

**Appellate Tribunal for Electricity**  
**(Appellate Jurisdiction)**

**Appeal No.132 of 2014**

**Dated: 22<sup>nd</sup> April, 2015**

**Present: Hon'ble Mr. Rakesh Nath, Technical Member**  
**Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

In the matter of:

EMCO Energy Limited  
701-702, Naman Center  
Plot C-31, G Block  
Bandra Kurla Complex  
Bandra (East)  
Mumbai-400051.

.... Appellant

Versus

1. Central Electricity Regulatory Commission  
3<sup>rd</sup> & 4<sup>th</sup> Floor, Chanderlok Building  
36, Janpath  
New Delhi-110001.

2. Power Grid Corporation of India Limited  
B-9, Qutab Institutional Area,  
Katwaria Sarai  
New Delhi – 110016.

.....Respondent

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr. Adv.  
Mr. Rajiv Yadav  
Mr. Tushar Nagar

Counsel for the Respondent(s) : Mr. M.S. Ramalingam  
Mr. M.G. Ramachandran  
Ms. Anushree Bardhan  
Ms. Poorva Sehgal  
Mr. Kumar Mihir

## **JUDGMENT**

### **RAKESH NATH, TECHNICAL MEMBER**

The present appeal has been rendered by EMCO Energy Limited against the order dated 21.02.2014 passed by the Central Electricity Regulatory Commission (“Central Commission”) whereby it has decided that long-term open access would commence for Appellant’s full generation capacity from the date of synchronization of until-I, i.e. 10.12.2012.

2. The Appellant is a generating company and owns and operates a thermal power plant of 2x300 MW installed capacity at Warora, Maharashtra. The Central Commission is the Respondent No.1, Power Grid Corporation of India Ltd. the transmission licensee and CTU, is the Respondent No.2.
3. The brief facts of the case are as under:
  - (a) In May, 2007, the Appellant made an application to the Respondent No.2 for grant of Long-Term Open Access (“LTOA”) for transfer of 520 MW power from their proposed power generation project to identified beneficiaries, viz. MSEDCL (Maharashtra), MPPTC (Madhya Pradesh), GUVNL (Gujarat) and the other Western Region constituents.
  - (b) The LTOA application was considered in the 9<sup>th</sup> meeting of the Western Region Constituents convened by the Respondent No.2 on 30.7.2007. Regarding Appellant’s application, the Respondent No.2 informed that studies were carried out for Western Region load-generation scenario corresponding to FY 2009-10 timeframe and in the studies it was assumed

that Sipat-I & II, Sipat-II Supplementary Schemes, Kahalgaon-II and Western Region System Strengthening Schemes (“WRSS”) I, II, III & IV scheduled for implementation by this time frame would be available. The Respondent No.2 was of the view that LTOA applied for by the Appellant could not be granted until the commissioning of WRSS-II system. WRSS-II system was expected to be commissioned by mid 2010. However, commencement of open access of the Appellant was intended from June, 2009.

- (c) It was agreed between the Appellant and the Respondent No.2 that LTOA may be provided to the Appellant after commission of WRSS-II and till that time during the intervening period power transfer may be effected through short-term open access.
- (d) Respondent No.2 vide letter dated 22.10.2007 conveyed in-principle approval for grant of LTOA to the Appellant. The only transmission strengthening requirement indicated in the letter was availability of EMCO Power Project – Bhadravati 400 KV Double Circuit line along with 2 nos. 400 KV bay extension at Bhadravati to be carried out by the Appellant before the commencement of LTOA.
- (e) The Appellant and the Respondent No.2 entered into a Bulk Power Transmission Agreement (“BPTA”) on 17.01.2009. The 9<sup>th</sup> meeting of Western Region constituents dated 30.7.2007 was enclosed as Annexure-I to the BPTA.

- (f) For construction of above noted 400 KV bays at Respondent No.2's Bhadravati sub-station, the Appellant entered into an agreement with Respondent No.2, whereby the latter was to undertake execution of the said 400 KV bays on behalf of the Appellant on a cost-plus basis.
- (g) The first circuit of 400 KV Double Circuit line from the Appellant's power project to Bhadravati was charged on 19.10.2012 and the second circuit on 17.11.2012.
- (h) The Appellant's first Unit of 300 MW capacity was synchronized on 10.12.2012 and the same was declared as commercially operational on 19.03.2013.
- (i) The Respondent No.2 raised a bill dated 15.11.2012 towards Point of Connection ('POC') transmission charges for the period from 19.10.2012 to 31.10.2012. Since October 2012, the Respondent No.2 has been raising bills for POC transmission charges on the Appellant. According to the Appellant, these charges could not have been levied since the system strengthening required to be undertaken by the Respondent No.2 as per BPTA, viz. WRSS-II System was yet to be completed. Accordingly, the Appellant sought reversal of these charges which was not accepted by the Respondent No.2.
- (j) Thereafter, the Appellant filed a Petition before the Central Commission seeking declaration that Power Grid Corporation (Respondent No.2) is not entitled to levy any transmission charges under BPTA dated 17.1.2009 until completion of WRSS-II. The Central Commission by the impugned

order dated 21.2.2014 directed that the LTOA would commence for full capacity of Appellant's project from the date of synchronization of Unit No.1 i.e. 10.12.2012. Aggrieved by the dismissal of its Petition, the Appellant has filed this Appeal.

4. The following submissions have been made by the Appellant:-
- a) The directions issued by the Central Commission is inconsistent with not only its own findings in the impugned order but also in terms of BPTA executed between the Appellant and the Respondent No.2 whereby LTOA and the consequent transmission charges were to commence upon, inter-alia, completion of WRSS-II being undertaken by the Respondent No.2.
  - (b) The Central Commission passed the impugned direction without there being any pleadings/and or prayer to the effect that LTOA charges must be levied from the date of synchronization of Unit no.1.
  - (c) In the 9<sup>th</sup> meeting of the Western Region constituents, it was agreed that till the availability of transmission system including WRSS-II transmission system, the transfer of power from the Appellant's project could be effected through short-term open access.
  - (d) The above noted terms for grant of LTOA was intimated to the Appellant vide letter dated 22.10.2012. It was clearly articulated that date of commencement of LTOA would be subject to availability of the identified transmission system including WRSS-II.
  - (e) In the BPTA dated 17.1.2009 also the commencement of LTOA was linked to availability of WRSS-II. Thus, commissioning of WRSS-II was a

condition precedent to grant of LTOA to the Appellant. No specific date for commencement of LTOA was specified neither in any document nor in BPTA.

- (f) It is trite that a contract must be enforced strictly in accordance with the terms thereof. Adequacy of the existing transmission system without commissioning of WRSS-II cannot be a reason for deemed commencement of open access and consequent recovery of POC transmission charges. In this connection, Rajasthan State Industrial Development and Investment Corporation v. Diamond and Gem Development Corporation Ltd., (2013) 5 SCC 470 has been referred to.
- (g) The Respondent No.2 has linked the levy of POC charges to circumstances that are evidently extraneous to the express term of the BPTA, namely Respondent No.2's ability to evacuate power due to changed power scenario in the Western Region.
- (h) The Respondent No.2 has not cited any principle of law justifying the levy of POC charges in a manner opposed to the express BPTA terms.
- (i) Respondent No.2's plea in respect of change in scenario in Western Region has been expressly rejected by the Central Commission. Despite this, the Central Commission has given the impugned directions.
- (j) An express contract between the parties can not be unilaterally altered by either party. It is only when the parties agree to a novation/amendment can the original contract be deemed as not binding on the parties. In this

regard Citi Bank. N.A. Vs. Standard Chartered Bank, (2004)1SCC 12 was relied upon.

- (k) The findings and observations in the impugned order are not supported by material on record and/ or contentions of the parties. The operative part of the impugned order is inconsistent with the Central Commission's own observations in the preceding paragraphs.
  - (l) The observation made by the Central Commission regarding acceptance of LTOA with effect from October 2012 in view of Appellant's letter dated 1.9.2012 is erroneous as the Appellant's offer for commencement of LTOA w.e.f. October 2012 was not accepted by the Respondent No. 2 and no novation of BTPA was effected.
  - (m) The Respondent No.2 did not undertake any augmentation of transmission system to meet Appellant's LTOA requirements and has no stranded capacity at present. In view of this, the Respondent No.2 should not be allowed to levy POC transmission charges on the Appellant.
5. In reply, the Respondent No.2 has submitted as under:-
- (a) In the BPTA, the scheduled commissioning of the power plant was June 2009 and therefore, the expected date of commencement of the open access was June 2009. With reference to above, the Western Regional load generation scenario corresponding to the period 2009-10 was studied.
  - (b) The power plant of the Appellant was synchronized much later in December 2012 and commissioned only in March 2013. By that time the

load generation scenario changed and the transmission system was available for the above capacity of the Appellant's power plant without the availability of WRSS-II System. The power from the Appellant's power project could be transferred without being affected in any manner by the non-completion of WRSS II.

- (c) The adequacy of the transmission system under changed scenario was informed to the Appellant and was duly acknowledged by the Appellant at the time of signing of the Connection Agreement in January 2012. The Appellant vide letter dated 16.3.2013 requested for bifurcation of LTOA unit-wise on prorata basis i.e. 260 MW each and levy of POC charges as and when units achieve synchronization.
- (d) The Appellant had projected the commissioning of the generating units in May and July 2012 as mentioned in the Connection Agreement signed in January 2012. The Appellant was, therefore, requiring the transmission of power from Bhadravati sub-station to the beneficiaries of the Western Region from October 2012 expecting to complete the generating unit as well as the dedicated transmission line by the aforesaid date.
- (e) Major portion of WRSS II had been duly completed before October 2012. Further, as per the load and generation balance and power flow condition prevalent in the Western Region in October 2012, there was adequate capacity for transfer of power from Bhadravati sub-station to Madhya Pradesh, Gujarat and other constituents of Western Region with full



security and reliability as per the conditions contained in Indian Electricity Grid Code, 2010.

- (f) The system strengthening, upgradation, etc., of the transmission system is a dynamic concept decided from time to time based on the requirements and other developments. Accordingly, it is open to the Respondent No. 2 not to proceed with some transmission network or system strengthening if the changed circumstances results in deferment of such upgradation of system or strengthening work. What is important is the availability of transmission network as a whole for transfer of power from the power station of the Appellant.
  - (g) The Appellant via letter dated 1.9.2012 had sought to avail LTOA for transfer to modified beneficiaries and Appellant indicated that it was in process of signing PPA with Dadra and Nagar Haveli. From the above request, it is evident that the Appellant was well aware that the two lines of WRSS-II will not affect the power transfer from the Appellant's power plant to the beneficiaries.
6. We have heard Mr. Sanjay Sen, Learned Senior Advocate for the Appellant, Mr. Ramalingam, Learned Counsel for the Central Commission and Shri M.G. Ramachandran, Learned Counsel for the Respondent No.2. Shri Ramalingam in his arguments justified the findings of the Central Commission.

7. On the basis of the rival contentions of the parties, the following question would arise for our consideration:

- i) **Whether the Central Commission has erred in deciding that POC transmission charges have to be levied on the Appellant from the date of synchronization of the first unit of 300 MW capacity at the Appellant's power project on 10.12.2012 without considering non-completion of WRSS-II transmission system of the Respondent No.2 as per the terms of the Bulk Power Transmission Agreement entered into between the parties?**
- ii) **Whether the above directions of the Central Commission are contrary to the observations and findings of the Central Commission in the impugned order?**
- iii) **Whether completion of WRSS-II was a pre-condition for levy of POC transmission charges in accordance with the BPTA entered into between the parties?**
- (iv) **Whether the Long Term Open Access and levy of POC transmission charges for 520 MW on the Appellant can be made from the date of synchronization of Unit-I, in view of the request of the Appellant made by letters dated 26.11.2012, 06.12.2012 and 16.03.2013 even without completion of WRSS-II in view of changed load flow scenario in the Western Region?**

All the above issues are interwoven and hence being considered together.

8. Let us first examine the findings of the Central Commission in the impugned order. The relevant findings are summarized below:
- (a) According to BPTA, the commencement of LTOA was subject to two conditions viz. availability of the dedicated transmission system to be constructed by the generator and availability of transmission system of Barh generating project and WRSS II. LTOA would commence only when both the conditions have been concurrently satisfied.
  - (b) The levy of transmission charges by Powergrid from October 2012 is contrary to the provisions of the BPTA according to which, for commencement of open access, availability of WRSS II is sine qua non. It is an undisputed fact that WRSS II has not been commissioned as yet and thus, LTOA has not commenced. Therefore, the question of incurring any liability by the generating company to share the transmission charges does not arise. Such a liability will be incurred only on commencement of LTOA.
  - (c) The condition of availability of WRSS-II was imposed at the instance of Powergrid (Respondent no.2). The generating company had sought LTOA from June, 2009. However, Powergrid after system studies found that the available capacity was inadequate to meet transfer to power of different drawee utilities on long-term basis as there would not be any major transmission corridor available between East-West corridor in the lower part of Western Region and flow of power from the power project would cause transmission constraints.

- (d) Powergrid is aware that the generating company becomes liable for sharing of transmission charges on availability of strengthening scheme as this portion has been admitted by Powergrid in its reply affidavit and yet the generating company has been billed from a date when WRSS-II was not available.
- (e) Power Grid Corporation has further stated that before commissioning of the power project, a number of other generation projects have been commissioned in Western Region and this has completely changed the scenario since now the power generally flows from Western Region to Eastern Region though earlier power flowed from Eastern Region to Western Region. The other factor highlighted by Power Grid Corporation in support of its plea of change in scenario is that power to Southern Region is now being transferred from Western Region over Bhadravati-Ramagundam HVDC link by utilizing its full capacity. Thus, according to Power Grid, due to the change in load-generation scenario across the regions, the power flow pattern in lines has changed. Under these circumstances, Power Grid has argued that availability of WRSS-II has lost significance. We are not impressed by the submission of Power Grid Corporation.
- (f) The generating company (Appellant herein) has emphasized that without physical connectivity to Bhadravati sub-station, POC charges are not applicable. Further, the generating company vide letter dated 21.11.2012 changed its stand and requested POC charges from synchronization of

unit-I. The generating company vide its letter dated 6.12.2012 has stated that all the conditions to start LTOA have not been fulfilled, therefore, POC charges should commence from the date of achieving synchronization of respective units. It is clear from above that the generating company is changing its stand frequently.

- (g) The generating company in its letter dated 1.9.2012 requested powergrid to change LTOA quantum allocation by which the quantum in respect of Maharashtra was reduced from 200 MW to 100 MW and instead of 100 MW to Gujarat, 200 MW was required to be transferred to Dadra & Nagar Haveli w.e.f. October 2012. It appears that the generating company was ready to accept commencement of LTOA w.e.f. October 2012.
- (h) The Petitioner was granted LTOA under Open Access Regulations, 2004 and it had agreed to bear the transmission charges of Western Region corresponding to 520 MW from the said generation project. BPTA provides that LTOA will start before or at synchronization of the units. The Petitioner made an application for grant of LTOA from the month of June, 2009 considering commissioning of units as mid June, 2009, December, 2009 and December, 2010. Hence, taking the vague condition imposed in the BPTA and non-coordination of PGCIL for operationalization of LTOA without non-availability of lines of WRSS-II, we direct that LTOA would commence for full capacity (520 MW) from the date of synchronization of unit-1 i.e. 10.12.2012.

9. Thus, the Central Commission while holding that levy of transmission charges by Power Grid from October 2012 is contrary to the provisions of BPTA according to which for commencement of open access, availability of WRSS-II is sine qua non directed that LTOA would commence for full capacity i.e. 520 MW from the date of synchronization of unit-I i.e. 10.12.2012. The reason for the aforesaid direction has been given as:
- (a) From the letter of the generating company (Appellant) dated 1.9.2012 requesting for change in LTOA quantum, it appears that the generating company was ready to accept commencement of LTOA w.e.f. October, 2012. The generating company is also changing its stand as evident from letters dated 21.11.2012 and 6.12.2012.
  - (b) BPTA provides that LTOA will start before or at the synchronization of the units.
  - (c) The generating company (Appellant) made an application for grant of LTOA from the month of June 2009 considering commissioning of units as mid June 2009, December 2009 and December 2010. Hence, taking the vague condition imposed in BPTA and non-coordination of PGCIL for operationalisation of LTOA without availability of lines of WRSS-II, the LTOA for full capacity (520 MW) would commence from date of synchronization of Unit-I i.e. 10.12.2012.
10. We find that the Appellant had made an application for LTOA on 14.5.2007 for 520 MW indicating the expected date of commencement of transmission open access from June 2009. The Appellant had indicated unit-wise commissioning

schedule as unit-I of 135 MW capacity in Mid 2009, Unit-II of 135 MW in December 2009 and unit-III of 250 MW in December 2010 (unit configuration was later changed to 2x300 MW by the Appellant). The Appellant along with the application enclosed duly signed terms and conditions as per the guidelines issued by the Respondent No.2. One of the conditions was confirmation by the Appellant that the LTOA should be effective from the date from which open access has been permitted or the date on which the system strengthening identified through studies is in place, whichever is later, provided BPTA has been executed with CTU and other transmission licensees.

11. The proposal for grant of LTOA to the Appellant as given by the Respondent No.2 was discussed in the 9<sup>th</sup> meeting of the Western Region Constituents held on 30.7.2007. It was proposed by the Respondent No.2 that LTOA may be provided to the Appellant after commission of the identified transmission system including WRSS-II transmission system. However, till that time during the intervening period, transfer may be affected through short-term basis, depending on the availability of transmission corridor capacity for which the Appellant may apply for short-term open access as per Central Commission's Regulations. The aforesaid proposal of the Respondent no.2 was accepted in the meeting of WR Constituents.
12. Accordingly, on 22.10.2007, the Respondent No.2 permitted LTOA to the Appellant with requirement of additional system strengthening. It was informed that the date of commencement of open access was from the fulfillment of :

- (i) Availability of dedicated transmission system to be constructed by the Appellant (Power Project to Bhadravati 400 KV D/C line)
  - (ii) Availability of transmission system of Sipat-I & II, Sipat-II supplementary scheme, Kahalgaon-II and WR system strengthening scheme I, II, III & IV.
  - (iii) Signing of BPTA with the Respondent No.2.
13. **Let us now examine the BPTA entered into between the Appellant and the Respondent No.2 on 17.1.2009.**
14. The date for which the open access is granted has been indicated in BPTA as under:
- “Date from which the open access is granted: from the date of availability of Evacuation system as indicated below and also subject to the availability of transmission system of various generation projects i.e. Barh and Western Region system strengthening scheme-II expected to be available by Mid 2010. Till such time, M/s. EMCO may apply for short-term Open Access to RLDC/NLDC for transfer of power from the generation project.”**
15. We find that the minutes of the meeting of WR constituents regarding LTOA applications held on 30.7.2007 has been enclosed as an Annexure to the BPTA. BPTA also provides that the Appellant shall share and pay the transmission charges from the date of open access.
16. The evacuation system has been indicated as the dedicated 400 KV D/C line for the power project to Bhadravati sub-station to be constructed by the Appellant.
17. Thus, the date of LTOA as per the BPTA was on fulfillment of the following conditions:
- (i) Commissioning of evacuation system viz. dedicated 400 KV D/C transmission line from the power projects to Bhadravati sub-station.



- (ii) Commissioning of Barh and WRSS-II transmission systems (which was expected to be available by mid 2010).

Till the availability of above systems, the Appellant had to seek for short-term open access for transfer of power from its generating station.

18. Admittedly, the evacuation system from the power project to Bhadravati sub-station was completed on 17.11.2012 when both the circuits were charged. There is no averment in the Appeal regarding Barh transmission system and the point under dispute is non-completion of WRSS-II. According to the PPA, the LTOA was subject to availability of WRSS-II and, therefore, levying of POC transmission charges from the commissioning of first 400 KV circuit from power plant to Bhadravati sub-station i.e. 19.11.2012 is in violation of the BPTA. Similar finding has been given by the Central Commission in the impugned order.
19. Admittedly, the Appellant in its application for LTOA had indicated the expected date of commencement of LTOA as June 2009 to coincide with commissioning of Unit-I. However, we do not find any condition in the BPTA that the LTOA will start before or at synchronization of the units. Thus, the observation of the Central Commission in the impugned order that BPTA provides that LTOA will start before or at synchronization of the units is not correct.
20. Let us now examine the letter dated 1.9.2012 referred in the impugned order. By this letter the Appellant had made a request for revision in quantum of power in respect of different target beneficiaries keeping total quantum of open access as same. The Appellant had made a request for reduction of quantum for MPPTCL from 200 MW to 100 MW, GUVNL from 100 MW to nil and allowing transfer of

200 MW reduced from MPPTCL and GUVNL to Dadra and Nagar Haveli (DNH) w.e.f October 2012. This was, however, not allowed due to non-availability of evacuation system for DNH. This letter, however, indicates that the Appellant was prepared to take LTOA w.e.f. October 2012, with revised power allocation to different beneficiaries in Western Region.

21. The Respondent No.2 has referred to letter dated 26.11.2012 from the Appellant indicating about the charging of the 400 KV D/C lines of evacuation system in which the Appellant has stated as under:

*“After successful testing of main equipment such as GT, STs we are planning to Synchronize our plant during 1 week of December 2012 tentatively and exact date of Synchronization shall be intimated to you separately to enable raising monthly POC charges effective from the date of Synchronization of the plant.*

In this regard, we request to reverse the POC charges if any, charged prior to synchronization of the plant for which we shall always be grateful.”

By the above letter, the Appellant had requested the Respondent No.2 for raising POC charges from the date of synchronization of Unit No.I which was expected during the first week of December, 2012 and reversal of POC charges raised on it prior to that.

22. Respondent No.2 has also referred to letter dated 6.12.2012 from the Appellant also relied by the Central Commission regarding LTA effective date and payment of POC charges. The relevant portion of the letter is reproduced below:

*“In continuation of the discussions of Mr. SN Sunkari had with you on 3<sup>rd</sup> December 2012 in your office, we would like to inform that we are in receipt of 2 Nos. of bills (Ref 2 & Ref 3) towards POC charges for the month of Oct’12 and Nov’12 respectively.*

In this regard, we would like to bring following to your notice:

- (i) As per the LTA document point (e) date of commencement of open access would be from the fulfillment of below listed all the conditions:
- Availability dedicated Transmission system i.e. EMCO generation project – Bhadravati 400 KV D/C along with 2 nos 400 KV bay extension at Bhadravati S/s
  - Availability of Transmission system of Sipat-I & II, Sipat-II supplementary schemes, Kahalgaon-II and WR system strengthening schemes I, II, III, IV
  - Signing of BPTA with Powergrid by M/s. EMCO Energy Ltd. for sharing of Western Regional transmission charges corresponding to entire 520 MW generation capacity.

- (ii) We would like to mention that the test charging dates of dedicated 400 KV D/C Transmission line are as below:

- One circuit was test charged on 19<sup>th</sup> October 2012 (18.31 Hrs)
- Second circuit was test charged on 17<sup>th</sup> November 2012 (16.50 Hrs)

The delay in the second Circuit of the Transmission line was due to Non readiness of second Bay at PGCIL Bhadravati substation, being developed by POWERGRID on deposit basis.

- (iii) Further we would also like to mention that the Unit-I has not achieved the synchronization till date. Unit wise synchronization schedules are mentioned below:

**Unit-I**

- |      |                 |   |
|------|-----------------|---|
| (i)  | Synchronization | - 6 <sup>th</sup> /7 <sup>th</sup> of December 2012 |
| (ii) | COD             | - 2 <sup>nd</sup> Week of January 2013              |

**Unit-II**

- |      |                 |                                      |
|------|-----------------|--------------------------------------|
| (i)  | Synchronization | - 1 <sup>st</sup> Week of April 2013 |
| (ii) | COD             | - 3 <sup>rd</sup> Week of May 2013   |

Since all the condition requisites for effective date of LTA commencement are not fulfilled, we request you to consider following on the meritorious basis:

- Reversal/waive off the POC charges raised for the months of Oct'12 and Nov'12.
- Commence POC charges Unit wise from the date of achieving synchronization of the respective Units."

23. By the above mentioned letter dated 6.12.2012, the Appellant requested for commencement of POC charges from the date of achieving synchronization of the respective units.

24. We find that the Appellant again by its letter dated 16.3.2013, informed the Respondent No.2 regarding delay in synchronization of Unit No.II due to reasons

not attributable to them and requesting for bifurcation of unit-wise LTA quantum on prorated basis i.e. 260 MW each and levy POC charges as and when unit achieves synchronization. The relevant extracts from the letter dated 16.3.2013 are reproduced below:

*“As we have signed LTA for 520 MW (without Unit wise break up) during 2007, we are continuing to pay POC charges for entire LTA quantum from October 17<sup>th</sup> 2012. With the uncertainties on fuel prevailing all over, it is becoming practically impossible to bear such huge burden to this tune of Rs.9.50 cr. a month. Present CERC Regulations 2009 on ‘Grant of Connectivity, Long-term Access Synchronization which implies operation of partial LTA.*

*In view of the foregoing, we humbly request for the following:-*

- (i) Bifurcate Unit wise LTA quantum on prorated basis i.e. 260 MW each and levy POC charges as and when Unit achieves synchronization.*
- (ii) Accordingly, for Unit-I the effective date for payment of POC charges may be considered as the day of its synchronizations i.e. 10<sup>th</sup> December 2012 and adjust already paid amount in the subsequent bills.”*

25. In the letter dated 6.12.2012 and 16.3.2013 Appellant has requested for commencement of LTOA from the synchronization of the first unit but wanted bifurcation of unit-wise LTOA from the date of synchronization of each unit. As correctly decided by the Central Commission such reduction/bifurcation will have to be dealt with separately as per Connectivity Regulations, 2009 as in the LTOA application and in BPTA, LTOA was to be given for 520 MW irrespective of commissioning of different units.

26. As already explained above, commencement of LTOA as per BPTA was from the date of commissioning of evacuation transmission line (dedicated line) which was the responsibility of the Appellant subject to commission of Barh and WRSS-II transmission systems which was the responsibility of the Respondent No.2. This was based on the load flow studies for FY 2009-10 when the plant of the

Appellant was expected to be commissioned with estimated load-generation balance corresponding to FY 2009-10. The commissioning of units at Appellant's plant was delayed. In the meantime, the load generation balance in the Western Region has changed due to commissioning of a number of generation projects in Western Region. On the basis of the actual load-generation balance prevailing in FY 2012-13, the Respondent No.2 is able to grant LTOA to the Appellant for 520 MW without completion of WRSS-II. When the Appellant has sought commencement of LTOA from the synchronization of the first unit and the Respondent No.2 is able to provide the same without completion of WRSS-II which was the obligation of the Respondent No.2, LTOA ought to be granted from the date of synchronization of Unit-I. However, the request of the Appellant for bifurcation of LTOA with synchronization of respective dates of the Units, has to be dealt with as per the Connectivity Regulation.

27. Learned Counsel for the Appellant has referred to Rajasthan State Industries Development and Investment Corporation Vs. Diamond & Gem Development Corporation Ltd., (2013) 5 SSC 470 wherein Hon'ble Supreme Court held that the contract is to be interpreted giving the actual meaning to the words contained in the contract and it has to be interpreted in such a way that its term may not be varied.
28. As already indicated above, the correct interpretation of the BPTA is that the LTOA has to commence from the date of completion of the evacuation arrangement and WRSS-II. However, when Appellant has made a request for commencement of LTOA with effect from synchronization of Unit No.1, the

Respondent No.2 can grant the LTOA by waiving the condition regarding completion of WRSS-II imposed in the BPTA which was the obligation of the Respondent No.2 and which is no more relevant in the present load-generation balance scenario. When the Appellant had itself made a request for commencement of LTOA w.e.f. synchronization of Unit-I and is availing open access from that date, it should not be aggrieved by the decision of the Central Commission to commence LTOA from the date of synchronization of Unit-I. The Central Commission is also right in holding that the LTOA was applied and granted for 520 MW without any bifurcation with date of commissioning of the Units and, therefore, the bifurcation of LTOA has to be dealt with by the CTU as per the Connectivity Regulations, 2009. The rulings referred to by the Appellants will not be applicable to the present case in view of express request made by the Appellant to allow open access from the date of synchronization of Unit No.1.

29. Admittedly, the first unit of the Appellant has been synchronized on 10.12.2012. The application of the Appellant for LTOA for 520 MW was from the commissioning of the first unit. The Appellant wants LTOA from the synchronization of the first unit but wants the LTOA quantum to be bifurcated into 260 MW with synchronization of first unit and balance 260 MW with the synchronization of the second unit. The Appellant in its letters referred to above seeking LTOA has not made the request subject to commissioning of WRSS-II. The LTOA approved for the Appellant is for 520 MW and bifurcation of the same has to be dealt with separately as per the Connectivity Regulation. Therefore, if the Respondent No.2 is in a position to provide LTOA of 520 MW in the prevailing load-generation

scenario in the Western Region grid with effect from the synchronization of the first unit, then POC transmission charges for 520 MW have to be charged from that date.

30. We do not find any infirmity in the findings of the Central Commission allowing POC charges from the date of synchronization of Unit No.1 The request of the Appellant for bifurcation of LTOA has to be dealt with separately as per the Connectivity Regulations.
31. In view of above, the Appeal is dismissed. No order as to costs.
32. Pronounced in the open court on this 22<sup>nd</sup> day of April, 2015.

**(Rakesh Nath)**  
**Technical Member**

**(Justice Surendra Kumar)**  
**Judicial Member**

✓  
REPORTABLE/NON-REPORTABLE

dk