th December, 2011, Respondent no.2 applied for grant of approval under Section 68 of the Electricity Act, 2003 for laying down the overhead line. This shows that for about a year it was Respondent no.2 which was delaying the implementation on account of environment and other clearances it required and began to take steps only after 07.12.2011. During the above period, the Respondent no.2 was also delaying the furnishing of the Construction Bank Guarantee, payment of System Study charges etc., as it is clear from the communication exchanged between the Appellant and the Respondent nos.2 during the entire year 2011.
- xxiii) The period from December 2011 to April 2012 was taken by Respondent no. 2 on dealing with the permission sought for by the

Respondent no.2 under Section 68 of the Electricity Act, 2003 from the Government of Gujarat and thereafter the issues of changing the connectivity from 400 KV Bhadreshwar sub station at Varsana to Mokha and thereafter from 400 KV DC line to 220 KV line were initiations of the Respondent no.2.

- xxiv) It is, therefore, clear that though the BPTA was executed on 21.10.2010 it was Respondent no.2 which had not taken steps to implement the project. The above is also supported by the fact that the Respondent no.2 did not give the Construction Bank Guarantee in time. Finally when the Appellant threatened to cancel the LTA, the Respondent no.2 had obliged and furnished requisite Bank Guarantee. Respondent no.2 in the appeal is referring to Clause 6 (c) of the BPTA which deals with the Bank Guarantee for transmission charges to be furnished by the Respondent no. 2. This is 6 months prior to the scheduled commencement date of the LTA. Clause 6(b) of the BPTA deals with the Letter of Credit. In terms of the Clause 6(c) such Letter of Credit is to be furnished within one month of the BPTA. The Bank Guarantee which the Appellant was seeking was in regard to the

Construction Bank Guarantee. This is independent of the Bank Guarantee for the transmission charges. It is, therefore, not correct on the part of the Respondent no. 2 to raise the issue of the Appellant insisting on Bank Guarantee contrary to the term of the BPTA. The Construction Bank Guarantee is for completely different purpose and is not covered by the BPTA. The Construction Bank Guarantee had finally been given by the Respondent no.2 without any reservation or condition. In any event, the State Commission has not proceeded on the basis of the Appellant having insisted upon furnishing of the Bank Guarantee.

- xxv) The State Commission is also wrong in holding the Appellant responsible for the delay in publishing the public notice and stating that this delay was on the part of the Appellant. The public notice was sought under Section 164 of the Electricity, 2003 which was after the permission Respondent no.2 sought for under Section 68 of the Electricity Act, 2003 was withdrawn by Respondent no.2 much later. The Respondent no.2 had sought the requisite approval under Section 68 of the Electricity Act, 2003

by an application made to the Government of Gujarat only on 07.12.2011 and not before. The approval under Section 68 was for the dedicated transmission line and was therefore the obligation of Respondent no.2. The Government of Gujarat sought the comments of the Appellant on 15.12.2011. The Appellant gave the comments on 31.12.2011. Thereafter, upon discussions between the parties it was agreed that the approval of the Appellant under Section 164 could be utilized. Respondent no.2 withdrew its application filed under Section 68 permission in February, 2012. The parties then proceeded on the basis of utilizing under Section 164 approval available to the Appellant. After undertaking the requisite study, the publication was made on 14.06.2012 which was in respect of the 400 KV DC line. This was later converted to 220 KV line on the terms contained in the letters dated 29.08.2012 and 08.01.2013. In the circumstances, the delay in publication of the notice cannot be said to be of the Appellant.

10. In view of above, the decision of the State Commission holding the Appellant to be responsible for delay in implementation of the dedicated transmission line is not correct and is liable to be set

aside. The documents on record and their sequence as mentioned above are supporting the Appellant's views.

11. Respondent no.2 has raised the issue of non payment of transmission charges to the Appellant as there has been no use of the transmission system by the Respondent no.2 and further in the absence of any proof of stranded capacity on the transmission system. In the impugned order, the State Commission has not dealt with the above on the grounds that it is not necessary to deal with the same on account of extension of time till 31.12.2014 being allowed. The Respondent no.2 is bound by the terms and conditions of the BPTA. Under the BPTA Respondent no.2 reserved capacity of 275 MW on the Intra-State Transmission Network. Respondent no.2 has not terminated the BPTA or surrendered the capacity. The above capacity has been blocked for the Respondent no.2 by the Appellant and cannot be given to others. In terms of the Open Access Regulations, Respondent no.2 is liable to pay the transmission charges as determined by the State Commission based on per MW capacity booked irrespective of the actual use of the transmission line. Respondent no.2 is

bound to pay the transmission charges as per the Regulation irrespective of whether it had used the transmission or not.

ORDER

12. In view of the above, the Appellant succeeds in this Appeal. The Appeal is allowed and the order dated 21.10.2014 passed by the Gujarat Electricity Regulatory Commission is set aside. The Respondent no.2 is directed to pay the transmission charges and other related payments applicable under the BPTA to the Appellant.
13. Pronounced in the Open Court on this **13th day of October, 2015.**

(I.J. Kapoor)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

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