IN THE APPELLATE TRIBUNAL FOR ELECTRICITY

(Appellate Jurisdiction)

APPEAL No. 66 of 2017

Dated: 15.07.2025

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

IN THE MATTER OF:

TANGEDCO
Rep. by Chief Financial Controller/Regulatory Cell
144, Anna Salai,
Chennai — 600 002. **…Appellant(s)**

Versus

1. Central Electricity Regulatory Commission
   4th Floor, Chanderlok Building
   New Delhi 110 001.

2. Power Grid Corporation of India Limited,
   "Saudamani", Plot No.2, Sector-29,
   Gurgaon -122 001.

3. Karnataka Power Transmission Corporation Ltd. (KPTCL),
Kaveri Bhawan,
Bangalore-560 009.

4. Transmission Corporation of Andhra Pradesh Ltd.
(APTRANSCO), Vidyut Soudha,
Hyderabad-500 082.

5. Kerala State Electricity Board (KSEB),
Vaidyuthi Bhavanam, Pattom,
Thiruvananthapuram-695 004.

6. Electricity Department
Government of Goa, Vidyuti Bhawan,
Panaji, Goa-403001.

7. Electricity Department,
Government of Pondicherry,
Pondicherry-605 001.

8. Eastern Power Distribution Company of Andhra Pradesh Ltd. (APEPDCL),
APEPDCL, P&T Colony,
Seethmmadhara, Vishakhapatnam,
Andhra Pradesh — 530001.

9. Southern Power Distribution Company of Andhra Pradesh Ltd.
(APSPDCL), Srinivasasa Kalyana Mandapam Backside,

Tiruchanoor Road, Kesavayana Gunta,
Tirupati-517 501.

10. Central Power Distribution Company of Andhra Pradesh Ltd.
(APCPDCL), Corporate Office, Mint Compound,
Hyderabad-500 063.

11. Northern Power Distribution Company of Andhra Pradesh Ltd.
(APNPDCL), Opp. NIT Petrol Pump,
Chaitanyapuri, Kazipet, Warangal-506 004.

12. Bangalore Electricity Supply Company Ltd.
(BESCOM), Corporate Office,
K. R. Circle, Bangalore-560 001.

13. Gulbarga Electricity Supply Company Ltd.
(GESCOM), Station Main Road,
Gulbarga. Karnataka – 585101.

14. Hubli Electricity Supply Company Ltd. (HESCOM),
Navanagar, PB Road,
Hubli, Karnataka – 580020.

15. MESCOM Corporate Office,
Paradigm Plaza, AB Shetty Circle,
Mangalore - 575 001.

16. Chamundeswari Electricity Supply Corporation Ltd.
(CESC), # 927, L J Avenue, Ground Floor,
New KantharajUrs Road,
Saraswatipuram, Mysore - 570 009.

17. Transmission Corporation of Telengana Ltd.
(APTRANSCO), Vidyut Soudha,
Khairatabad, Hyderabad-500 082.

18. Andhra Pradesh Solar Power Corp. Pvt. Ltd.
6-3-856/A3, Neeraj Public School Lane,
Opp. Green Park Hotel,
Ameerpet, Hyderabad 500 016.

19. Central Transmission Utility of India Ltd.
Represented by its Chief General Manager
A wholly owned subsidiary of
Power Grid Corporation of India Ltd.
Saudamini, Plot No. 02, Sector 29
Gurugram — 122001. **…Respondents**

Counsel for the Appellant(s) : Mr. S. Vallinayagam
Mr. Manoj Kumar Sharma

Counsel for the Respondent(s) : Mr. Shri Venkatesh for R-2
Ms. Suparna Srivastava for R-19

JUDGEMENT

PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER

1. The captioned appeal has been filed by M/s. TANGEDCO challenging the Impugned Order passed by the Central Electricity Regulatory Commission (in short "CERC" or "Central Commission") dated 30.06.2016 in 26/TT/2016 in as much as the Central Commission has held the transmission line as ISTS line and permitted the tariff to be included in the ISTS base, to be shared by all beneficiaries under PoC mechanism in respect of the asset exclusively designed for evacuation of power from State owned Solar Power Project up to the point of interconnection with CTU substation.

Description of Parties

2. Respondent No. 1 is the Central Electricity Regulatory Commission, established under section 76 of the Electricity Act, 2003, having been vested with the powers under section 79 of the Electricity Act, 2003 (in short "Act") inter alia to resolve the dispute herein.

3. Respondent No.2, Power Grid Corporation of India Limited (in short "PGCIL" or "Power Grid"), is a deemed Inter-State Transmission Licensee.

4. Respondent Nos. 3 to 17 are the Transmission Licensees, and the Distribution Licensees of the Southern Region States, and the Electricity Department of Puducherry and Goa.

5. Respondent No. 18 is Andhra Pradesh Solar Power Corporation Pvt. Ltd (in short "APSPCL") is a Joint Venture of Solar Energy Corporation of India (SECI), APGENCO, and NREDCAP. APSPCL, an authorised Solar Power Park Developer (SPPD) for the State of Andhra Pradesh, is facilitating the establishment of the Ultra Solar Power Park (USPP) of 1500 MW capacity at NP Kunta in Anantapur and Kadapa districts under JNNSM.

6. Respondent No. 19 is Central Transmission Utility of India Limited (in short "CTUIL" or "CTU") and was mandated to undertake functions under Section 38 (1) of the Electricity Act, 2003 for transmission of power.

<u>Factual Matrix of the Case</u> (as submitted by the Appellant)

7. APSPCL, the SPPD, has applied for connectivity and Long-Term Access with CTU for the development of the infrastructure and connectivity. As per the guidelines for the development of Solar Park issued by the Government of India, Ministry of New & Renewable Energy, February 2016.

> *"8 (xiii) Transmission Network*
> *Internal transmission system will be considered as dedicated system of the generators' developed on their behalf by SPPD.*
> *Forecasting and Scheduling will be done as per CERC Regulations and Indian Electricity Grid Code. The SPPD may take the function of forecasting if the solar project developers so desire.*
> *Interconnection point will be at the ISTS system i.e. 400 kV substation where ISTS system is involved. The solar park where internal transmission system is connected to the STU system, its*

interconnection point will be at the STU system. All costs and losses up to that point will be on account of the solar project developers or SPPD depending upon the arrangement between the solar project developers and the SPPD.

As soon as first project in park gets commissioned, transmission charges will start getting paid from corpus of fund created by the SPPD, out of the collection from the solar project developers, for the entire capacity of line. If the line gets ready as per schedule and no project is commissioned, SPPD will have to pay charges as per applicable rules."

8. Paragraph 13, dealing with other important issues of the guidelines of the Government of India, Ministry of New & Renewable Energy, envisages the following for the external transmission system. In Annexure A to Annexure 1 of the MNRE letter dated 12.12.2014, it is stated that:

*"**If the State Government is willing to buy over 50% of the power generated in the solar park, preference will be given to STU, which will ensure setting up of sub-station and development of necessary infrastructure for transmission of power from substation to load centers.***

If the state is not willing to buy at least 50% of the power generated in the solar park, then CTU may be entrusted with the responsibility of setting up 400 KV or bigger sub-station right next to the solar park and its connectivity with the CTU. For setting up of this transmission & evacuation infrastructure, Power Grid may prepare a separate

project to be funded from NCEF / external funds / Green Corridor project, if the cost is very high. The system would be planned in such a manner so that there is no wheeling charge applicable on solar power in accordance with the CERC Regulation or reduce the wheeling charges to affordable level."

9. In the present case, the State of Andhra Pradesh is the sole beneficiary consuming 90% of the power generated from the solar park.

10. PGCIL, being the Central Transmission Utility, before the bifurcation into PGCIL and CTUIL, evolved the following transmission scheme for the evacuation of power from the above solar power plant.

Evacuation line:
LILO of 400 kV Kadapa – Kolar S/C line at NP Kunta
400/220 kV substation:

a) Establishment of 400/220 kV Substation at NP Kunta Substation with 3x500 MVA Transformers;
b) 2 Nos. 220 kV Line bays at NP Kunta pooling station

Reactive compensation;

c) 1x125 MVAR,420 kV Bus Reactor at NP Kunta substation
d) 100 MVA STATCOM at NP Kunta pooling station

11. **Power Grid based on the letter from AP agreed to construct the above transmission & evacuation infrastructure. Power Grid was required to prepare a separate project to be funded from NCEF / external funds / Green Corridor project, if the cost of the evacuation system was very high.**

12. In the 27th meeting of SRPC, objections regarding the execution of the scheme by PGCIL and the sharing of the transmission charges were raised by M/s KSEB and deliberated.

13. As far as the evacuation system for Solar Power Parks is concerned, the Ministry of Power vide their letter dated 12.12.2014 has clearly indicated that:

> *"6. Fund for power evacuation*
>
> *The power evacuation arrangement will consist of two parts i.e. pooling station network within park to collect power from each project and transmitting sub-station at the park boundary as the first part and the transmission sub-station along the transmission line up to CTU/STU existing grid as the second part. The implementing agency would be responsible for the first part and CTU/STU would be responsible for second part. For both these parts i.e. entire evacuation arrangement, MNRE grant may be used. Loan from multilateral/bilateral agencies may also be as a component to fund the power evacuation infrastructure by the implementing agency and CTU/STU. If the capital expenditure for the evacuation network is high, then a separate proposal may also be considered for funding from National Clean Energy Fund (NCEF), Green Corridor Programme or any other source.*
>
> *7. Central Financial Assistance (CFA)*

CFA @ Rs. 25.00 lakh (Rs twenty five lakh) per park would be released by MNRE to SECI for DPR preparation for the Solar Park, conducting surveys, etc.

Besides, CFA of up to Rs. 20.00 lakh (Rs twenty lakh) per MW or 30% of the project cost, including Grid-connectivity cost, whichever is lower, would be released to SECI on achieving the milestones given under para 7 of the scheme. For release of requisite funds, the state Govt. will send a formal proposal to MNRE.

The grant will be managed and released by SECI, on behalf of MNRE, for which SECI will be given a fund handling fee of 1% of the grant released."

14. The above Central Financial Assistance states as "The grant will be managed and released by SECI, on behalf of MNRE, for which SECI will be given a fund handling fee of 1% of the grant released."

15. In the annexure to the letter, MoP has given guidelines for the development of Solar Parks and Ultra Mega Solar Projects. The guidelines related to transmission infrastructure are as follows:

"8. Transmission and evacuation of power from Solar Park Interconnection of each plot with pooling stations through 66 KV /other suitable voltage underground or overhead cable will be the responsibility of the solar project developer. The designated nodal agency will set up the pooling stations (with 400/220, 220/66 kV or as may be suitable switchyard and respective transformers) inside the

solar park and will also draw transmission to transmit power to 220 kV/400 kV sub-station.

The responsibility of setting up a sub-station nearby the Solar Park to take power from one or more pooling stations will lie with the Central Transmission Utility (CTU) or the State Transmission Utility (STU), after following necessary technical and commercial procedures as stipulated in the various regulations notified by the Central/State Commission.

If the State Government is willing to buy over 50% of the power setting up of sub-station and development of necessary infrastructure for transmission of power from substation to load centres. The designated implementing agency will intimate POWERGRID and CEA at least 6 months before so that the planning and execution can be carried out in time.

If the state is not willing to buy at least 50% of the power generated in the Solar Park, then CTU may be entrusted with the responsibility of setting up 400 KV or bigger sub-station right next to the Solar Park and its connectivity with the CTU. For setting up of this transmission & evacuation infrastructure, Power Grid may prepare a separate project to be funded from NCEF / external funds / Green Corridor project, if the cost is very high. The system would be planned in such a manner so that there is no wheeling charge applicable on solar power in accordance with the CERC Regulation or reduce the wheeling charges to affordable level."

16. The MOP in its letter dated 12.12.2014 has spelt out that if the capital expenditure for the evacuation network is high, then a separate proposal may also be considered for funding through National Clean Energy Fund (NCEF), Green Corridor Programme or any other source.

17. The Guidelines for Development of Solar Parks issued by MNRE during February 2016 also affirm that it is the responsibility of the SPPD to arrange connectivity and LTA for ISTS. The relevant extracts are as follows:

> *"13. Other important issues:--*
> *i) As per the notification nos. L-1/(3)/2009-CERC and L-1/41/2010-CERC dated 15th May, 2015 of Central Electricity Regulatory Commission (CERC), Solar Power Park Developer (SPPD) has been included as an Applicant for Connectivity and Long Term Access in Inter-State Transmission System (ISTS). SPPD may make back to back arrangement with the solar project developers through a legally valid agreement that the solar project developers are the generators and must take responsibilities for Scheduling and Deviation Settlement Mechanism (DSM) charges as per CERC Regulations. This must be made clear at the time of allotment of land.*
> *...*
> *iii) The project cost for the Solar Park will be divided under "Heads" and accounts*
> *must be maintained accordingly. A four digit code head will be followed. The digits would denote the following:*
> *Major Head: Code for Capital Cost - 1*

Code for Maintenance Cost - 2

Major Sub Head: Code for Cost of Internal Activities - 1

Code for Cost of External Activities – 2

Illustration

1202: Capital cost of External Transmission System

1204: Capital cost of External Cost of Sub-station (400 kV or above)"

18. Regulation 4(4) and 5 of the CERC (Grant of Regulatory Approval for execution of Inter-State Transmission Scheme to Central Transmission Utility) Regulations, 2010 read as below:

"4(4) The Project Inception Report shall clearly outline the scope and objectives of the proposed ISTS Scheme, its conformity with the evaluation criteria mentioned in these regulations with detailed justification supported by cost benefit analysis.

5. Evaluation criteria

The ISTS Schemes shall be evaluated on the basis of the following criteria:

(i) Need for the transmission scheme

a. Technical justification

b. Urgency

c. Prudence of the investment

(ii) Cost Assessment and possible phasing of implementation

(iii) Cost-benefit to the users of the proposed ISTS Scheme."

19. The Central Commission did not direct the second Respondent, CTU, to bring on record the details of funds availed/ being availed by CTU for the development of the transmission scheme as per the guidelines of MNRE. The evacuation line, which, as per section 10 of the Electricity Act, was to be built by a generator at its own expense, which was supposed to be financed by MNRE. The line is not owned by CTU to bring it under Section 2 (36) of the Electricity Act, 2003.

20. Dedicated Transmission line is defined in Section 2(16) of the Act as under:

> *"dedicated transmission lines' means any electric supply-line for point to point transmission which are required for the purpose of connecting electric lines or electric plants of a captive generating plant referred to in Section 9 or generating station referred to in Section 10 to any transmission lines or sub-stations or generating stations, or the load centre, as the case may be."*

21. The Regulation 3(1) (iii) of the CERC (Grant of Regulatory Approval for execution of Inter-State Transmission Scheme to Central Transmission Utility) (First amendment) Regulations, 2015 provides as below:

> *"3. (1) (iii) ISTS Scheme proposed by CTU, for which the Central Government authorised Solar Power Park Developer has sought long term access, and for which consultation with CEA and beneficiaries wherever identified has been held for setting up the ISTS scheme and the Solar Power Park Developer undertakes to bear all liabilities on behalf of the solar power generators to be set up in the Solar Park."*

22. The Central Commission, in Petition No. 29/MP/2015 filed by the second Respondent, CTU, accorded Regulatory Approval for the above transmission assets as per Regulation 3 of CERC (Grant of Regulatory Approval for execution of Inter-State Transmission Scheme to Central Transmission Utility) (First amendment) Regulations, 2015.

23. Further, in the 38th meeting of the Standing Committee on Power System Planning for Southern Region held on 7th March, 2015, the following were observed and concluded:

> *"21.21 In view of above discussions it was agreed that though the proposed scheme is technically in order, however, it can be firmed up subject to resolving the regulatory issues. Regarding the proposed STATCOM at N P Kunta the same was agreed due to urgency in the matter as a special case, however, its delivery would be along with Phase-II of the project. Regarding the regulatory aspects, CTU would get clarification on - (i) eligibility for LTA, Connectivity, (ii)the issue of Multiple Injections, (iii) whether the proposed 400/220kV S/s which is in the premises of the solar park should be under scope of park developer or in STU/CTU, and (iv) whether LTA should be applied by actual generation developers who may sign PPA with AP DISCOMs or the APSPCL. It was also decided that APTRANSCO would study planning of connecting its nearby 220kV S/S with the 220kV sub-pooling stations in NP Kunta Park."*

24. PGCIL had filed a tariff petition No.26/TT/2016 seeking approval of CERC for the transmission tariff in respect of the above scheme.

25. In the reply to the petition, the Appellant has raised objections over the inclusion of the assets into the ISTS base and the sharing of transmission charges under PoC. During the hearing held on 22.03.2016, TANGEDCO also raised its objections before CERC, stating that beneficiaries cannot be burdened with the cost of the evacuation line dedicated to the Solar Park.

26. The Central Commission did extract the submissions of the Appellant but did not consider the same, and no reasons were given for not considering the contentions of the Appellant. CERC issued an order dated 16.05.2016 approving the tariff for the year 2016-17 and 2017-18 with the inclusion of transmission tariff in PoC.

27. The Appellant stated the following reasons for filing the Appeal before us:

a) Conducting a comprehensive system study involving all the stakeholders to assess the impact on PoC due to the inclusion of the assets used for a state-specific solar project, which could be used for one-third of a day.

b) Assessing of diurnal power flow in the proposed ISTS network designed for the evacuation of power from solar power parks.

c) Consensus among the existing DICs before socializing the cost of the inefficient, under-utilized network for a state-specific solar project.

d) Need and justification for socializing the transmission cost among all the DICs in the absence of interstate transactions.

e) Transparency in calculating the PoC and disseminating the methodology for inclusion of solar-specific transmission assets under the ambit of PoC

28. Further, added that since the PoC mechanism is PAN India and the solar projects are State specific being funded by MNRE, the Central Commission has failed to direct the CTU to adhere to the guidelines issued by MoP vide their letter dated 12.12.2014 for availing funds/ grants for execution of the project and not to penalize the extraneous DICs of the transmission elements.

29. Tamil Nadu is one of the renewable-rich States where wind and solar projects of grid scale are in abundance, backed by a robust network for evacuation, transmission, and distribution of power, which has been developed by TANTRANSCO. The transmission charges for 400 kV pooling stations and 400 kV interconnecting transmission lines are fully borne by TANGEDCO.

30. The Commission has failed to examine whether the scope of the PoC mechanism is required to be revisited in the circumstances of Ultra Mega Solar and Wind Projects being connected to the ISTS network through a dedicated evacuation line. which is required to be laid by the generator as per section 10 of the Act.

31. Thus, being aggrieved by the Impugned Order dated 30.06.2016 passed by the CERC in the Petition No. 26/TT/2016, the Appellant has preferred the present Appeal.

Written Submissions of the Appellant, TANGEDCO

32. The Appellant has filed the present appeal challenging the order dated 30.06.2016 passed by the Central Electricity Regulatory Commission (CERC) in

Petition No. 26/TT/2016, wherein the Commission directed the sharing of transmission tariff for assets developed for evacuating power from a State-specific solar project at NP Kunta, in accordance with the provisions of the CERC Sharing Regulations, 2010. The Solar Park, located in Andhra Pradesh, was primarily established to supply 90% of its power to the state itself.

33. The evacuation system was designed to ensure unidirectional power flow from the solar generators within the park to the NP Kunta 400/220 kV substation and thereafter to Andhra Pradesh. The distribution companies of Andhra Pradesh have executed Power Purchase Agreements (PPAs) with the solar developers in the park. In Petition No. 29/MP/2015, regulatory approval was sought for the development of this evacuation infrastructure by PGCIL (now CTUIL). The petition specifically included a prayer for the approval of both the construction and the tariff-sharing mechanism.

34. While the Commission granted regulatory approval for construction, it did not decide upon the transmission tariff or its sharing methodology. This aspect of the order remained unchallenged by PGCIL and has thus attained finality. The evacuation system was constructed pursuant to MNRE's letter dated 12.12.2014, which categorised the system into two components:

(i) the pooling station and internal network up to the transmission substation at the boundary of the park, to be implemented by the designated agency, and
(ii) the transmission substation and transmission line up to the existing CTU or STU grid, to be implemented by the CTU or STU.

MNRE also clarified that grants may be utilised for both components.

35. Eventually, the entire evacuation system was integrated with the existing Cuddapah substation via LILO (Line-In-Line-Out) of the Kolar-Cuddapah 400 kV single circuit line.

36. The evacuation infrastructure developed for the NP Kunta Solar Park comprises two parts: the first extends up to the 220/400 kV substation, and the second extends from this substation to the LILO of the existing Kolar-Cuddapah 400 kV single circuit line, which is connected to the existing Cuddapah substation. As per the MNRE letter dated 12.12.2014, both parts were to be integrated with the existing substation, forming a complete evacuation arrangement. The Respondent No. 2, PGCIL, proceeded to implement the transmission scheme based on a communication from the Government of Andhra Pradesh and subsequent clearance by its Board.

37. This action was taken without formal approval from the Standing Committee, although it was discussed therein. All power generated from the NP Kunta Solar Park, located entirely within Andhra Pradesh, is consumed within the State, and no power is transmitted outside the State's boundaries. Therefore, the dedicated evacuation system, despite being physically connected to the Kolar-Cuddapah 400 kV line via LILO, does not qualify as an inter-state transmission system.

38. As per the definition in section 2 of the Electricity Act, 2003:

(16) "dedicated transmission lines' means any electric supply-line for point to point transmission which are required for the purpose of

connecting electric lines or electric plants of a captive generating plant referred to in Section 9 or generating station referred to in Section 10 to any transmission lines or sub-stations or generating stations, or the load centre, as the case may be.

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(72) "transmission lines" means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a substation, together with any step-up and step-down transformers, switch-gear and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works;"

39. As per the MNRE letter of 12.12.2014, parts 1 and 2 constitute the entire evacuation system and are to be funded by MNRE/NCEF/GCP or any other source. This letter clearly states that the evacuation system is to be constructed by CTU or STU. The evacuation system cannot be construed to be a transmission line, and PGCIL/CTUIL can seek a tariff determination for the same.

40. Section 2(36) of the Electricity Act, 2003 defines "inter-State transmission system" to include:

(i) the transmission of electricity from one State to another via a main transmission line;

(ii) transmission across an intervening State's territory or within a State when incidental to inter-State transmission; and

(iii) transmission within a State on a system that is built, owned, operated, maintained, or controlled by a Central Transmission Utility (CTU).

41. This definition applies specifically to a “transmission line” as defined under Section 2(72), and not to a “dedicated transmission line” as per Section 2(16). A dedicated transmission line refers to a line set up for connecting a generating station directly to the point of consumption or injection without being part of the broader inter-State transmission network. The sub-clauses (i) to (iii) of Section 2(36) must be interpreted harmoniously, as they collectively define what constitutes an inter-State transmission system. Interpreting sub-clause (iii) in isolation would contradict the legislative intent and broader purpose of Section 2(36), which is to delineate inter-State transmission and not merely CTU-operated assets within a State.

42. Accordingly, the contention of the Respondents that the solar evacuation system qualifies as an inter-State transmission system is incorrect, particularly when there is no flow of electricity across State boundaries. Since the system in question is a dedicated evacuation system for intra-State consumption, PGCIL/CTUIL is not entitled to claim transmission tariff under the inter-State framework.

43. AS PER THE PROCEDURE FOR MAKING APPLICATION FOR GRANT OF CONNECTIVITY TO ISTS:

7. CONSTRUCTION OF DEDICATED TRANSMISSION SYSTEM

7.1. An applicant may be required by the CTU to construct a dedicated system to the point of connection to enable connectivity to the grid which shall be owned, operated and maintained by the applicant.

7.2. However, a thermal generating station of 500 MW and above and a hydro generating station of 250 MW and above, other than a captive generating plant, shall not be required to construct a dedicated line to the point of connection and such stations shall be taken into account for coordinated transmission planning by the CTU and CEA.

7.3. In all the cases where dedicated transmission system up to point of connection is to be undertaken by CTU / Inter-State Transmission licensee, the applicant after grant of connectivity shall sign transmission agreement as per the format given at FORMATCON-8 within one month of the grant of connectivity. Further applicant shall furnish Bank Guarantee (BG) for the amount EITHER (a) at the rate of Rs. 2.5 lakhs/MW (or such amount as amended from time to time, with the approval of the Commission)) if the connectivity requires transmission lines upto 20 kms OR (b) at the rate of Rs. 5 lakhs/MW (or amount as amended from time to time in the Regulations if the connectivity requires transmission lines more than 20 kms. The BG as per format given at FORMAT-CON-7 should be made in favour of CTU / Transmission licensee within one month of signing of transmission agreement with validity upto commissioning of above transmission system.

In case application for Grant of Connectivity and Grant of Long Term Access are made concurrently or after a time gap, then the requirement of submission of above BG should be read in conjunction with the clause for Bank Guarantee of Rs. 5 lakhs per MW for construction/augmentation of transmission system under "Procedure for Grant of Long Term Access". In such cases the total BG required to be submitted for both the construction of dedicated line as well as

for augmentation of transmission system together, at any time, shall not exceed Rs. 5 Lakhs per MW.

The time frame for commissioning of above dedicated transmission system from the signing of BPTA would be 9 months plus the time lines as specified by CERC in tariff Procedure for making application for Grant of Connectivity in ISTS regulations or actual date of commissioning desired by the applicant and agreed to by the CTU, whichever is earlier.

7.4. If dedicated line is to be constructed and terminated by the applicant as per the Connection Agreement, the modifications at the connection point required to be under taken by CTU would be undertaken on deposit of estimated cost by applicant. In this case there shall be no requirement of BG.

7.5. Provided further that if the dedicated transmission system is also used by any other user(s) at a later date, then the transmission charges for above dedicated transmission system would be shared in proportion to the quantum of power injected by respective user into the grid, as per the system in vogue at that time.

44. The evacuation system from the solar park up to the point of injection into the ISTS line at the interconnection point, which is the existing ISTS line, is an evacuation system. No other beneficiary transmits power using the evacuation system from the SPPD to the interconnection point at the LILO. In contrast to the Kadapa-Kolar ISTS line, which is used for electricity transmission by various beneficiaries, the evacuation system is exclusively used by the SPPD for power evacuation up to the point of interconnection, i.e., the LILO.

45. Chapter 4 of Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 states that:

> *"9. Criteria for granting long-term access or medium-term open access*
>
> *(1) Before awarding long-term access, the Central Transmission Utility shall have due regard to the augmentation of inter-State transmission system proposed under the plans made by the Central Electricity Authority.*
>
> *(2) Medium-term open access shall be granted if the resultant power flow can be accommodated in the existing transmission system or the transmission system under execution:*
>
> *Provided that no augmentation shall be carried out to the transmission system for the sole purpose of granting medium-term open access:*
>
> *Provided further that construction of a dedicated transmission line shall not be construed as augmentation of the transmission system for the purpose of this regulation.*

46. Further, the CERC SHARING REGULATIONS 2010 provide as under:

> (A) CHAPTER 4: PROCESSES FOR SHARING OF TRANSMISSION CHARGES AND LOSSES
>
> *7. Process to determine Point of Connection Transmission Charges and Losses allocations.*

(1) The process to determine the allocation of transmission charges and losses shall be as under and as per timelines set out subsequently in Chapter 7 of these regulations:

(u) No transmission charges for the use of ISTS network shall be charged to solar based generation. This shall be applicable for the useful life of the projects commissioned in next three years.

(v) No transmission losses for the use of ISTS network shall be attributed to solar based generation. This shall be applicable for the useful life of the projects commissioned in next three years.

47. The above regulation exempts transmission charges on solar generators commissioned in the next three years from 2010. MNRE's proposal for setting up the Solar Park was from 2014 to 2019. The transmission system for evacuating the power with COD of 28.04.2016 and 01.07.2016 cannot be exempted under the above regulations.

(B) THE SHARING REGULATIONS REQUIRE A TSA AS PER REGULATION 13.

13. Transmission Service Agreement (TSA).

(1) The Designated ISTS Customers and the CTU shall enter into new transmission services agreement or modify the existing Bulk Power Transmission Agreements to incorporate the new tariff and related conditions. Such agreement shall govern the provision of transmission services and charging for the same and shall be called the Transmission Service Agreement (TSA) and shall, inter-alia, provide for:-

(a) Detailed commercial and administrative provisions relating to sharing of ISTS charges and losses based on principles derived from these regulations;

(b) Provisions on metering, accounting, billing and recovery of charges for the ISTS from the constituents;

(c) Procedures for declaration and approval of contracted capacity at each node or an aggregation of nodes in the ISTS for each Designated ISTS Customer;

(d) Detailed procedures and provisions for connection by the Designated ISTS Customers at the inter-connection points, including the processes for requisitioning new inter-connection capacity on the ISTS;

(e) Procedures and provisions for treatment of over or under injections by the Designated ISTS Customers;

(f) Procedures and provisions for treatment of the delay in injection / withdrawal by Designated ISTS Customers;

(g) Treatment of the delay in commissioning of transmission lines;

(h) Payment security mechanisms;

(i) Default and its consequences;

(j) Dispute resolution mechanisms;

(k) Term of the agreement and the termination provisions;

(l) Force Majeure Conditions; and

(m) Any other matter that is relevant for the Point of Connection transmission charge and loss allocation mechanism.

48. The Respondent transmission service provider (PGCIL) failed to place on record any Transmission Service Agreement (TSA) entered into either with the

Andhra Pradesh Distribution Companies (AP Discoms) or the Andhra Pradesh Solar Power Development Corporation Limited (APSPCL). Despite this, the Central Commission did not adequately address this lapse and permitted the transmission charges to be socialized between CTU and TSP without any supporting documentation.

49. There is nothing on record to indicate compliance with Regulation 13 of the CERC Sharing Regulations. The Central Commission, in its impugned order dated 30.06.2016, did not consider or respond to the legitimate objections raised by the Appellant. Specifically, in paragraph 50 of the order, the Commission provided no reasoning for rejecting or ignoring these objections. Additionally, PGCIL did not disclose whether it applied for or availed of financial grants from MNRE as per the applicable Guidelines. The Guidelines stipulate that PGCIL should have utilised grants for constructing the evacuation system.

50. Importantly, the MNRE Guidelines also state that where a State commits to procure at least 50% of the power from a solar park, CTU need not be involved in establishing major transmission infrastructure. In this case, the State of Andhra Pradesh had agreed to procure 90% of the power generated, indicating that the responsibility for funding the evacuation system lies with the State.

51. Moreover, CERC's earlier order dated 03.08.2015 in Petition No. 29/MP/2015 only granted approval for constructing the evacuation system but did not determine who is liable for bearing its cost or transmission charges.

52. Without prejudice to the Appellant's primary contention that the transmission line in question does not constitute an inter-State transmission system (ISTS), it is

further submitted that the CERC Sharing Regulations are based on the principle of proportionate cost sharing aligned with actual usage. These regulations are designed to account for factors such as the quantum, direction, and distance of power flow. Exempting host States, such as Andhra Pradesh, from paying their share of transmission charges for using the evacuation infrastructure contradicts the regulatory framework.

53. If the Long-Term Open Access (LTOA) or Medium-Term Open Access (MTOA) quantum related to Andhra Pradesh's solar generation is excluded from the calculation of Point of Connection (PoC) charges, it results in unjust enrichment. The host State would benefit both from MNRE grants for solar infrastructure and from exemption from paying transmission charges, which goes against the intent of Sections 61(c) and 61(d) of the Electricity Act, 2003, which mandate efficient, economic, and equitable allocation of resources and promotion of competition and consumer interest.

54. In conclusion, the Appellant contends that the Central Commission's order dated 30.06.2016 in Petition No. 26/TT/2016 is erroneous, arbitrary, and contrary to the statutory and regulatory framework. It is accordingly prayed that the impugned order may be set aside in the interest of justice.

Written Submissions of the Respondent No. 2, POWERGRID

55. Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO) has filed the present appeal challenging the order dated 30.06.2016 passed by the Central Electricity Regulatory Commission (CERC) in Petition No. 26/TT/2016.

56. In that order, CERC determined the transmission tariff for the LILO of the 400 kV Kadapa-Kolar single circuit line at NP Kunta, including associated line bays, one 500 MVA Inter-Connecting Transformer (ICT) and its bays at NP Kunta Substation (Asset I), and two 500 MVA transformers, one 125 MVAR reactor, and associated bays (Asset II), developed by Power Grid Corporation of India Ltd. (POWERGRID).

57. The matter was heard on 28.02.2025 by the Tribunal, which reserved judgment and directed parties to file written submissions. POWERGRID is submitting its written submissions accordingly. As a preliminary objection, POWERGRID submits that the appeal is not maintainable because the issues raised by TANGEDCO were already adjudicated by CERC in its earlier order dated 06.08.2015 in Petition No. 29/MP/2015, which granted regulatory approval.

58. Since that order attained finality and was not challenged, the Appellant is barred from reopening the same issues due to the principle of res judicata. Hence, at the threshold, the appeal is misconceived because it challenges matters that do not arise from the order dated 30.06.2016 under appeal.

SUBMISSIONS ON MERIT

Re: Present Appeal is not maintainable and is misconceived

59. The primary contention raised by the Appellant pertains to the consideration of the transmission line in question as an Interstate Transmission System (“ISTS”) line and the inclusion of its tariff under the Point of Connection (“PoC”) mechanism

as per the CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 ("2010 Sharing Regulations").

60. It is pertinent to note that even though the appeal primarily challenges the Impugned Order, however, it indirectly is seeking to contest the Regulatory Approval Order for the asset in question, which was never challenged or disputed by any of the parties present therein (including the Appellant) and has thus attained finality.

61. Notably, CERC, while enacting the CERC (Grant of Regulatory Approval for execution of Inter-State Transmission Scheme to Central Transmission Utility) Regulations, 2010, wanted to establish a responsive regulatory framework for expanding the transmission system based on anticipated requirements. The relevant extracts of the said Regulations are reproduced as under:

> *"The Central Transmission Utility has been vested with the functions under subclause (c) of sub-section (2) of Section 38 of the Electricity Act, 2003 (the Act) to ensure development of an efficient, co-ordinated and economical system of interstate transmission lines for smooth flow of electricity from the generating stations to the load centres. Para 5.3.2 of the National Electricity Policy notified by the Central Government under Section 3 of the Act vide Resolution No.2314012004- R&R(Vol.11) dated 12. 1.2005 provides that "network expansion should be planned and implemented keeping in view the anticipated transmission needs that would be incident on the system in the open access regime. Prior agreement with the beneficiaries would not be a pre-condition for network expansion.*

CTU/STU should undertake network expansion after identifying the requirements in consultation with stakeholders and taking up the execution after due regulatory approval."

62. Further, Regulation 7(1) of the said Regulations provides that the transmission tariff of the ISTS scheme approved by the Commission under Regulation 8 of these Regulations shall be determined as per applicable regulations framed under Section 61 of the Electricity Act 2003. The relevant extract of the said Regulations is as follows:

"7. Recovery of charges of approved transmission Scheme

(1) *The transmission tariff of the ISTS Scheme Approved by the Commission under Regulation 8 of these regulations shall be determined in accordance with the prevailing regulations on terms and conditions of tariff specified by the Commission under Section 61 of the Act.*"

63. The objections raised by the Appellant in the present appeal were already considered and addressed by the Central Commission in its Regulatory Approval Order dated 06.08.2015. The Appellant was a party to those proceedings, and its concerns were duly examined. Upon comprehensive consideration of the facts and objections, including those raised earlier by Kerala State Electricity Board (KSEB), which were similarly dismissed, CERC granted regulatory approval for the development of the transmission system and incorporated it into the Inter-State Transmission System (ISTS) under the 2010 Sharing Regulations.

64. As this prior order was not appealed and has attained finality, the Appellant is barred from contesting the same issues again. The doctrine of res judicata applies, precluding re-litigation of matters already adjudicated. Relevant support for this position is drawn from ***Union of India v. S.P. Sharma (2014) 6 SCC 351*** and ***Neelima Srivastava v. State of U.P. 2021 SCC OnLine SC 610***.

65. Permitting the Appellant to contest the regulatory approval after the execution of the transmission project would lead to regulatory uncertainty and undermine investment confidence in the sector. Once a transmission licensee executes a project based on regulatory approval, it has a statutory entitlement to recover the associated transmission charges.

66. Further, at the time of developing the subject assets, POWERGRID was functioning as the Central Transmission Utility (CTU) under Section 39 of the Electricity Act, 2003. A CTU is authorized to develop only the ISTS. Therefore, the assets developed by POWERGRID must be classified as part of the ISTS.

67. This is reinforced by Section 2(36) of the Act, which provides that transmission systems developed by a CTU form part of the ISTS network. Thus, the present appeal is an attempt to indirectly challenge a regulatory approval order that has already attained finality, under the pretext of contesting a subsequent tariff order. It is submitted that the appeal is misconceived and should be dismissed with costs, and that the Tribunal may consider the conduct of the Appellant in filing such an appeal.

Re: Appeal is devoid of merits

68. It is contended that the present appeal lacks merit and warrants dismissal. The Appellant's contention that regulatory approval was granted only for transmission assets developed by State Transmission Utilities (STUs), and not for those developed by Central Transmission Utilities (CTUs), is factually and legally incorrect for the following reasons.

69. The CERC Regulatory Approval Regulations were enacted to create a structured framework for transmission system expansion based on projected future needs. These regulations were amended on 15.05.2015 to explicitly include provisions facilitating the development of solar power parks, thereby broadening their scope and applicability. Acting in its capacity as the Central Transmission Utility (CTU), POWERGRID implemented the transmission system pursuant to the regulatory approval granted and is consequently entitled to recover transmission charges under the 2010 Sharing Regulations.

70. The Appellant is therefore barred from objecting to the execution of the project by a CTU as opposed to an STU. Importantly, CERC grants regulatory approval only after considering all relevant facts and stakeholder inputs. Any dispute or concern about the project's implementation ought to have been raised during the regulatory approval stage and not after the project has been executed. Accordingly, the arguments raised by the Appellant are unsubstantiated and the appeal deserves to be dismissed.

Re: Treatment of the grant received

71. The Appellant has contended that the Central Electricity Regulatory Commission wrongly accepted that POWERGRID did not receive or utilize grants

under the Ministry of Power (MoP) or the Ministry of New and Renewable Energy (MNRE) guidelines. This contention is factually incorrect.

72. In reality, POWERGRID did receive a partial grant, which was duly adjusted against the capital cost of the transmission assets. This fact is clearly recorded in paragraphs 32 to 40 of the true-up order dated 18.02.2022 passed by CERC in Petition No. 360/TT/2020. The assets referred to as Asset-1 and Asset-2 in that order are the same assets under consideration in the present appeal.

Analysis and Conclusion

73. After hearing the Learned Counsel for the Appellant and the Learned Counsel for the Respondents at length and carefully considering their respective submissions, we have also examined the written pleadings and relevant material on record. Upon due consideration of the arguments advanced and the documents placed before us, the following issue arises for determination in this Appeal:

a) ***Whether the transmission system constructed by POWERGRID for evacuation of power from the NP Kunta Solar Park qualifies as part of the Inter-State Transmission System (ISTS) under Section 2(36) of the Electricity Act, 2003 despite the fact that 90% of the power is consumed within Andhra Pradesh and thus whether it is liable to be included under the Point of Connection (PoC) mechanism for socialized cost sharing as per the CERC Sharing Regulations, 2010?***

b) ***Whether the Appellant (TANGEDCO) is estopped from challenging the ISTS classification and the resultant tariff order in Petition No.***

26/TT/2016, in light of the Regulatory Approval Order dated 03.08.2015 in Petition No. 29/MP/2015 passed by CERC, which approved the scheme and was not challenged by the Appellant, thereby invoking the doctrine of res judicata?

74. The Appellant herein has prayed for the following:

"1. to set aside the order dated 30.06.2016 passed by the Central Electricity Regulatory Commission in petition No. 26/TT/2016; and
2. Pass any other order or orders as this Hon'ble Appellate Tribunal may deem fit and proper in the facts of the case."

75. The Central Commission, vide the Impugned Order, held that the transmission system formed part of the ISTS and directed the tariff to be shared under the Point of Connection (PoC) mechanism in accordance with the CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 ("the Sharing Regulations").

76. The principal contention of the Appellant is that the transmission system in question was essentially intra-State in character, as 90% of the power from the NP Kunta Solar Park is tied up for consumption within Andhra Pradesh. The Appellant contends that the assets were constructed as a dedicated evacuation facility and do not qualify as ISTS within the meaning of Section 2(36) of the Electricity Act, 2003.

77. Further, the Appellant challenges the socialization of transmission charges under the PoC regime, submitting that such imposition is neither permissible in law nor justified on facts.

78. Conversely, the Respondent No. 2 argues that the system is squarely covered by the definition of ISTS and that the Appellant is barred from raising such objections after the transmission project received regulatory approval in Petition No. 29/MP/2015, which attained finality without appeal.

79. Thus, the appeal raises substantial questions on the interpretation of statutory definitions, regulatory consistency, and the applicability of the doctrine of res judicata.

80. The Appellant's challenge is premised on a fundamental factual assertion that the entire transmission system, including the LILO of the 400 kV Kolar-Kadapa line and the NP Kunta substation, is designed to serve a State-specific purpose.

81. According to the Appellant, the generation is intended for consumption within the State boundaries, and the direction of power flow is unidirectional: from the solar generators to the NP Kunta pooling station and onward to the Andhra Pradesh grid. It is the case of the Appellant that under these facts, there exists no element of inter-State transmission.

82. Further, the Appellant relies heavily on the letter issued by the Ministry of New and Renewable Energy (MNRE) dated 12.12.2014, which clearly delineates the evacuation infrastructure into two parts: the first comprising intra-park connectivity up to the pooling station, and the second consisting of the line from

the pooling station to either the CTU or STU network. It is argued that both components together constitute the evacuation system, for which MNRE assistance was made available. The Appellant emphasizes that the MNRE scheme contemplates funding such evacuation facilities through Government grants and never envisaged recovery of tariff through PoC from other States.

83. Reliance is also placed on the statutory definitions under Sections 2(16), 2(36), and 2(72) of the Electricity Act, 2003. The Appellant argues that the transmission system in question qualifies as a “dedicated transmission line” under Section 2(16), constructed solely for the purpose of evacuating power from a specific generating location to the nearest point of interconnection. Since no other entity or State uses the evacuation system, it is submitted that the line does not form part of the “transmission lines” contemplated under Section 2(72), and therefore cannot be brought within the definition of ISTS in Section 2(36).

84. On the issue of cost recovery, the Appellant questions the absence of a valid Transmission Service Agreement (TSA) between Powergrid and the AP Discoms or the Solar Power Development Corporation. It contends that the Sharing Regulations, 2010, particularly Regulation 13, mandate the existence of a TSA for any recovery of charges through the PoC mechanism. No such agreement has been placed on record. Additionally, it is argued that the exemption from ISTS charges under the Sharing Regulations applied only to solar generators commissioned within three years of 2010, which would not include the NP Kunta project commissioned in 2016.

85. Lastly, the Appellant refutes the plea of res judicata. It contends that Petition No. 29/MP/2015 was filed by Powergrid seeking regulatory approval for the

construction of the assets, and that the Central Commission consciously declined to adjudicate on cost recovery and sharing of charges. Thus, the question of estoppel does not arise, and the present challenge is maintainable on both law and fact.

86. In response, the Respondent No. 2 asserts that the assets in question were not constructed as a mere dedicated evacuation system but were developed under the statutory mandate of the CTU to implement ISTS. It is submitted that Powergrid, acting as the CTU under Section 38 of the Electricity Act, 2003, is legally empowered to plan, develop, and operate an efficient and coordinated ISTS network across the country. The transmission system comprising the LILO of the 400 kV Kolar-Kadapa line and the NP Kunta substation was approved in accordance with CERC's Regulatory Approval Regulations, 2010, and was granted explicit regulatory clearance in Petition No. 29/MP/2015.

87. The Respondent points out that the definition of ISTS under Section 2(36)(iii) explicitly includes systems built, owned, operated, or maintained by the CTU, even if located within a single State. It is therefore contended that the nature and character of the line as ISTS is determined by its ownership and functional integration into the national transmission network, not merely by the present direction of power flow or beneficiary geography. Moreover, once a transmission asset is declared to be part of ISTS by regulatory approval, the socialization of charges through PoC is a regulatory consequence, and not contingent upon usage patterns or load flow.

88. On the issue of estoppel and res judicata, the Respondent argues that TANGEDCO was a party to the proceedings in Petition No. 29/MP/2015 and chose

not to challenge the Commission's decision granting regulatory approval to the scheme. The Commission, after detailed deliberations and hearing objections, including those raised by the Kerala State Electricity Board (KSEB), concluded that the transmission system was essential for the development of renewable power and approved its inclusion in the ISTS. It is submitted that the doctrine of res judicata applies, and the Appellant cannot now reopen questions that were directly and substantially in issue in earlier proceedings.

89. The Respondent also clarifies that partial grant funding was received from MNRE, and the balance capital cost was duly trued up by CERC in Petition No. 360/TT/2020.

90. Undisputedly, the present Appeal calls upon this Tribunal to examine and decide a composite legal and factual question pertaining to the classification of a transmission system constructed by Powergrid at NP Kunta as part of the Inter-State Transmission System (ISTS), and whether its tariff is liable to be socialized under the Point of Connection (PoC) mechanism under the Sharing Regulations, 2010.

91. The Appellant placed reliance on various provisions of the Act, which are quoted again as under for the sake of clarity:

> **Section 2(16) of the Act**
>
> "*dedicated transmission lines' means any electric supply-line for point to point transmission which are required for the purpose of connecting electric lines or electric plants of a captive generating plant referred to in Section 9 or generating station referred to in Section 10 to any*

transmission lines or sub-stations or generating stations, or the load centre, as the case may be."

Section 9 of the Act

"(Captive generation): (1) Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines:"

Section 10 of the Act

"(Duties of generating companies): --- (1) Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder."

92. From the above, it can be seen that the Dedicated Transmission Line can only be built by a Generating Station or a Captive Generating Station and not by a Transmission Licensee.

93. The contention of the Appellant that the said transmission system is a dedicated transmission line has to be rejected as the Dedicated Transmission Line is built by a Generating Station or a Captive Generating Station.

94. Further, as per section 2(72) read with section 12 and section 14, a transmission line can be built by a transmission licensee.

Sections 2(72) & 2(73) of the Act

(72) "transmission lines" means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee)

transmitting electricity from a generating station to another generating station or a substation, together with any step-up and step-down transformers, switch-gear and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works; (73) "transmission licensee" means a licensee authorised to establish or operate transmission lines;

Section 12 of the Act

"*(Authorised persons to transmit, supply, etc., electricity): No person shall (a) transmit electricity; or (b) distribute electricity; or (c) undertake trading in electricity, unless he is authorised to do so by a licence issued under section 14, or is exempt under section 13.*"

Section 14 of the Act

"(Grant of licence): The Appropriate Commission may, on an application made to it under section 15, grant a licence to any person - (a) to transmit electricity as a transmission licensee; or (b) to distribute electricity as a distribution licensee; or (c) to undertake trading in electricity as an electricity trader, in any area as may be specified in the licence:"

95. As the Impugned Transmission Line is built by PGCIL, a deemed transmission licensee, the said line is undisputedly a transmission line as per section 2(72) of the Act.

96. Accordingly, the said line is either an ISTS or an Intra-State Line.

97. Therefore, it is pertinent to consider the scheme of the Electricity Act, 2003, in respect of ISTS. The concept of ISTS is codified under Section 2(36) of the Act. The Appellant also has stressed that this definition must be read holistically, and not in isolation. In their submission, the three sub-clauses under Section 2(36), that is, clauses (i), (ii), and (iii), must be read in conjunction to yield a purposive interpretation.

Section 2(36) of the Act

"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 a Central Transmission Utility."

98. From the above, the transmission system built, owned, operated, maintained or controlled by CTU, within the territory of a State, is an ISTS.

99. The Impugned System in this Appeal is identical to 2(36)(iii); there cannot be any other interpretation for the same.

100. The Appellant contended that the phrase "inter-State" implies that the system must physically convey electricity across State borders or at least support such conveyance. As such, the Appellant contends that clause (iii), which allows

for intra-State transmission to be considered as ISTS when developed by the Central Transmission Utility (CTU), cannot be interpreted disjunctively from the requirement of interstate flow of power.

101. This Tribunal finds that such an interpretation is not in harmony with the legislative text and intent. The wording of Section 2(36)(iii) clearly states: *"the transmission of electricity within the territory of a State on a system built, owned, operated, maintained or controlled by a Central Transmission Utility."* This clause is framed as a standalone inclusion within the overall definition of ISTS. The legislature, by using the conjunctive word "or" and presenting this clause independently, intended to categorically include such intra-State lines within the domain of ISTS when built by the CTU.

102. The statute thus defines that transmission lines, though located within one State, will be treated as interstate in nature when developed by the CTU. The Appellant's argument, while appealing in principle, cannot override this clear and express statutory stipulation.

103. We find the argument of the Appellant that it is not covered under 2(36)(iii) is completely misleading, misinterpreted, and out of context, inter alia, and deserves to be rejected.

104. It is an undisputed fact that PGCIL, at the relevant time, was designated as the Central Transmission Utility under Section 38 of the Electricity Act, 2003. PGCIL undertook the development of the NP Kunta transmission system, including the LILO of the 400 kV Kolar-Kadapa S/C line and the NP Kunta 400/220 kV substation, pursuant to the regulatory mechanism provided under the CERC

(Grant of Regulatory Approval for execution of Inter-State Transmission Scheme to CTU) Regulations, 2010.

105. The purpose of these regulations was to enable proactive transmission system planning in a manner responsive to evolving generation patterns and open access requirements. As rightly argued by Powergrid, the planning of such transmission assets is not contingent on prior identification of beneficiaries, a position upheld in Para 5.3.2 of the National Electricity Policy.

106. Further, the Order dated 03.08.2015 passed by CERC in Petition No. 29/MP/2015 granted regulatory approval for the development of the very transmission system under consideration, wherein the Appellant was admittedly a party to those proceedings and chose not to challenge the regulatory approval despite having the opportunity to do so. Importantly, in those proceedings, similar objections were raised by another stakeholder, Kerala State Electricity Board (KSEB), on the ground that the scheme was State-specific and should not be socialised.

107. These objections were considered and rejected by the Commission, which concluded that the asset was required to be developed by the CTU and qualified as ISTS. The doctrine of res judicata squarely applies, as the issue of classification was directly and substantially in issue in the earlier proceedings.

108. The Appellant's contention that the Commission did not determine the tariff methodology or sharing mechanism in Petition No. 29/MP/2015 does not dilute the binding nature of that order. The grant of Regulatory Approval under Regulation 8 of the CERC 2010 Regulations is not an isolated administrative act.

109. Regulation 7 mandates that an ISTS scheme, once approved by the Commission under Regulation 8, its tariff ought to be determined under the prevailing tariff regulations issued under Section 61 of the Act. Thus, the consequence of regulatory approval under the scheme of these regulations is the legal and regulatory inevitability of PoC-based cost recovery.

110. It must also be noted that Powergrid has substantiated that the transmission system in question is integrated into the broader ISTS network by way of LILO of the Kolar-Kadapa 400 kV S/C line, which is a recognised ISTS line. The transmission assets do not terminate at an isolated substation but link up with the central grid, thereby enabling present and future interstate power flows. While the Appellant places emphasis on the unidirectional flow of power and the high share of intra-State consumption, such a usage pattern is not determinative of the system's classification.

111. The Appellant contends that no valid TSA is placed on record between the relevant beneficiaries and Powergrid. It is argued that such an agreement is a prerequisite under Regulation 13 of the Sharing Regulations, 2010.

112. However, this Tribunal notes that the regulatory scheme does not envisage TSA as a condition precedent for the determination of tariff in respect of ISTS assets developed with regulatory approval.

113. Regulation 13 is as follows:

"13. Transmission Service Agreement (TSA).

(1) The Designated ISTS Customers and the CTU shall enter into new transmission services agreement or modify the existing Bulk Power Transmission Agreements to incorporate the new tariff and related conditions. Such agreement shall govern the provision of transmission services and charging for the same and shall be called the Transmission Service Agreement (TSA) and shall, inter-alia, provide for:-

(a) Detailed commercial and administrative provisions relating to sharing of ISTS charges and losses based on principles derived from these regulations;

(b) Provisions on metering, accounting, billing and recovery of charges for the ISTS from the constituents;

(c) Procedures for declaration and approval of contracted capacity at each node or an aggregation of nodes in the ISTS for each Designated ISTS Customer;

(d) Detailed procedures and provisions for connection by the Designated ISTS Customers at the inter-connection points, including the processes for requisitioning new inter-connection capacity on the ISTS;

(e) Procedures and provisions for treatment of over or under injections by the Designated ISTS Customers;

(f) Procedures and provisions for treatment of the delay in injection / withdrawal by Designated ISTS Customers;

(g) Treatment of the delay in commissioning of transmission lines;

(h) Payment security mechanisms;

(i) Default and its consequences;

(j) Dispute resolution mechanisms;

(k) Term of the agreement and the termination provisions;

(l) Force Majeure Conditions; and

(m) Any other matter that is relevant for the Point of Connection transmission charge and loss allocation mechanism."

114. Regulation 13 lays down the administrative and commercial modalities for payment and billing under the PoC mechanism, but does not affect the fundamental entitlement of the CTU to recover costs for assets built under a valid regulatory approval. It is also pertinent that PGCIL has clarified that partial funding from MNRE was received and that the balance cost has been duly trued up by the Commission in a subsequent tariff petition, i.e., Petition No. 360/TT/2020, which the Appellant has not controverted.

115. In light of the above, we find that the classification of the NP Kunta transmission system as part of ISTS is legally sustainable, factually supported, and consistent with the national regulatory framework for renewable energy integration.

116. The approval of the project as an ISTS asset through a prior regulatory proceeding, the ownership and operation by the CTU, and the eventual interstate connectivity of the transmission lines establish the legitimacy of the tariff order passed in Petition No. 26/TT/2016. The objections raised by the Appellant are both procedurally barred and substantively untenable.

117. Accordingly, the transmission system constructed by PGCIL for the NP Kunta Solar Park qualifies as part of the Inter-State Transmission System under Section 2(36)(iii) of the Electricity Act, 2003, by virtue of its development and

ownership by the CTU. The fact that 90% of the power is currently consumed within Andhra Pradesh does not alter its legal character. Accordingly, it is liable to be included in the PoC mechanism for cost sharing under the CERC Sharing Regulations, 2010.

118. The Appellant is estopped from challenging the ISTS classification and the resultant tariff order in Petition No. 26/TT/2016, owing to its participation in Petition No. 29/MP/2015 and failure to appeal the Regulatory Approval Order dated 03.08.2015. The doctrine of res judicata bars such a collateral challenge.

ORDER

For the foregoing reasons as stated above, we are of the considered view that the captioned Appeal No. 66 of 2017 does not have merit and is hereby dismissed**.** The order dated 30.06.2016 passed by the Central Electricity Regulatory Commission in Petition No. 26/TT/2016 is affirmed**.**

The Captioned Appeal and pending IAs, if any, are disposed of in the above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 15th DAY OF JULY, 2025.

(Virender Bhat)	**(Sandesh Kumar Sharma)**
Judicial Member	**Technical Member**

REPORTABLE / ~~NON-REPORTABLE~~

Pr/mkj/kks