

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 315 of 2013

Dated:20th Aug, 2015

Present: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER
HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER

In the Matter of:

**M/S Torrent Power Limited
Torrent House, Off Ashram Road,
Ahmedabad**

... Appellant/Petitioner

Versus

- 1) Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi – 110001**
- 2) Western Regional Power Committee
F-3, MIDC Area, Marol
Opp- SEEPZ, Central Road,
Andheri East
Mumbai-400 093**
- 3) Powergrid Corporation of India Limited
B-9 Qutub Institutional Area,
Katwaria Sarai,
New Delhi-110016**
- 4) Gujarat Urja Vikas Nigam Limited
Sardar Patel Marg, Vidyut Bhawan,
Race Course, Vadodara,
Gujarat**

- 5) **Madhya Pradesh Power Transmission Company Limited
Block No.2,
Shakti Bhawan, Rampur,
Jabalpur-482 008**
- 6) **Chhattisgarh State Power Distribution Company Limited
Sunder Nagar, Danganiya,
Raipur-492 013**
- 7) **Maharashtra State Electricity Distribution Company Ltd.,
Prakashgad, Plot G-9,
Bandra (E),
Mumbai-400 051**
- 8) **Electricity Department, Government of Goa,
Vidyut Bhavan,
Panjim, Goa**
- 9) **Electricity Department, Union Territory of Daman and Diu
'Power House Building'
Nani Daman-396 210**
- 10) **Electricity Department, Union Territory of
Dadra and Nagar Haveli,
Vidyut Bhavan,
Opp Secretariate
Silvassa**

... Respondent(s)

Counsel for the Appellant(s) : Mr. Amit Kapur
Mr. Apoorva Misra
Ms. Ritika Arora
Mr. Abhishek Munot
Mr. M Desai

Counsel for the Respondent(s): Mr. M S Ramalingam for R-1
Mr. M.G.Ramachandran,

Mr. Anand K Ganesan
Ms. Swapna Seshadri
Ms. Ranjitha Ramachandran
Ms. Poorva Saigal for R-4
Mr. Manoj Dubey
Mr. Rishab D Singh for R-5

J U D G M E N T

PER HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER

1. The present appeal has been filed by the appellant Torrent Power Limited under Section 111 of the Electricity Act 2003 before this Tribunal against the order dated 8.6.2013 passed by Central Electricity Regulatory Commission (hereinafter called the Central Commission) in Petition No. 278 of 2010 whereby the Central Commission has passed an order with regard to the sharing of Transmission charges for inter-regional links between Western Region and other Regions on proportionate basis and sharing of wheeling charges for Gujarat and Maharashtra for use of Gujarat Energy Transmission Corporation Limited (Gujarat Transco) for conveyance of power from Central Sector to union territories of Daman & Diu and Dadra Nagar Haveli and use of Maharashtra State Electricity Transmission Company Limited (Maha Transco) for wheeling of power from the Central Sector Generating Station to the State of Goa.
2. The Appellant/Petitioner (herein Torrent Power Limited) has the generation facilities with a total installed capacity of 1647.5 MW

including 1147.5 MW SUGAEN Mega Power Project, in the State of Gujarat. As part of the associated transmission system for SUGEN Mega Power Project, Torrent Power Grid Limited (TPGL), a joint venture between Torrent Power Limited and Power Grid Corporation of India Limited after obtaining transmission license from the Central Commission has established a 250 km, 400 kV double circuit line from SUGEN to 400 kV Pirana Sub-Station of TPGL with LILO of Vapi-Jhanor and Jhanor-Dehgam lines of PGCIL for evacuation of power from SUGEN Mega Power Project. The Petitioner also holds licenses for distribution of electricity in Ahmedabad/Gandhinagar and Surat areas in the State of Gujarat.

3. Central Electricity Regulatory Commission is the Respondent No.1. The R-2 is Western Regional Power Committee. R-3 is Power Grid Corporation of India Limited and R-4 to R-10 are the Distribution Companies/beneficiaries of the Western Region.
4. The brief facts of the case are as under:
 - 4.1 The Appellant, Torrent Power Limited has generation facilities with a total installed capacity of 1647.5 MW including 1147.5 MW SUGEN Mega Power Project in the State of Gujarat. As part of the associated transmission system for SUGEN Mega Power Project, Torrent Power Limited, the Appellant has formed a joint venture with R-3 namely Power Grid Corporation of India Limited.

- 4.2 On 22.4.2004, the Appellant made an application to Power Grid Corporation of India for grant of long term open access for use of Western Region Transmission System for evacuation of power from SUGEN Mega Power Project to Torrent Power Ahmedabad Electric Company, Torrent Power Surat Electric Company, MP State Electricity Board and Maharashtra State Electricity Distribution Ltd.
- 4.3 On 2.8.2005, the Appellant entered into a Power Purchase Agreement with Power Trading Corporation of India Limited (PTC India Limited) for supply of 100 MW Power and subsequently on 16.7.2007, PTC India Limited has entered into a Power Sale Agreement with MPPTCL for 100 MW.
- 4.4 On 30.9.2006, a meeting of the Western Region Constituents was held regarding the Open Access application of the Appellant for its SUGEN Power Plant. During the said meeting, it was decided that since Long Term Open Access (LTOA) of the Appellant for 500 MW Power involves utilization of the Western Grid, the Appellant is required to sign the Bulk Power Transmission Agreement (BPTA) with PGCIL for sharing of Western Regional Transmission Charges corresponding to 500 MW power before the commencement of Open Access.
- 4.5 On 16.11.2006, the Power Grid provided Open Access to the Appellant. The point of injection of power was 400 kV Generating switch yard of the Appellant's SUGEN Power Plant for 500 MW Power to be injected into the Inter State transmission network.

- 4.6 On 16.5.2007, the Central Commission granted transmission license to TPGL (the joint venture between the Appellant and Power Grid) allowing it to transmit electricity as transmission licensee and for that purpose to construct, maintain and operate 400 kV transmission line along with associated system for evacuation of power from the SUGEN Mega Power Project .
- 4.7 After obtaining the transmission license from the Central Commission, the TPGL has established a 250 Km, 400 KV double circuit line from SUGEN to 400 kV Pirana sub-station of TPGL with LILO of Vapi-Jhanor and Jhanor-Dehgam lines of PGCIL for evacuation of power from SUGEN Mega Power Project.
- 4.8 On 31.8.2008, a BPTA was entered into between the Appellant and Power Grid in accordance with which the points of injection and drawals were both situated in the Western Region. Subsequent to the execution of the BPTA, the Central Transmission Utility (CTU) on 7.8.2008, wrote a letter to all the constituents of the Western Region including the Gujarat Transco stating that the Appellant/Petitioner needs to share the western region transmission charges corresponding to the power transfer capacity.
- 4.9 On 31.7.2009, the Central Commission passed its order in Petition No.64 of 2008 and 67 of 2008 in the matter of Gujarat Transco Vs Union Territory of Daman and Diu & Ors whereby it was held that (a) the charges calculated on the basis of WRPC shall be applicable w.e.f 1.4.2004 (b) the charges on the basis of WRPC calculation

would be applicable till 31.3.2009 and thereafter with effect from 1.4.2009, the WRPC shall calculate the charges payable for use of GETCO system in the same manner and the charges shall be shared by the Western Region constituents as decided earlier by the order dated 3.2.2009. The parties were at liberty to approach the Commission for resolving the disputes if any regarding calculation/payment of charges in accordance with the law and (c) the applicable transmission charges for conveyance of power to Daman and Diu & Dadar and Nagar Haveli shall be shared by long term Customer of Western Region in the same manner as regional assets of Power Grid.

4.10 On 10.12.2009, 54th Meeting of Commercial Committee of WRPC was conducted in Mumbai and discussed with regard to methodology for working out the weighted average share for sharing of transmission charges of inter-regional links and sharing of wheeling charges for wheeling of Central Sector Power to Goa, Daman and Diu and Dadra and Nagar Haveli. Further, in the meeting, it was discussed that the transmission charges towards intervening Gujarat Transco/Maharashtra State Electricity Transmission Co Ltd (Maha Transco) transmission system being utilized for transmission of central Sector Power to Daman and Diu, Dadra and Nagar Haveli and Goa were to be shared by the beneficiaries of Central Sector Stations of Western Region.

- 4.11 On 8/9.4.2010, the 13th meeting of WRPC Commercial Committee was conducted and it was concluded that (a) Open Access Customer cannot be treated differently. Therefore all Open Access Customers of Western Region should also share the inter regional links of transmission charges viz. Eastern Region-Western Region, Northern Region-Western Region and Southern Region-Western Region on proportionate basis with effect from April, 2009 (b) the long term Open Access Customers to ISTS of Western Region also should share the wheeling/transmission charges paid to Gujarat Transco for wheeling of Central Sector Power to Daman and Diu and Dadra and Nagar Haveli and Wheeling/transmission charges paid to Maha Transco for wheeling of Central Sector power to Goa as being shared proportionately by the beneficiaries of Central Sector generating stations of Western Region with effect from August, 2009 .
- 4.12 On 6.5.2010, the Power Grid issued an invoice for an amount of Rs.57,29,518/- upon the Appellant for the month of April, 2010 towards claim of inter-regional link transmission charges for Western Eastern Region, Western Northern Region and Western Southern Region. The Appellant has made the said payment to the Power Grid under protest.
- 4.13 The Power Grid raised an invoice upon the Appellant for the month from April, 2010 towards inter regional link charges based on the revised methodology for sharing of transmission charges for inter

regional links from May, 2010 to July, 2011 on monthly basis and the Appellant paid the amount under protest.

4.14 Aggrieved by the decision of the Western Regional Power Committee arrived at its 13th meeting held on 9.4.2010; the Appellant Torrent Power Limited filed Petition No.278 of 2010 before the Central Commission and sought for following directions:

“(a) Order that the claim of transmission charges for inter-regional links between WR-ER, WR-NR, WR-SR as well as claim of wheeling charges payable to Gujarat and Maharashtra are not payable to the Petitioner for the reasons explained earlier,

(b) Set aside the decision taken by WRPC (Respondent No. 1) at its 13th meeting of the effect that LTOA customers for ISTS of WR also should share (a) the wheeling /transmission charges paid to GETCO for conveyance of Central Sector power to DD and DNH and wheeling and transmission charges paid to MSETCL for wheeling of Central Sector Power to the Sate of Goa as being shares proportionately by the beneficiaries of the Central Sector Generating Stations of WR, and (b) the transmission charges for inter-regional transmission links,

(c) Declare the claim of transmission charges for inter-regional links for WR-ER, WR-NR and WR-SR and wheeling charges for Gujarat and Maharashtra by PGCIL / CTU (Respondent No.2) vide its invoices dated 06.05.2010 and 05.06.2010, 06.07.2010 , 05.08.2010, 03.09.2010 & 05.10.2010 as void.

(d) Restrain the Respondent No. 2 to raise further invoice for (i) transmission charges for inter-regional link and (ii) wheeling charges for Gujarat and Maharashtra.

(e) Relax, if considered necessary, the provisions of the Regulation 2009 by virtue of power under Regulation 44 of the Regulation 2009 by disallowing the claim of Respondent No. 2

(f) Direct the PGCIL/CTU (Respondent NO. 2) to refund to the Petitioner the amount recovered by it on account of (i) transmission charges for inter-regional links and (ii) wheeling charges payable to Gujarat and Maharashtra, along with interest,

(g) Condone any inadvertent omission/errors/shortcomings and permit the Petitioner to add/change/modify/alter this filing and make further submission as august be required at a future time and

(h) Pass such other order as may be deemed fit in the fact and circumstances of the case.”

4.15 After hearing the arguments of the parties, the Central Commission on 8.6.2013 passed the Impugned Order in the Petition No.278 of 2010 and the extract of the Order is quoted as below:

(a) The petitioner is not liable to share the transmission charges for inter-regional links. These charges shall be shared strictly in accordance with clause (3) of regulation 33. The recoveries on this count already made from the petitioner shall be refunded to it within six months.

(b) The petitioner as a long-term open access customer of the Western Region Transmission System is liable to bear the wheeling charges for the transmission lines of GETCO and MSETCL used for conveyance of Central Sector power outside the concerned States.

4.16 Aggrieved by the Impugned Order dated 8.6.2013, the Appellant has filed the instant Appeal on 23.7.2013 and sought for the following relief:

(a) Allow the Appeal and set aside the Impugned Order dated 8.6.2013;

(b) Order that the claim of transmission charges for inter regional links as well as wheeling charges for transmission lines of Gujarat Transco and Maha Transco used for conveyance of Central Sector power to Daman and Diu and Dadra Nagar Haveli on one hand and State of Goa on the other are not payable by the Appellant.

(c) Declare the claim of transmission charges made against the Appellant for inter regional links between Western Region-Eastern Region, Western Region-Northern Region and Western Region-Southern Region and wheeling charges for Gujarat and Maharashtra by Power Grid, vide its invoices, as null and void;

(d) Direct Power grid to refund the amount paid by the Appellant, under protest, on account of inter regional links as well as wheeling charges for transmission lines of Gujarat Transco and Maha Transco used for conveyance of Central Sector Power to Daman and Diu and Dadra Nagar Haveli on one hand and State of Goa on the other along with interest;

(e) Pass such other or further orders as to this Tribunal may deem fit & proper in the interest of justice.

5. We have heard the arguments of Mr. Amit Kapur, learned Counsel for the Appellant and Mr. M G Ramachandran, learned Counsel for R-4 and gone through the submissions made by the contesting parties. The following issues arise for our consideration:

(a) **Issue No.1: Whether the Central Commission erred in concluding that the Appellant Petitioner is liable to share the transmission charges for inter regional links?**

(b) **Issue No.2: Whether the Central Commission erred in concluding that the Appellant Petitioner as a Long Term Open Access Customer of Western Region Transmission System is liable to bear the wheeling charges for the transmission lines of GETCO and MPPTCL use for conveyance of Central Sector power to Daman & Diu and Dadar and Nagar Haveli and to the State of Goa?**

Issue No.1

6. The following are the submissions made by the learned Counsel for the Appellant on Issue No.1 i.e. **Whether the Central Commission erred in concluding that the Petitioner is liable to share the transmission charges for inter regional links?**

6.1 that the Applicable Regulatory framework for sharing of inter-regional links in terms of Regulation 33 (3) of the Tariff Regulations, 2009, the

transmission charges for inter regional link have to be shared among the beneficiaries of the Inter State Generating Stations and not by the Generating Stations like the Appellant's Generating Company.

- 6.2** that Regulation 33(7) of the Tariff Regulations, 2009 provides for payment of inter-regional transmission charges by the Generators who: (a) are connected with Inter State Transmission System (b) have availed open access with injection in one region and drawals within and outside that region (as is the case with the Central Generating Station) and; (c) have beneficiaries who are not identified.
- 6.3** that the Central Commission failed to appreciate the material facts that 85% of the capacity/output of the Appellant is tied-up and identified. The Appellant has an existing generation facility of 1147.5 MW i.e. the "SUGEN Power Project" at Surat, Gujarat. Out of the said 1147.5 MW (1113 MW-after deducting auxiliary consumption) the Appellant has identified beneficiaries for 935 MW comprising (a) 100 MW with MPPTCL through the 400 kV SUGEN bus (b) 417.5 MW to Torrent Power Ahmedabad Electric Company's distribution Company (Torrent Power-Ahmedabad Discom) through its 400 kV SUGEN bus to Pirana 400 kV TPGL sub station and (c) 417.5 MW to Torrent Power Surat Electric Company's distribution Company (Torrent Power-Surat Discom) from the 220 kV SUGEN bus through 6 nos of dedicated transmission lines. The remainder 935 MW of

power is eligible for merchant sale (availing short term open access) under law.

- 6.4** that based on the doctrine of proportionality and canons of interpretation of statute the factum of 15% capacity being available for merchant sale cannot justify treating the entire output as being based on “unidentified customers”.
- 6.5** that the erstwhile Torrent Power Generation Limited had executed Power Purchase Agreements with erstwhile Torrent Power Ahmedabad Discom and Torrent Power-Surat Discom for the supply of Power from the SUGEN Power Plant to the cities of Ahmedabad and Surat. The said PPAs were approved by Gujarat Electricity Regulatory Commission in terms of its order dated 23.12.2005.
- 6.6** that the Appellant entered into a Power Purchase Agreement with the PTC India Limited on 2.8.2005 for supply of 100 MW power. Subsequently on 16.1.2007, PTC India Limited and MP Power Trading Company Limited executed a Power Sale Agreement (PSA) for sale of power from the Appellant’s SUGEN Power Project.
- 6.7** that with respect to the payment of inter-regional link charges, the Open Access granted by Power Grid to the Appellant on 16.11.2006, involves the utilization of the Western Region Transmission System confined to the points of injection and drawal within the Western Region only. The Appellant has not been granted connection/access to any Inter Regional lines. This position is evidenced by:

(a) Minutes of Meeting dated 30.9.2006 between the constituents of the Western Region, whereby it was agreed as under:

“vi. As the above transaction of 500 MW power involves utilization of WR Grid hence, M/s. TPGL needs to sign BPTA with POWERGIRD for sharing of Western Region transmission charges corresponding to 500 MW power before commencement of Open Access”.

(b) Power Grid's intimation letter dated 16.11.2006, issued to the Appellant for providing Open Access which clearly establishes the fact that the point of injection from the Appellant's SUGEN Power Plant and the point of drawal of the drawee utilities are both within the Western Region Transmission System and is not connected with any of the Inter Regional links. The details of the said Open access are as under:

(i) Point of injection of Power (nearest EHV sub station and ownership of EHV sub station): 400 KV Generating Switchyard.

(ii) Names(s) of concerned SLDC: SLDC Gujarat.

(iii) Name of Drawee utilities: (1) Torrent Power-Ahmedabad Discom (2) Torrent Power-Surat Discom (3) MPSEB and (4) Maha Discom.

(iv) Quantum of power injection into the Inter State Transmission Network: 500 MW.

(v) Point of drawal (nearest EHV sub station and ownership of EHV substation): Respective SLDC

(vi) Period for which Open Access is granted: 25 years from the date of the commencement of Open Access.

(c) Power Grid's letter dated 07.08.2008 whereby it was stated as under:

"Further, M/s. Torrent Power needs to share WR transmission charges corresponding to the power transfer capacity".

6.8 that the Central Commission has acted contrary to the letter and spirit of the Tariff Regulations, 2009 by wrongly fastening the inter-regional link charges to be shared by the Appellant.

6.9 that the inter-regional link charges are to be shared only by the beneficiaries of either the Central Sector Generating Stations as notified by the Government of India or by beneficiaries of other generating stations, as per the contracts executed and implemented and those who have availed Inter Regional Open Access. It is noteworthy that:

(a) the Appellant is not a beneficiary being a Generating Station but an entity who has availed Open Access to the Inter State Transmission system for a period of 25 years having being allocated transmission capacity of 500 MW power for transmission between the specified point(s) of injection and point(s) of drawal which lies in Western Region alone and

(b) the inter regional link charges are not to be shared by IPPs like the Appellant who not only have identified beneficiaries

within the Western Region alone, but also have no intention of contracting firm power to any procurer in other regions and hence has not availed Inter-regional Open access outside the region in which the Appellant is located.

6.10 that the Open Access permission granted to the Appellant contains specified points of injection and drawl and transmission capacity granted cannot be allocated to drawal points in other regions. Hence, the Appellant with the current Open Access approval cannot transfer power outside the region using any Inter Regional links.

6.11 that it is clear that WRPC as well the Central Commission have failed to appreciate the fact that Open Access customers cannot be treated at par with the beneficiaries of the Central Sector Generating Station.

6.12 that the Open Access customers of the Western Region have to be and have been treated differently from the beneficiaries of the Central Generating Stations and hence cannot be made liable to share inter-regional link charges.

6.13 that Regulations 2(1) (m) of the Connectivity Regulations, 2009 provides that, Long Term Customer means, a person who has been granted long term access and includes a person who has been allocated power from Central Sector Generating Station i.e generating station on the same platform.

6.14 that in view of the above, inter regional link charges are to be borne and shared by the beneficiaries of the:

(a) Inter State Generating Stations in proportion to their respective entitlements (in MW) in the Inter State Generating Station in their own region and in the Eastern Region (i.e for Inter Regional link between Eastern and Northern/Western/Southern Regions); and

(b) inter State Generating Stations in proportion to their entitlements (in MW) in the Inter State Generating Stations in their own region in the ratio of 50:50 (i.e. for Inter Regional link between Northern and Western Regions, Western and Southern Regions and Eastern and North Eastern Regions.

6.15 that the Central Commission failed to appreciate the rationale for segregating Regional and Inter Regional charges and which entities bear each of these in the Tariff Regulations, 2009 consistent with the philosophy laid down in the CERC Tariff Regulations, 2004.

6.16 that Regulations 33 (7) of the Tariff Regulations, 2009 provides that the transmission charges corresponding to any plant capacity of a generating station for which a beneficiary has not been identified and contracted shall be paid by the concerned generating company. This clause is residuary clause regarding payment of the transmission charges by the generating companies, which seeks to facilitate conveyance of electricity from the generating station to the target region.

6.17 that the Generator that has sought and has been granted long term access to the target region is obliged to pay the transmission charges for its own region, the inter regional links for the target region and the transmission charges of the target region, where there are no long term beneficiaries who should bear such transmission charges. Regulations 33(7) of the Tariff Regulations, 2009 cannot be interpreted to impose an obligation on generating companies to share inter regional link charges in all situations. Therefore, in terms of Regulations 33(7) of the Tariff Regulations, 2009, the Appellant who has identified beneficiaries in the Western Region alone is not liable to pay Inter Regional link charges in terms of Regulations 33(3) of the Tariff Regulations, 2009.

6.18 that the Central Commission has wrongly observed that the Appellant has agreed to pay inter regional link charges in its Bulk Power Trading Agreement (BPTA), because no part of the BPTA can override the statutory provisions.

7. Per Contra, the following are the submissions made by the learned Counsel on behalf of the R-1 (Central Electricity Regulatory Commission).

7.1 that the submissions of the Appellant are misconceived and untenable.

7.2 that as per Regulation 33 of the 2009 Tariff Regulations, transmission charges comprise two components viz Regional Transmission

charges and the charges for the inter regional links. While Regulation 33(2) of the 2009 Tariff Regulations deal with sharing of the regional transmission charges, Regulation 33(3) deals with the methodology for sharing of the transmission charges towards inter regional links. Regulation 33(7) contains the residual provisions which deals with a situation when beneficiary has not been identified and contracted for a part of the plant capacity. It is also significant that Regulation 33(7) refers to transmission charges in the generic sense in broad terms viz the regional transmission charges as well as charges for inter regional links.

7.3 that from the plain reading of Regulation 33 (3), it is apparent that the liability for payment of charges for the inter regional links is in proportion to the entitlement of the share in the inter state generating stations. It is obvious that the entitlement in the power generated by the inter State generating station in the region is the criteria. Whether or not the power flows across the border of the region is not relevant for the purpose of payment of transmission charges for the inter regional links. Even the buyers located in the same region as the inter State generating stations of the region are required to pay the charges for the inter-regional links. The basic fallacy in the stand taken by the Appellant is that it has misconceived the charges for inter regional links to be the charge payable in proportion to the power drawn across the inter regional border. This construction is thoroughly unwarranted by the provisions of the 2009 Tariff Regulations.

7.4 Once the above explained scope and import of Regulation 33(3) is appreciated, the inevitable question that follows is what will be the situation if the entire capacity of a inter-State Generating Station has not been contracted. Under such a scenario, no discom/buyer will have any entitlement in respect of such un-contracted generation capacity. If the construction urged by the Appellant is accepted, two anomalous results will emerge viz either there is no return for the transmission license in respect of such capacity although it is providing service. Alternatively, the Discoms or buyers will be paying more than the legitimate share; i.e. they will be paying transmission charges for the power for which they do not have any contract. This will also be in violation of the plain reading of Regulation 33(3). The only solution under such a scenario is that the Generator will have to bear the charge in respect of such power. By necessary implication, the inter State Generator who has the un-contracted generating capacity will have to step into the shoes of the beneficiary for the purpose of payment of transmission charges for the inter-regional links. Further, this aspect has been explicitly taken care of through the residual provision in Regulation 33(7).

7.5 Further, the construction urged by the Appellant requires insertion of the word “Regional” at the beginning of Clause 33(7) to make it read “Regional Transmission Charges corresponding to any plant capacity for which a beneficiary has not been identified and contracted shall be paid by the concerned Generating Company”. Such insertion of

words for the purpose of construction of a provision is prohibited by the well known principles for interpretation of statutes.

7.6 that it is also admitted fact that 15% of the power generated by the Appellant is being sold in open market through open access. Therefore, the Appellant is either a user deriving benefit from the inter regional link, alternatively he is entitled to derive the benefit from the inter regional links. Once this is admitted the application of clause 33(7) and the levy of transmission charges for inter regional links is inevitable.

7.7 that only condition for invoking the application of clause 33(7) is that the generating company must have “any plant capacity for which a beneficiary has not been identified and contracted”.

7.8 that the Appellant reference to the erstwhile tariff regulation applicable during 2001-04, it is submitted that the Appellant is indirectly challenging the validity of the 2009 Tariff Regulations which is not permissible in the present proceedings.

7.9 that the only condition for invoking the application of clause 33(7) is that the Generating Company must have “any plant capacity for which a beneficiary has not been identified and contracted”.

8. Per contra, the following are the submissions made on behalf of the Respondent No.4 i.e. Gujarat Urja Vikas Nigam Limited.

8.1 that the basic premise on which the Appellant has proceeded namely, that the transmission charges specified in Regulations 33(1) and (2)

for Regional transmission and the transmission charges for inter regional link specified in Regulation 33 (3) of the Tariff Regulations, 2009 are alternative and mutually exclusive. The said interpretation is patently erroneous and completely contrary to the scheme of Regulation 33 which deals with the sharing of transmission charges in a composite manner. These charges under Regulation 33 are payable in a cumulative manner wherever they are applicable. In other words, a long term open access user is required to pay not only the transmission charges as specified in Regulations 33(1) and (2) but also in addition thereto the transmission charges for the inter regional links as specified in Regulation 33 (3) of the Tariff Regulations, 2009.

8.2 that the Appellant is confusing the terms 'inter Regional' and 'inter State' and is wrongly distinguishing 'Intra Regional' and 'Inter State' when, both are the same in the context of and while interpreting Regulation 33 (3) of the Tariff Regulations, 2009. The Intra Regional would mean the entire region and in the case of Western Region, the States/Union Territories comprise of Gujarat, Maharashtra, Madhya Pradesh, Chhattisgarh, Goa, U.T of Daman-Diu and U.T of Dadra Nagar Haveli. An Intra State would be within the respective State. The Inter Regions in respect of Western Region would include Eastern Region, Northern Region and Southern Region. Inter State would, therefore, be Intra Region (or Regional) in the context of Regulation 33.

- 8.3 that in accordance with the above, the transmission involving conveyance of power from a generating station in the State of Gujarat such as the Appellant to Maharashtra or Madhya Pradesh or any other State in the Western Region would be Inter State Transmission as well as Intra Region Transmission.
- 8.4 that the generating station of the Appellant being in the State of Gujarat (which is in the Western Region), the Transmission Charges for the Inter Regional Links with Eastern, Southern and Northern Regions shall be shared by it being the Long Term Open Access Users of Western Region (the Intra Region Users) in proportion to the sum of their respective entitlements in the generating stations capacity in the Western Region (and Eastern region in case of sharing of WR-ER link).
- 8.5 that the main contention of the Appellant that it does not fall within the definition of beneficiary is also misconceived. Firstly, part of the capacity is being used by the Appellant.
- 8.6 that in any event, Regulation 33(7) clearly states that where the beneficiaries are not identified, the charges shall be payable by the Generating Company.
- 8.7 that the Appellant has in the BPTA specifically agreed to pay the transmission charges for the inter regional links also. Having specifically agreed to and taken advantage of the Open Access under the BPTA, it is now not open to the Appellant to challenge the terms

of the Agreement. In any event, the agreement not being inconsistent with any provisions of the Regulation, the same cannot be avoided or reopened.

8.8 that it is also relevant to mention that the Appellant has not challenged the provisions of the Agreement or sought for any declaration that the Agreement is void or unenforceable.

8.9 that the Central Commission has in the Impugned Order specifically relied on Regulation 33 (7) and also on the provisions of BPTA to hold that the Appellant is liable to pay transmission charges for the inter regional links. The order inter alia holds as under:

“it is, therefore, specified that in respect of all inter-regional links between ER and NR, between ER and WR and between ER and SR, their, transmission charges shall be merged with the transmission charges of intra-regional systems of NR, WR and SR respectively, and shared in the same manner as the later with effect from 1.4.2008”.

8.10 that the impugned decision of the Central Commission is justified and in terms of the Regulations and also the provisions of the BPTA entered into between the parties.

9. Per contra, the following are the submissions made by R-5, MP Power Management Company Limited.

9.1 that it is baseless for the Appellant to contend that the decision in the WRPC meeting on 9.4.2010 is invalid because under law, as it had no authority to decide on the question of sharing but only to facilitate integrated operation of the power system in the region in view of its

functions as laid down under Section 2(55) of the Electricity Act, 2003.

- 9.2 that the said decision dated 9.4.2010 of the WRPC does not suffer from any illegality or infirmity because when the issue of sharing of the charges came up before the WRPC, Regulation 33 of the Tariff Regulations, 2009 providing for the methodology for sharing of the inter regional links were already in force.
- 9.3 that the relevant clause of BPTA does not run contrary to the provisions of Regulation 33 of the Tariff Regulations, 2009. Therefore, in terms of the relevant clauses of the BPTA, it was obligated to share and pay the WR transmission charges akin to other beneficiaries. It had specifically agreed to share and pay “any other charges as specified by the CERC including charges for inter-regional links”.
- 9.4 that as per the provisions of Regulation 33(2) and (3) of the Tariff Regulations, the Appellant being the user of the ISTS was liable to share the WR transmission charges and transmission charges for inter-regional links.
- 9.5 that the Appellant uses a part of its generation for supply of electricity to its own consumers, then for all practical purposes, it’s position is akin to the beneficiaries in other States as there is no qualitative difference between such beneficiaries in other States and the Appellant.

9.6 that further more, Regulation 33 (7) of the Tariff regulations provides that the transmission charges corresponding to any plant capacity for which the beneficiary has not been identified and contracted shall be paid by the concerned generating company. This Regulation provides for sharing of the transmission charges for regional as well as inter regional and does not make any distinction between regional transmission charges and the transmission charges for inter regional links. Therefore, in case the beneficiary has been identified corresponding to whole or a part of the plant capacity, the transmission charges corresponding to such plant capacity are payable by the beneficiary under Regulation 33(2) and (3) both.

9.7 that even otherwise, in totality of the facts and circumstances of the case, the Impugned order does not suffer from any material illegality or infirmity. The Appeals is sans merit. Hence, may be dismissed with costs.

10. Our Discussion and Conclusion on Issue No.1

10.1 The Appellant Petitioner, Torrent Power Limited has the generation facilities with total installed capacity of 1647.5 MWs including 1147.5 MW SUGEN Mega Power project in the State of Gujarat. As part of the associated transmission system for SUGEN Mega Power project, the Torrent Power Grid Limited (TPGL), a joint venture between Torrent Power Limited and Power Grid Corporation of India Limited, after obtaining transmission license from the Central Commission has established a 250 Kms 400 KV double circuit line from SUGEN to 400

KV Piarana sub station of TPGL with LILO of WAPI Jhonar and Jhanor-Dehgam lines of PGCL for evacuation of power from SUGEN MP Project. The Appellant Petitioner also holds licenses for distribution of electricity in Ahmedabad/Gandhinagar and Surat areas in Gujarat.

10.2 Having gone **through the rival contentions of both the parties, let us** examine relevant Regulations of the Central Commission dealing with this issue. Regulation 33 of the Tariff Regulations, 2009 is quoted as below:

“33. Sharing of transmission charges. (1) The following shall be added up to arrive at the regional transmission charges payable for a month by the users of the concerned regional (common) transmission system :

(a) Amounts payable for the month for all components of inter-State transmission system (ISTS) in the region, charges for which have been agreed to be pooled and shared by all regional beneficiaries. These shall necessarily include all components of ISTS in commercial operation on 1.4.2008, as also components of transmission system associated with a generating station 6 [at least one generating unit] of which was declared under commercial operation upto 31.3.2008.

(b) Amounts payable for the month for those parts or the whole of all new transmission systems for which regional beneficiaries have agreed to pay the charges on pooled basis, or it has been so decided by the Commission. These may include an appropriate share of the total charges of a new associated transmission system commensurate with extra capacity built therein to cater to future generation addition and/or for system strengthening not directly attributable to the concerned power plant

(2) The above regional transmission charges (grossed up) shall be shared by the following :

(i) All regional beneficiaries, in proportion to the sum of their respective entitlements (in MW) during the month in the inter-State generating stations in that region and in other regions, but excluding any generating capacity for which charges of associated transmission system are not being fully pooled.

(ii) Beneficiaries in other regions having entitlements in any generating station in the concerned region, in proportion to such entitlement (in MW) during the month, but excluding any generating capacity for which charges of associated transmission system are not being fully pooled.

(iii) Generating companies owning generating stations connected to inter-state transmission system in the region, but for which the associated transmission system has not been fully commissioned for any reason, in proportion to the gap (in MW) between the generating capacity commissioned up to the end of the month and the capacity for which the designated associated transmission system has been commissioned up to the beginning of the month.

(iv) Medium-term users of the regional transmission system, in proportion to the MW for which medium-term usage has been approved by the Central Transmission Utility for that month.

(3) The transmission charges for inter-regional links shall be shared in the following manner, except where specifically agreed otherwise :

(i) The amount payable for the month for inter-regional links between Eastern and Northern / Western / Southern regions shall be borne by the beneficiaries in the latter region (Northern / Western / Southern), in proportion to the sum of their respective entitlements (in MW) in the inter-State generating stations in their own region and in Eastern region, but excluding any generating capacity for which charges of associated transmission system are not being fully pooled.

(ii) The amounts payable for the month for inter-regional links between Northern and Western regions, between Western and Southern regions, and between Eastern and North-eastern regions shall be borne by the linked regions in 50 : 50 ratio, and shared by the beneficiaries in the concerned region in proportion to the sum of their respective entitlements (in MW) in the inter – State generating stations in their own region, but excluding any generating capacity for which charges of associated transmission system are not being fully pooled.

Provided that 220 kV Birpara – Salakati transmission line shall be treated as a part of the Eastern Region transmission system and its charges shall be borne by the beneficiaries in Eastern Region only.

(4) For those associated transmission systems or part thereof which are not agreed to be commercially pooled with the Regional transmission system, the applicable transmission charges shall be borne by the beneficiaries of the concerned generating station(s) or the generating company as the case may be and shared between them as mutually agreed or as decided by the Commission.

(5) Transmission charges for 400 / 220 kV step down transformers (ICTS) and downstream systems, under inter-state transmission schemes brought under commercial operation after 28.03.2008 shall be determined separately (i.e. segregated from the rest of the scheme) and shall be payable only by the beneficiary directly served.

(6) Entitlements of Eastern Region beneficiaries in Chukha, Tala and Kurichchu hydroelectric generating stations in Bhutan shall be considered as their entitlements in ISGS in their own region, for the purpose of clauses (2)(i) and (3)(ii) above.

(7) Transmission charges corresponding to any plant capacity for which a beneficiary has not been identified and contracted shall be paid by the concerned generating company.

10.3 It is seen from Clause 33, that the Clause 1 of the Regulation 33 deals with amounts payable for all components of inter State transmission system in the region in commercial operation as on 1.4.2008 as also components of transmission system associated with a generating station where one or more generating units were declared under commercial operation up to 31.3.2008. Amounts payable for the month for those parts or the whole of all new transmission systems for which regional beneficiaries have agreed to pay the charges on pooled basis, or it has been so decided by the Commission may include an appropriate share of the total charges of

a new associated transmission system commensurate with extra capacity built therein to cater to future generation.

Thus, it is clear that Clause 1 of the Regulation 33 does not deal with the inter regional link charges and the inter regional link charges are not included in the regional transmission charges.

10.4 Clause 2 of Regulation 33 provides for that regional transmission charges shall be shared by (1) all regional beneficiaries (ii) beneficiaries in other regions (outside the concerned region) having entitlement in any generating station in the concerned region and (iii) Generating companies owning generating stations connected to inter state transmission system has not been fully commissioned for any reason and (iv) medium term users of the regional transmission system.

It is evident from Clause 2 of the Regulation that the Generating Companies have to share the regional transmission charges under the circumstances mentioned in the Clause.

10.5 Clause 3 of the Regulation 33 contains the principle for sharing of transmission charges for inter regional links.

It is evident from Clause 3, that the inter-regional link charges are shared only by the beneficiaries and provision has been made that sharing of transmission charges for inter regional links are not included in the regional transmission charges.

It is seen from the above Clause of the Regulation that most important issue raised is interpretation of the term “**beneficiaries**” exclusively used in Clause 2 and 3 of the Regulation 33.

10.6 The term beneficiaries is defined in Clause 6 of the Regulation 3 in relation to Generating Station is quoted below:

“Beneficiaries in relation to generating stations means the person purchasing electricity generated at such a Generating Station whose tariff is determined under these Regulations”.

“The meaning of beneficiaries specified in Central Commission’s Regulation 2(e) of Grid Code: Beneficiaries means a person who has shared any inter state Generating Station”.

It is evident from the above definition that the Generating Company as a user of the inter State transmission system is not included within the scope of beneficiary or beneficiaries. Further, as per Clause (2) and (3) of Regulation 33, it is evident that the term beneficiaries is used in the context of generating stations only as it provides that the transmission charges for inter regional links are shared only by the beneficiaries of the inter State generating stations. Further, the Appellant/Petitioner is not purchasing power from its Generating Stations for its own use.

Thus, the beneficiaries are continuously importing power either from the same region or from other regions. Accordingly, the provision relating to sharing of transmission charges for inter regional links as

per Clause (3) have been made applicable to beneficiaries and not to the Generating Companies.

Therefore, under Clause 3, the Generating Company is exempted from sharing of transmission charges for inter regional links as it does not qualify as the beneficiary.

10.7 Clause 4, 5 and 6 of the Regulation are not relevant to this issue.

10.8 Now let us discuss Clause 7 of the Regulation 33.

This Clause specifies that the transmission charges corresponding to any plant capacity for which a beneficiary has not been identified and contracted, shall be paid by the concerned generating company and is liable to pay the transmission charges.

The Appellant Petitioner is having identified beneficiaries in the same region and the details are as follows:

The Appellant/Petitioner is having identified beneficiaries namely:

(a) (i) Torrent Power-Ahmedabad Discom

(ii) Torrent Power-Surat Discom

(iii) PTC India Limited

(iv) Balance capacity if any is utilised for Mercantile Sales under Short Term Open Access as per the Central Commission's Regulations.

(b) The Appellant/Petitioner entered into Long Term Open Access Agreement (BPTA) between Torrent Power Ltd and Power Grid Corporation of India Ltd) for transfer of 500 MW power. The Agreement clearly specifies the injection point and drawal point. In the BPTA agreement it is shown as follows:

Injection Utility

Name: Torrent Power Ltd (TPL)
Location: Gujarat
Region : WR
Open Access Capacity: 500 MW

Drawee Utility

- (i) PTC India Ltd
- (ii) Torrent Power Ltd
- (iii) MPSEB
- (iv) MSEDCL

Thus, the Appellant/Petitioner is having identified Long Term Open Access Consumers. Therefore, Clause (7) of Regulation 33 does not apply to the Appellant.

10.9 Further, we feel that the objective of this Clause (7) of Regulation 33 is to facilitate conveyance of electricity from the Generating Stations to the target region allowed as per the practice by the Central Transmission Utility.

10.10 The Appellant has been granted Long Term Open Access and is obligated to pay transmission charges for its region. Further, the Appellant is having unidentified beneficiaries pertaining to short term contract to sale in the other region, the payments of transmission

charges have been covered under the Short Term Open Access Regulation of the Commission.

10.11 Similarly, the interpretation shall apply to Clause of the Bulk Power Transmission Agreement and no part of the Bulk Power Agreement can override the statutory Regulations.

10.12 The Appellant with the current Open Access approval cannot transfer power outside the region using any inter regional links.

10.13 In view of the above discussion, we hold that the Appellant Petitioner is not liable to share the inter regional transmission charges and is only liable to pay the transmission charges for its own region i.e. Western Region.

10.14 Accordingly, this issue is decided in favour of the Appellant and the relevant portion of the Impugned Order dated 8.6.2013 is set aside. The recoveries made on this account from the Appellant Petitioner shall be refunded by the Respondent Power Grid Corporation of India Limited.

11. Issue No.2: The following are the submissions made by the learned Counsel appearing on behalf of the Appellant.

11.1 that the Central Commission in the Impugned Order has wrongly held that the Appellant, being the Open Access Customer of the Western Region is liable to share the wheeling charges for Gujarat and Maharashtra for use of (a) Gujarat Transco's transmission system for conveyance of Central Sector Power to Union Territory of Daman &

Diu and Dadra Nagar Haveli and (b) Maha Transco's transmission system for wheeling of Central Sector Power to the State of Goa.

11.2 that the Open Access users of Inter State Transmission system of Western Region are not the beneficiaries of the Western Region. Therefore, the transmission charges towards intervening Gujarat/Maharashtra Transco transmission system being utilized for transmission of Central Sector power to Daman & Diu, Dadra Nagar Haveli and Goa are to be shared as per agreed mechanism amongst the Western Region beneficiaries of Central Sector Generating Station of Western Region whereas the Appellant is not a beneficiary of the Central Generating Station but is an Open Access Customer of the Inter State Transmission system of Western Region.

11.3 that as per CERC tariff Regulations, 2004, the beneficiaries of Central Generation Stations are the deemed Open Access Customers to inter State transmission system. Therefore, in accordance with Gujarat Commission's orders dated 3.2.2009 and 31.7.2009 passed in Petition Nos.64 and 67 of 2008, such transmission charges towards wheeling of Central Sector power to Daman & Diu, Dadra Nagar Haveli and Goa are to be shared proportionately by the beneficiaries of Central Generating Station as per their drawal/entitlement in accordance with the existing arrangements.

11.4 that the Appellant neither under the CERC tariff Regulations, 2004 nor under tariff Regulations, 2009 is liable for paying wheeling charges as wrongly appended by the Central Commission.

11.5 that the issue of wheeling charges was dealt with for the first time in the 54th Commercial Committee Meeting of WRPC on 10.12.2009. The WRPC Commercial Committee opined that the existing practice of pooling of transmission charges as had been done in the past should be continued and there was not reason for sharing mechanism to be different. The Open Access Customers of Inter State Transmission System of Western Region are not the beneficiaries of the Western Region.

11.6 that in view of the detailed submissions made, the Appellant is not liable to share wheeling charges for the transmission lines owned by the Gujarat Transco and Maha Transco being used for conveyance of the Central Sector Power to the Union Territories of Daman & Diu and Dadra Nagar Haveli and to the state of Goa.

12. Per Contra, the following submissions have been made by the learned Counsel appearing on behalf of the R-4, i.e. Gujarat Urja Vikas Nigam Ltd.

12.1 that the same networks of the State Utilities of Maharashtra and Gujarat are used for conveyance of electricity for inter state power namely inter state transmission utility. The use of such net work for transfer of power from one State to another also falls within the definition of Inter State transmission of electricity as per the definition in Section 2 (36) of the Electricity Act, 2003.

12.2 that this Tribunal has held in Appeal No.150 of 2007 by the judgment dated 17.12.2007 that such lines are subject to tariff determination by the Central Commission u/s 79 of the Electricity Act. In the circumstances, such rights of the utilities used for inter State Transmission is to be shared.

12.3 that the matter was discussed during the 13th WRPC meeting held on 9.4.2010 and decided that the Long Term Open Access Customer ISTS of Western Region also should share the wheeling/transmission charges paid to GETCO for wheeling of Central Sector Power to Daman And Diu and Dadar and Nagar Haveli and wheeling and transmission charges to MSCTCL for wheeling of Central Sector Power to Goa as being shared proportionately by the beneficiaries of Central Sector Generating Stations for Western Region with effect from August, 2009.

12.4 that in the above circumstances there is no merit in the contention of the Appellant and the present Appeal is liable to be dismissed with cost.

13. Per Contra, the following submissions were made by the learned Counsel for R-5, MP Power Management Company Limited.

13.1 that it is wholly incorrect on the part of the Appellant to assert that sharing of wheeling charges for transmission system lines of GETCO, MSETCL used for conveyance of Central Sector power outside the respective State in the absence of any rule or Regulation, it was

inequitable to saddle it with the liability for usage of the transmission lines by other State/Union Territories. Contrary to the assertion of the Appellant, the Central Commission directed that the charges shall be shared in the manner decided in the order dated 3.2.2009 which provides that the applicable transmission charges for conveyance of power to Daman and Diu and Dadar and Nagar Haveli shall be shared by all long term customers of Western Region in the same manner as the regional assets of the Central Transmission utility.

13.2 that the transmission charges for inter State transmission system are owned in the regional transmission charges and shared by long term customers. The Commission's decision for pooling of the transmission charges for the transmission lines of GETCO and MSETCL used for conveyance of Central Sector power to the Union Territories is to be viewed accordingly.

13.3 Therefore, on this issue the Commission's Order is just and proper.

14. Our Discussions and Conclusion on Issue No.2.

14.1 Second Issue is regarding sharing of wheeling charges for Transmission System lines of GETCO and MSETCL used for conveyance of Central Sector Power outside the respective States.

14.2 Let us analyse whether the Appellant is liable to share the Wheeling Charges Transmission lines of GETCO and MSEDCL for conveyance of Central Sector Power to Daman and Diu and Dadar and Nagar Haveli.

Section 2(36) of the Electricity Act, 2003 defines inter State Transmission System which is quoted as under:

“36. “inter-State transmission system” includes –

(i) any system for the conveyance of electricity by means of main transmission line from the territory of one State to another State;

(ii) the conveyance of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to such inter-State transmission of electricity;

(iii) the transmission of electricity within the territory of a State on a system built, owned, operated, maintained or controlled by Central Transmission Utility.

14.3 Further, this Tribunal pronounced the judgment dated 17.12.2007 in Appeal No.150 of 2007 and held as under:

“Accordingly, the transmission of power from Central Generating units to Goa is an inter-State transmission in terms of Section 2(36) of the Act. The use of transmission lines of MSETCL is incidental to the transmission of power from Central Generating Station to Goa. The determination of tariff for inter-State transmission as per the provisions of Section 79 of the Act is vested with CERC and is beyond the jurisdiction of MERC.”

In view of the above judgment of this Tribunal, GETCO filed a Petition No.64/2008 and 67/2008 under Section 62 read with Section 79 of the Electricity Act for fixation of the transmission charges for use of the Gujarat Transmission system for conveyance of Central Sector power to the union Territories’ of Dadra & Nagar Haveli and Daman & Diu. The Central Commission, by its order dated 3.2.2009, passed after hearing

the parities, laid down the detailed guidelines for determination of transmission charges. The relevant portion of the order is as under:

“21. On the issue of pooling of applicable transmission charges for sharing by all the beneficiaries of the region, MPPTCL in its affidavit submitted on 22.12.2008 has stated that DD has been connected to CTU network since April 2008 after commissioning of 220 kV Vapi-Magarwada D/C transmission line and has contended that question of pooling of transmission charges payable by DD should not arise. We presume that MPPTCL is aware that some power is still flowing through the petitioner’s network who is contending that DD should pay charges for such use directly to it. Similar argument has been made in respect of conveyance of power to DNH after commissioning of 220 kV Vapi-Kharadpada D/C transmission line. To a pointed question during the hearing on 7.8.2008, as to whether these charges be pooled and shared by all the beneficiaries as had been done in the past, the counsel for the petitioner, DD, DNH and Goa, GUVNL and representative of MPPTCL agreed that the existing practice of pooling of transmission charges should be continued.”

14.4 The Central Commission in its order dated 3.2.2009 in Petition No.64 of 2008 and 67 of 2008 stated that the applicable transmission charges for the identified intervening transmission facilities shall be shared in the same manner as inter State intra regional transmission system based on the 2004, Regulations. The relevant portion of the order is quoted as under:

“(n) The applicable transmission charges for conveyance of power to DD and DNH shall be shared by all long term

customers of WR in the same manner as regional assets of PGCIL.”

14.5 In view of the above discussions, the transmission charges for inter State transmission system are pooled in the regional transmission charges and shared by Long Term Open Access Customers. Thus, we conclude that the Appellant is a Long Term Open Access Customer of Western Region and liable to share the Wheeling Charges for the transmission of central sector power to Daman and Diu and Dadar and Nagar Haveli to the State of Goa to GETCO and Maha Transco. Accordingly, this issue is decided against the Appellant and we uphold the decision of the Central Commission.

15. Summary of Our Findings:

15.1 **Issue No.1:** The Appellant, Torrent Power Limited obtained Transmission License for evacuation of power from its SUGEN Power Generating Station to their identified beneficiaries within the region. The Appellant also entered Bulk Power Transmission Agreement with Power Grid Corporation of India Ltd.

15.2 The Central Commission concluded in the Impugned Order dated 8.6.2013 that as per Regulation 33(2) (3) and (7) of Tariff Regulations, 2009, the Appellant is liable to pay the transmission charges for inter-regional links and accordingly, the Respondent Power Grid Corporation of India Limited raising invoices towards inter-regional link charges and the Appellant is paying the charges under protest. This approach of the Central Commission is per se illegal and cannot be appreciated.

15.3 As per Regulation 33(2), the transmission charges for inter regional links have to be shared by (i) all regional beneficiaries (ii) beneficiaries in other regions (outside the concerned region) and (iii) Generating Stations connected to inter State transmission System has not been fully commissioned for any reason and (iv) medium term users of the regional transmission system and as per Clause (3) of Regulation 33 which contains principles for sharing of transmission charges for inter-regional links.

15.4 The Clauses (2)and (3) of Regulation 33 specifies that the beneficiaries have to share the transmission charges of inter regional link. As per Section 2(36) of Electricity Act, 2003 and Central Commissions Regulations 2(e) of Grid Code, the Appellant is not liable to pay the transmission charges of inter regional links.

15.5 Further, Clause (7) of Regulation 33 of the Tariff Regulations, 2009 specifies that the transmission charges corresponding to any plant capacity for which a beneficiary has not been identified and contacted, shall be paid by the concerned Generating Company which is liable to pay the transmission charges. In this case, the Appellant/Petitioner is having identified beneficiaries and hence, the Appellant is not liable to pay the inter-regional link charges and the Impugned order dated 8.6.2013 is set aside to the extent cited above and the Respondent Power Grid Corporation of India Ltd is directed to refund the inter-regional link charges if any recovered from the

Appellant within three months failing which it shall be liable to pay interest @ 9% per annum till the date of actual refund.

16. Issue No.2

16.1 The Central Commission in its Impugned Order dated 8.6.2013 has rightly and legally concluded that the Appellant has to share the transmission charges for wheeling of Central Sector power to Daman and Diu and Dadar Nagar and Haveli and Goa.

16.2 In view of the above discussions and the Appellant being one of the Long Term Open Access Customers of the Western Region is liable to share the transmission charges for transfer of power of Central Stations to Daman and Diu and Dadar and Nagar and Haveli and Goa.

ORDER

The Appeal is partly allowed and the Impugned Order dated 8.6.2013 is set aside to the extent cited above and the Respondent Power Grid Corporation of India Ltd is directed to refund the inter-regional link charges if any recovered from the Appellant within three months failing which it shall be liable to pay interest @ 9% per annum till the date of actual refund. The Central Commission is expected to ensure the compliance of this Order positively.

There is no order as to costs.

17. Pronounced in the Open Court on this **20th day of August, 2015.**

(T Munikrishnaiah)
Technical Member

(Justice Surendra Kumar)
Judicial Member

Dated, the 20th August, 2015.



REPORTABLE / ~~NON-REPORTABLE~~