

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

**Appeal No. 206 of 2017
&
Appeal No. 332 of 2017**

Dated: 15.09.2025

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

Appeal No. 206 of 2017

In the matter of:

TANGEDCO

**Rep.by Chief Financial Controller/Regulatory Cell
144, Anna Salai, Chennai – 600 002.**

..... Appellant(s)

Versus

1. The Secretary
Central Electricity Regulatory Commission
4th Floor, Chanderlok Building
New Delhi 110 001.
2. The General Manager
Power Grid Corporation of India Limited,
"Saudamani", Plot No.2, Sector-29,
Gurgaon -122 001.
3. The Managing Director
Karnataka Power Transmission Corporation Ltd. (KPTCL),
Kaveri Bhawan,
Bangalore-560 009.
4. The Managing Director
Transmission Corporation of Andhra Pradesh Ltd. (APTRANSCO),
Vidyut Soudha, Hyderabad-500 082.

5. The Managing Director
Kerala State Electricity Board (KSEB),
Vaidyuthi Bhavanam, Pattom,
Thiruvananthapuram-695 004.
6. The Secretary
Electricity Department
Government of Goa,
Vidyuti Bhawan, Panaji,
Goa-403001.
7. The Secretary
Electricity Department,
Government of Pondicherry,
Pondicherry-605 001.
8. The Managing Director
Eastern Power Distribution Company of Andhra Pradesh Ltd. (APEPDCL),
APEPDCL, P&T Colony,
Seethmmadhara, Vishakhapatnam,
Andhra Pradesh - 530001.
9. The Managing Director
Southern Power Distribution Company of Andhra Pradesh Ltd. (APSPDCL),
Srinivasasa Kalyana Mandapam Backside,
Tiruchanoor Road, KesavayanaGunta,
Tirupati, Chittoor District, Andhra Pradesh -517 501.
10. The Managing Director
Central Power Distribution Company of Andhra Pradesh Ltd. (APCPDCL),
Corporate Office, Mint Compound,
Hyderabad, Andhra Pradesh -500 063.
11. The Managing Director
Northern Power Distribution Company of Andhra Pradesh Ltd. (APNPDCL),
Opp. NIT Petrol Pump,
Chaitanyapuri, Kazipet,
Warangal, Andhra Pradesh -506 004.

12. The Managing Director
Bangalore Electricity Supply Company Ltd. (BESCOM),
Corporate Office, K. R. Circle,
Bangalore, Karnataka -560 001.
 13. The Managing Director
Gulbarga Electricity Supply Company Ltd. (GESCOM),
Station Main Road,
Gulbarga, Karnataka – 585101.
 14. The Managing Director
Hubli Electricity Supply Company Ltd. (HESCOM),
Navanagar, PB Road,
Hubli, Karnataka - 580020.
 15. The Managing Director
MESCOM Corporate Office,
Paradigm Plaza, AB Shetty Circle,
Mangalore, Karnataka -575 001.
 16. The Managing Director
Chamundeswari Electricity Supply Corporation Ltd. (CESC),
927, L J Avenue, Ground Floor,
New KantharajUrs Road, Saraswatipuram,
Mysore, Karnataka -570 009.
 17. The Associate General Manager
Moxie Power Generation Limited,
Adani Group, National Council of YMCA of India
Gate No.5, Bharat Yuvak Bhawan 1, Jai Singh Road,
New Delhi - 110001.
 18. The Managing Director
Ind-Bharath Power (Madras) Limited,
Pit No. 30-A, Road No.1
Film Nagar, Jubilee Hills,
Hyderabad, Andhra Pradesh -500 003
- Respondent(s)**

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

Counsel for the Respondent(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri for R-2

Mr. Matrugupta Mishra
Ms. Swagatika Sahoo
Mr. Nipun Dave
Ms. Sonakshi
Ms. Akanksha V. Ingole
Mr. Harsh Jain for R-17

Appeal No. 332 of 2017

In the matter of:

Moxie Power Generation Limited
Through its Associate General Manager,
Ramcon Fortuna Towers 4th,
Kodambakkam High Road,
Nungambakkam High Road,
Chennai - 600034, Tamil Nadu.

...Appellant(s)

Vs.

1. The Secretary,
Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001.
2. The Chairman
Powergrid Corporation of India
B-9, Qutab Institutional Area,
Katwaria Sarai, New Delhi-110016.
3. The Managing Director
Karnataka Power Transmission Corporation Limited
(KPTCL), Kaveri Bhawan,
Bangalore-560 009.

4. The Chairman and Managing Director
Transmission Corporation of Andhra Pradesh Limited
(APTRANSCO), Vidyut Soudha,
Hyderabad-500 082.
5. The Chairman and Managing Director
Kerala State Electricity Board (KSEB),
Vaidyuthi Bhavanam,
Pattom, Thiruvananthapuram-695 004.
6. The Chairman and Managing Director
Tamilnadu Electricity Board (TNEB)
NPKRR Maaligai, 800, Anna Salai,
Chennai-600 002.
7. The Secretary
Electricity Department,
Government of Goa,
Vidyuti Bhawan, Panaji,
Goa - 403 001.
8. The Secretary
Electricity Department,
Government of Pondicherry,
Pondicherry-605 001.
9. The Chairman and Managing Director
Eastern Power Distribution Company of Andhra Pradesh
Limited (APEPDCL),
APEPDCL, P&T Colony,
Seethmmadhara, Vishakhapatnam,
Andhra Pradesh.
10. The Joint Managing Director
Southern Power Distribution Company of Andhra Pradesh
Limited (APSPDCL),
Srinivasasa Kalyana Mandapam Backside,
Tiruchanoor Road, Kesavayana Gunta,
Tirupati-517 501, Chittoor District, Andhra Pradesh.

11. The Secretary, Corporate Office
Central Power Distribution Company of Andhra Pradesh
Limited (APCPDCL),
Corporate Office, Mint Compound,
Hyderabad-500 063, Andhra Pradesh.
12. The Chief General Manager
Northern Power Distribution Company of Andhra Pradesh
Limited (APNPDCL),
Opp. NIT Petrol Pump,
Chaitanyapuri, Kazipet,
Warangal-506 004, Andhra Pradesh.
13. The Managing Director
Bangalore Electricity Supply Company Limited (BESCOM),
Corporate Office, K.R. Circle,
Bangalore-560 001, Karnataka.
14. The Managing Director
Gulbarga Electricity Supply Company Limited (GESCOM),
Station Main Road,
Gulbarga, Karnataka.
15. The Managing Director
Hubli Electricity Supply Company Limited (HESCOM),
Navanagar, PB Road,
Hubli, Karnataka.
16. The Managing Director
MESCOM Corporate Office,
Paradigm Plaza, AB Shetty Circle,
Mangalore-575 001, Karnataka.
17. The Managing Director
Chamundeswari Electricity Supply Corporation Limited
(CESC), # 927, L J Avenue, Ground Floor,
New Kantharaj Urs Road, Saraswatipuram,
Mysore-570 009, Karnataka.

18. The Director
Ind-Bharath Power (Madras) Limited,
Pit No. 30-A, Road No.1
Film Nagar, Jubilee Hills,
Hyderabad-500 003, Andhra Pradesh.

...Respondent(s)

Counsel for the Appellant(s) : Mr. Matrugupta Mishra
Ms. Swagatika Sahoo
Mr. Nipun Dave
Ms. Sonakshi
Ms. Akanksha V. Ingole
Mr. Harsh Jain

Counsel for the Respondent(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri for R-2

Mr. S. Vallinayagam for R-6

JUDGEMENT

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

1. These Appeals have been filed by the Appellants (M/s. TANGEDCO and M/s. Moxie Power Generation Ltd.) challenging the Impugned Order passed by the Central Electricity Regulatory Commission (in short "CERC" or "Central Commission") dated 29.07.2016 in Petition No. 127/TT/2014.

Description of the Parties (both in Appeal No. 206 of 2017 and 332 of 2017)

2. The Appellant, Tamil Nadu Generation and Distribution Corporation Limited (in short "TANGEDCO") is the distribution licensee for the State of Tamil Nadu and is wholly owned by the State Government and is the successor of the erstwhile

Tamil Nadu Electricity Board, formed pursuant to its unbundling under a transfer scheme, in terms of Section 131 of the Electricity Act, 2003.

3. The Appellant in Appeal No. 332 of 2017 and Respondent No. 17 in Appeal No. 206 of 2017 is Moxie Power Generation Limited (formerly Coastal Energen Private Limited) which is a generating company operating a thermal power plant located in Tuticorin, Tamil Nadu.

4. Central Electricity Regulatory Commission (in short “CERC”) is the Respondent No. 1 in both the appeals which is the statutory body vested with the functions and powers by the Electricity Act, 2003.

5. Power Grid Corporation of India Limited (PGCIL) is the Respondent No. 2 in both the Appeals which is the Central Transmission Utility (CTU) and Inter-State Transmission Licensee responsible for planning and implementing inter-State transmission systems.

6. Ind-Bharath Power (Madras) Limited (IBPML) is the Respondent No. 18 in both the appeals which is an Independent Power Producer (IPP) that was also granted LTA and formed part of the coordinated transmission planning for the Tuticorin area of Tamil Nadu.

7. All other Respondents in both the appeals are State Transmission and Distribution Companies including Karnataka Power Transmission Corporation Ltd. (KPTCL), Transmission Corporation of Andhra Pradesh Ltd. (APTRANSCO), Kerala State Electricity Board (KSEB), Electricity Departments of Goa and

Pondicherry; and others are the DISCOMs of Andhra Pradesh and Karnataka (e.g., APEPDCL, APSPDCL, APCPDCL, APNPDCL, BESCOM, GESCOM, HESCOM, MESCOM, CESC). These entities are either ISTS users, regional beneficiaries, or LTA-related stakeholders in the Southern Region.

Factual Matrix of the Case (Appeal No. 206 of 2017) (as submitted)

8. The present Appeal No. 206 of 2017 has been filed by Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) challenging the order dated 29.07.2016 passed by the Central Electricity Regulatory Commission (CERC) in Petition No. 127/TT/2014.

9. The dispute pertains to the imposition of transmission charges in respect of two Line-In Line-Out (LILO) configurations of the Tuticorin JV–Madurai 400 kV D/C Quad line at the Tuticorin Pooling Station, commissioned by Power Grid Corporation of India Limited (PGCIL).

10. The first LILO circuit was commissioned on 04.01.2015 along with the 765 kV pooling station at Tuticorin and a 1 x 80 MVAR Bus Reactor, and the second LILO circuit was commissioned on 08.01.2015.

11. These assets were part of a common transmission system evolved for Coastal Energen Pvt. Ltd. (now Moxie Power) and Ind-Bharath Power (Madras) Ltd., following discussions in the 29th and 30th Standing Committee Meetings on Power System Planning held on 27.08.2009 and 13.04.2010 respectively.

12. The configuration was modified due to space constraints at the Tuticorin JV station and regulatory approval was granted by the Central Commission vide order dated 31.05.2010 in Petition No. 233/2009.

13. CEPL commissioned its generating station on 23.12.2014 and began evacuating 558 MW of power from 24.12.2014 under Short-Term Open Access (STOA), which later transitioned to Medium-Term Open Access (MTOA) from 01.07.2015 to 03.06.2018.

14. The LILO arrangement was utilised for this power evacuation to TANGEDCO. The 38th Standing Committee Meeting on 07.03.2015 recorded that CEPL was to construct a 400 kV Quad D/C line from its switchyard to the Tuticorin Pooling Station. As an interim measure, a LILO of the NTPL-Madurai D/C line was created.

15. The dedicated transmission line (DTL) of CEPL was eventually commissioned on 29.10.2016, and the upstream line from Tuticorin Pooling Station to Salem Pooling Station was commissioned on 13.11.2016.

16. PGCIL filed Petition No. 127/TT/2014 on 20.06.2014 seeking approval of transmission tariff for the subject assets. While TANGEDCO filed replies, CEPL and IBPL did not participate in the proceedings despite notices.

17. On 29.07.2016, the Central Commission passed the Impugned Order, approving the COD of the LILO elements and directing recovery of transmission

charges from CEPL and IBPL until commissioning of their DTLs, instead of including the subject assets under PoC billing.

18. Aggrieved by this, TANGEDCO filed Appeal No. 206 of 2017 on 15.12.2016. CEPL also filed a separate appeal (Appeal No. 332 of 2017) on 11.08.2017, both of which are tagged and being adjudicated together.

Written Submissions of the Appellant (Appeal No. 206 of 2017)

19. The present impugned order pertains to the financial implications arising from two Line-In Line-Out (LILO) arrangements discussed in the Commission's order dated 29.07.2019 in Petition No. 127/TT/2014.

[A] The first LILO concerns both circuits of the Tuticorin JV–Madurai 400 kV Quad Double Circuit line, which were looped in and out at the Tuticorin Pooling Station. This arrangement was undertaken by the 2nd Respondent as an alternative route for power transfer owing to the non-commissioning of upstream connectivity at the time of the Commercial Operation Date (COD) of its generating station.

[B] The second LILO involves one circuit of the NTPL–Madurai Double Circuit line, which was temporarily looped in and out due to Coastal Energen (the Respondent generator) not commissioning its dedicated evacuation line up to the 2nd Respondent's sub-station. This interim arrangement facilitated power evacuation in the absence of the intended connectivity.

FACTS:

20. **[A]** The LILO of both circuits of the Tuticorin JV–Madurai 400 kV Quad Double Circuit line at the Tuticorin Pooling Station was executed by the 2nd Respondent as an alternative route for power transfer due to the absence of upstream connectivity on the Commercial Operation Date (COD) of the generating station.

21. In the 29th meeting of the Standing Committee on Power System Planning for the Southern Region held on 27.08.2009, the 2nd Respondent, PGCIL, formulated a common transmission system to facilitate power evacuation for two Independent Power Producers—Coastal Energen Pvt. Ltd. (2×660 MW) and Ind-Barath Power Madras Ltd. (4×350 MW), both located in Tuticorin, Tamil Nadu.

22. The proposed transmission system comprised:

- (i) Establishment of 765 kV pooling stations at Tuticorin, Salem, and Madhugiri (initially operated at 400 kV);
- (ii) 400 kV D/C Quad or High-Capacity line from Coastal Energen’s switchyard to Tuticorin Pooling Station;
- (iii) 400 kV D/C Quad or High-Capacity line from Ind-Barath’s switchyard to Tuticorin Pooling Station;
- (iv) 765 kV D/C line from Tuticorin to Salem Pooling Station (initially charged at 400 kV);
- (v) 765 kV S/C line from Salem to Madhugiri Pooling Station (initially charged at 400 kV);
- (vi) 400 kV Quad D/C line from Madhugiri to Yelahanka;

(vii) 400 kV D/C Quad line from Tuticorin Pooling Station to Tuticorin JV.

However, the minutes of the said meeting did not include any provision for the LILO of the Tuticorin JV–Madurai 400 kV D/C Quad line. Accordingly, the said line, as recorded, was not part of or relevant to the originally planned evacuation system for the two IPPs.

23. In the 30th meeting of the Standing Committee on Power System Planning of Southern Region held on 13.04.2010 [Minutes of the meeting dated 05.05.2010] the following was agreed:

5.0 Transmission System Associated with the Coastal Energen Pvt Ltd (2x600 MW) and IND Barath Power Ltd (2x660 MW) projects in Tuticorin area of Tamil Nadu:

5.1 Chief Engineer, CEA explained that the Tuticorin Pooling Station – Tuticorin JV Station (of NLC) 400kV D/C Quad line was inter-alia agreed as part of the transmission system associated with the Coastal Energen Pvt Ltd(2x600 MW) and IND Barath Power Ltd (2x660 MW) projects in Tuticorin area of Tamil Nadu. Later, NLC informed that they could spare only one bay at their Tuticorin JV station. As such, considering space constraint and better capacity utilization of the 400kV quad D/C line, it is now proposed that instead of the Tuticorin Pooling Station – Tuticorin JV Station 400kV D/C line, both the circuits of Tuticorin JV –

Madurai 400kV Quad D/C line may be LIL Oed at Tuticorin Pooling Station.

He further stated that a new 765/400kV Substation at Salem Pooling Station (to be initially operated at 400kV) was also inter-alia agreed as part of the above transmission system. Connectivity of this new Salem S/S with existing grid was yet to be firmed up depending upon location of the new Salem Pooling Station. It is now proposed that Salem Pooling Station be connected with existing Salem 400kV S/S with a 400kV Quad D/C line.

5.2 After discussions, the above proposed modifications in the transmission system for the Coastal Energen Pvt Ltd (2x600 MW) and IND Barath Power Ltd (2x660 MW) projects in Tuticorin area of Tamil Nadu were agreed.

24. It is an admitted fact that the new 765/400kV Substation at Salem Pooling Station (to be initially operated at 400kV) a part of the above transmission system was yet to be firmed up and therefore proposed modifications in the transmission system for the Coastal Energen Pvt Ltd (2x600 MW) and IND Barath Power Ltd (2x660 MW) projects in Tuticorin area of Tamil Nadu were agreed.

25. The above fact is not denied by the 2nd Respondent. In the circumstances, it is undisputed that the 2nd Respondent is responsible for the non-execution of the

upstream connectivity as agreed to in the 29th meeting of the Standing Committee on Power System Planning.

26. The Central Commission refers to the above 30th SCM of 05.05.2020 at paragraph 73 of the impugned order but does not extract the paragraph which deals with the admitted non-commissioning of the upstream new 765/400kV Substation at Salem Pooling Station.

27. The admitted non-commissioning of upstream new 765/400kV Substation at Salem Pooling Station resulted in the alternative arrangement discussed in the 30th SCM of 05.05.2020.

28. This alternate arrangement has a financial implication on the 2nd Respondent. The question, therefore, is who should bear the financial implication of this LILO of both the circuits of Tuticorin JV – Madurai 400kV Quad D/C line at Tuticorin Pooling Station.

29. As per the Regulation 4(3) (i) and Regulation 12 (2) of CERC's Tariff Regulation 2014, under which the transmission tariff for the LILO portion is determined is extracted as under:

Regulation 4 (3):

(i) where the transmission line or substation is dedicated for evacuation of power from a particular generating station, the generating company and transmission licensee shall endeavour to commission the generating station and the transmission system

simultaneously as far as practicable and shall ensure the same through appropriate Implementation Agreement in accordance with Regulation 12(2) of these Regulations.”

Regulation 12 (2):

“The “uncontrollable factors” shall include but shall not be limited to the following:

- i. Force Majeure events.; and*
- ii. Change in law.*

Provided that no additional impact of time overrun or cost over-run shall be allowed on account of non-commissioning of the generating station or associated transmission system by SCOD, as the same should be recovered through Implementation Agreement between the generating company and the transmission licensee:

Provided further that if the generating station is not commissioned on the SCOD of the associated transmission system, the generating company shall bear the IDC or transmission charges if the transmission system is declared under commercial operation by the Commission in accordance with second proviso of Clause 3 of Regulation 4 of these

regulations till the generating station is commissioned:

Provided, also that if the transmission system is not commissioned on SCOD of the generating station, the transmission licensee shall arrange the evacuation from the generating station at its own arrangement and cost till the associated transmission system is commissioned.

30. The Central Commission failed to take note of the admitted non-commissioning of upstream new 765/400kV Substation at Salem Pooling Station and the resultant alternative arrangement discussed in the 30th SCM of 05.05.2020 in view of the third proviso to Regulation 12 (2) of Tariff Regulations 2014.

31. It is submitted that as per third proviso to Regulation 12 (2) of Tariff Regulations 2014, the 2nd Respondent is liable to arrange the evacuation from the generating station at its own arrangement and cost till the associated transmission system is commissioned. The Central Commission failed to advert to and comply with its own regulations in the admitted facts of the present case. In the circumstances, the impugned order is liable to be set aside.

32. **[B]** LILO of one circuit of the NTPL-Madurai D/C line as an interim arrangement due to non-commissioning of its dedicated evacuation line up to the Sub-station of 2nd Respondent by Coastal Energen, the Respondent generator herein.

33. There was delay on the part of the generators in constructing the dedicated evacuation line from the generating station to the Tuticorin Pooling Station. In order to facilitate the drawl of startup power and for evacuation of power generated by the generators till the generators commission their dedicated evacuation line, a temporary arrangement was made by LILO. The relevant extract of meeting of 38th SRSCM dated 7.3.2015 is as under:

“23.0 ATS Tuticorin JV (2x500 MW) TPS of M/s NTPL

*30.1 Director, CEA stated for power evacuation from the Tuticorin JV TPS, a 400 kV Tuticorin JV TPS-Chekkannurani (Madurai) D/C Quad line with 2 x 315 MVA, 400 kV/220 kV ICT at Tuticorin JV TPS had been agreed. Accordingly, M/s. PGCIL has erected 2 nos. of 400kV NTPL-Madurai DC Quad feeder lines. For evacuation of power from Coastal Energen, LILO of one circuit of the NTPL-Madurai D/C line was agreed **as an interim arrangement.***

30.2 Further, as per NTPL’s letter M/s. PGCIL is scheduled to commission 400kV system of its 400kV/765kV pooling station at Ettayapuram, near Tuticorin shortly with 4 nos. of 400 KV bays. The existing 400kV NTPL-Madurai and 400kV Coastal Energen-Madurai feeders will be shifted to pooling station. However, the 400kV tie between NTPL and

*M/s Coastal Energen would continue. **So, with only 2 nos. of 400kV Ettayapuram PS-Madurai feeders being available, stability of power evacuation system of NTPL would be of concern.***

*30.3 PGCIL informed that as per the agreed scope of power evacuation system of Costal Energen is to construct a 400kV Quad D/C line from its switchyard to Tuticorin Pooling Station. As an interim arrangement, this line has been part completed by making LILO of one circuit of the NTPL-Madurai D/C line. **After commissioning of the Costal Energen-Tuticorin P.S. 400kV Quad D/C line, the NTPL-Madurai/ Tuticorin Pooling Station D/C line would be restored.***

*30.4 Accordingly, the NTPL apprehension regarding the tie line between NTPLCoastal Energen line, **it was clarified that this tie line would be disconnected after commissioning of Costal Energen-Tuticorin P.S. 400kV Quad D/C line.***

34. The above minutes clearly establishes the LILO is only a temporary arrangement, that the stability of power evacuation system of NTPL would be of concern. The above situation arose due to the default of the generator in constructing the dedicated evacuation line from its generating unit to the sub-station of the 2nd Respondent. It is submitted that as per Regulation 8 (5) of Central

Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010, (in short “the 2010 Sharing Regulations”):

*“In the case of the Approved Withdrawal or Approved Injection not materializing either partly or fully **for any reason whatsoever**, the Designated ISTS Customer shall be obliged to pay the transmission charges allocated.”*

35. Here the DICs are the LTOA customers i.e., IPPs who have entered into LTA agreements with the 2nd Respondent. The financial implication of the entire exercise carried out in the 38th SRSCM dated 07.03.2015 is to be borne by the IPPs till the dedicated evacuation lines are commissioned by them.

The relevant paragraphs of the impugned order are extracted as under:

“Sharing of Transmission Charges

72. We have considered the submissions of TANGEDCO, which have been earlier discussed at para-9 of this order. We are of the view that the LILO of the Tuticorin JV-Madurai 400 kV D/C line at Tuticorin Pooling station is redundant and it is of no use to the beneficiaries, unless and until the pooling stations and upstream connectivity is put under operation. Hence, the claim of the petitioner is totally baseless and there is no provision in the Regulations for allowing tariff for any transmission element without any beneficial use.

73. The SLD of the instant assets is given at Annexure-III to this order. The moot question is who would bear the transmission charges if upstream/downstream transmission system is not ready? In this regard, we have perused the minutes of 30th SCM held on 5.5.2010, in which the assets covered in the instant petition were planned and implemented to evacuate power from CEPL and IBPL. The relevant extract of meeting is as under:-

“5.0 Transmission System Associated with the Coastal Energen Pvt. Ltd (2x660 MW) and IND Barath Power Ltd (2x660 MW) projects in Tuticorin area of Tamil Nadu:

5.1 Chief Engineer, CEA explained that the Tuticorin Pooling Station-Tuticorin JV Station (of NLC) 400kV D/C Quad Line was inter-alia agreed as part of the transmission system associated with the Coastal Energen Pvt. Ltd (2x600 MW) and IND Barath Power Ltd (2x660 MW) projects in Tuticorin area of Tamil Nadu. Later, NLC informed that they could spare only one bay at their Tuticorin JV station. As such, considering space constraint and better capacity utilization of the 400kV quad D/C line, it is now proposed that instead of the Tuticorin Pooling Station of Tuticorin DV Station 400kV D/C line, both the circuits of Tuticorin JV-Madurai 400kV Quad D/C line may be LILLOed at Tuticorin Pooling Station.

5.2 After discussions, the above proposed modifications in the transmission system for the Coastal Energen Pvt. Ltd (2x600

MW) and IND Barath Power Ltd (2x660 MW) projects in Tuticorin area of Tamil Nadu were agreed.”

74. We have also perused the RLDC certificate dated 16.2.2015 whereby one circuit is indicated as LILO of Madurai Coastal Energen. On perusing the minutes of 38th SCM dated 23.3.2015, it is observed that one Ckt. of Madurai-NTPL has actually been LILLOed at Coastal Energen which, is again LILLOed at Tuticorin Pooling Station. The relevant extract of meeting of 38th SRSCM dated 7.3.2015 is as under: -

“23.0 ATS Tuticorin JV (2x500 MW) TPS of M/s NTPL

30.1 Director, CEA stated for power evacuation from the Tuticorin JV TPS, a 400 kV Tuticorin JV TPS-Chekkannurani (Madurai) D/C Quad line with 2 x 315 MVA, 400 kV/220 kV ICT at Tuticorin JV TPS had been agreed. Accordingly, M/s. PGCIL has erected 2 nos. of 400kV NTPL-Madurai DC Quad feeder lines. For evacuation of power from Coastal Energen, LILO of one circuit of the NTPL-Madurai D/C line was agreed as an interim arrangement.

30.2 Further, as per NTPL’s letter M/s. PGCIL is scheduled to commission 400kV system of its 400kV/765kV pooling station at Ettayapuram, near Tuticorin shortly with 4 nos. of 400 KV bays. The existing 400kV NTPL-Madurai and 400kV Coastal Energen-Madurai feeders will be shifted to pooling station. However, the 400kV tie between NTPL and M/s Coastal Energen would continue. So, with only 2 nos. of 400kV Ettayapuram PS-Madurai

feeders being available, stability of power evacuation system of NTPL would be of concern.

30.3 PGCIL informed that as per the agreed scope of power evacuation system of Costal Energen is to construct a 400kV Quad D/C line from its switchyard to Tuticorin Pooling Station. As an interim arrangement, this line has been part completed by making LILO of one circuit of the NTPL-Madurai D/C line. After commissioning of the Costal Energen-Tuticorin P.S. 400kV Quad D/C line, the NTPL-Madurai/ Tuticorin Pooling Station D/C line would be restored.

30.4 Accordingly, the NTPL apprehension regarding the tie line between NTPLCoastal Energen line, it was clarified that this tie line would be disconnected after commissioning of Costal Energen-Tuticorin P.S. 400kV Quad D/C line.”

75. The LILO was agreed in SCMs where TANGEDCO also participate Further, regarding the apprehension of TANGEDCO that NTPL will be backed down, it is directed that CTU/RLDC should take care while granting access to /scheduling CEPL that NTPL is not backed down due to scheduling for CEPL due to interim arrangement. It is also observed that in 38th SCM, LILO of Madhurai-NTPL at Coastal is agreed as interim arrangement. In this regard, we have already directed, vide order dated 7.10.2015 in Petition No. 112/TT/2013, as follows:-

“65 The associated transmission lines were to be constructed by the generation developer matching with the transmission system to be developed by the petitioner and the LILOs constructed by

generation developers which were temporary arrangement were to be replaced by the associated transmission system. It is noticed that some of the generation developers have not commissioned the dedicated lines and are continuing to evacuate power through the temporary LILO arrangements. We direct the petitioner to discuss the issue in the Standing Committee Meeting on Transmission and finalize the timeline for replacement of the LILOs of generation developer by dedicated transmission lines within a period of six months from the date of connection of LILO of the petitioner.”

Accordingly, we direct that the interim LILO by CEPL be removed within 6 months from the date of issue of this order.

76. We agree with the submission of TANGEDCO that the petitioner should have completed up-stream system i.e., Tuticorin-Salem and Tuticorin-Madurai line as per scheduled timeline so that all the assets provide their intended benefits. We direct the petitioner to complete the construction of these assets expeditiously. However, LILO has been declared commercial by the petitioner under the 2014 Tariff Regulation and to deal with such situation, in a similar case of Petition No. 112/TT/2013 we have decided as follows: -

“Since the generation developers have failed to construct the dedicated transmission lines due to which assets created by the petitioner covered under the present petition are not serving the intended purpose, we are of the view, that the tariff for these assets shall be borne by the generators till operationalisation of

their LTA as required under Regulation 8(5) of the 2010 Sharing Regulations as stated in para 60 herein. Till such time, the tariff for the assets shall be excluded from PoC pool.”

77. Thus, drawing analogy from above, we are of the view that CEPL and IBPL shall pay transmission charges for the instant assets till the dedicated transmission line upto the Tuticorin Pooling Station are constructed and declared under commercial operation and put to regular use by the concerned generating station. If one of the generating stations commissions the dedicated transmission line, in that case 50% of the charges of LILO will be included under PoC and the balance 50% of the transmission charges shall be borne by the generating which has not commissioned the dedicated transmission line. After both the generating stations commission the dedicated transmission lines, the billing, collection and disbursement of the transmission charges approved shall be governed by the provisions of Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010, as amended from time to time, as provided in Regulation 43 of the 2014 Tariff Regulations.”

36. It is submitted that the Central Commission in the operative part of the impugned order does not spell out clearly that LILO of both the circuits of Tuticorin JV – Madurai 400kV Quad D/C line at Tuticorin Pooling Station modified as an alternate route for power transfer by 2nd Respondent due to non-commissioning of upstream connectivity by the 2nd Respondent on the date of COD of the generating

station is to be borne by the 2nd Respondent as per the third proviso to Regulation 12 (2) of Tariff Regulations 2014; though the findings arrived at by the Central Commission are in favour of the Appellant.

37. It is submitted that on the issue of payment of transmission charges as found in paragraph 77, the Central Commission failed to appreciate that in view of the alternate arrangement made by the 2nd Respondent due to its default in commissioning the upstream connectivity by 2nd Respondent, the liability to bear the cost of alternative arrangement is on the 2nd Respondent as per third proviso to Regulation 12 (2) of Tariff Regulations 2014.

38. The findings of the Central Commission in order dated 29.06.2017 in 61/RP/2016 filed by the 2nd Respondent before CERC is not challenged by the 2nd Respondent by filing an appeal. The relevant extract is as under:

“Analysis and Decision”

8. We have considered the submissions of the Review Petitioner and TANGEDCO. Though this Review Petitioner was tagged with Review Petition No. 54/RP/2016 on the basis of the submission of TANGEDCO, on perusal of both Review Petitions we find that the prayers in the present petition are different from the prayers in Review Petition No. 54/RP/2016. Accordingly, we have decided to issue the order based on the facts and pleadings in each case. The basic contention of the Review Petitioner is that the transmission charges of the instant transmission assets

*should be included in the PoC charges as provided in the 2010 Sharing Regulations and there is no other mechanism to recover the transmission charges. We are of the view that only those transmission assets which are put to useful service of the DICs shall be included in the PoC charges. **However, in cases where the transmission assets have not been put to useful service on account of the non-availability of upstream or downstream system, the transmission charges for the said assets cannot be loaded to the DICs through PoC mechanism.** Accordingly, the transmission charges for the assets have not been correctly included in the PoC charges.”*

39. The above finding in the review petition is in line with the findings in the main order:

“72. We have considered the submissions of TANGEDCO, which have been earlier discussed at para-9 of this order. We are of the view that the LILO of the Tuticorin JV-Madurai 400 kV D/C line at Tuticorin Pooling station is redundant and it is of no use to the beneficiaries, unless and until the pooling stations and upstream connectivity is put under operation. Hence, the claim of the petitioner is totally baseless and there is no provision in the Regulations for allowing tariff for any transmission element without any beneficial use.”

40. This clear finding in it in 127/TT/2014 that the LILO is not of any beneficial use unless and until the pooling stations and upstream connectivity is put under operation has not been challenged by the 2nd Respondent.

41. It is submitted that the LILO of Tuticorin JV-Madurai 400 kV D/C line at Tuticorin Pooling station is redundant and after commissioning of the upstream connectivity up to Selam and Madhugiri by the 2nd Respondent is required to be decommissioned as the same will be of no use to the generator and the Discom.

42. It is submitted that the Appellant is not disputing the fact that the LILO of Tuticorin JV-Madurai 400 kV D/C line at Tuticorin Pooling station was not beneficial to the Appellant and Respondent generator. The issue is the wrong inclusion of this LILO into PoC mechanism as the same is contrary to the third proviso to Regulation 12 (2) of Tariff Regulations 2014.

43. It is submitted that the transmission tariff collected till date by the 2nd Respondent in respect of the LILO of Tuticorin JV-Madurai 400 kV D/C line at Tuticorin Pooling station has to be refunded to the beneficiary Discoms as per the Tariff Regulations.

Written Submissions of the Appellant (Appeal No. 332 of 2017)

44. Moxie Power Generation Limited (formerly Coastal Energen Private Limited), the Appellant, has challenged the Impugned Order dated 29.07.2016 passed by the Respondent Commission in Petition No. 127/TT/2014. By the said

order, the Commission has imposed non-PoC transmission charges amounting to INR 15,43,26,909/- on the Appellant for the period from 04.01.2015 to 27.10.2016.

45. This imposition pertains to the LILO of the 1st and 2nd circuits of the Tuticorin JV–Madurai 400 kV (Quad) line, which were declared commissioned by PGCIL on 04.01.2015 and 08.01.2015, respectively. The Appellant contends that the said charges were imposed in a tariff determination petition filed by PGCIL for the 2014-19 control period, in which PGCIL did not seek recovery of such charges from the Appellant.

46. Therefore, the levy has been made without any prayer to that effect and is contrary to the provisions of the CERC Sharing Regulations, 2010. The Appellant, under protest and without prejudice to its rights, paid the aforesaid amount to PGCIL on 09.10.2017.

47. Subsequently, the Appellant sought reimbursement of the said amount from Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) under Article 4.4.1 of the Power Purchase Agreement dated 19.12.2013, through its letter dated 19.12.2017. The Appellant remains aggrieved by the Impugned Order, which it argues is inconsistent with the applicable regulations and settled legal principles, thereby warranting its reversal.

A. Factual Distinction from Appeal No. 51 of 2018 decided on 01.09.2020

48. PGCIL has contended that the issue raised by the Appellant with respect to

payment of non-PoC charges qua the LILO is covered by the Judgment of this Tribunal in the decision of Jindal India Thermal Power Limited v. Central Electricity Regulatory Commission and Ors. in Appeal No. 51 of 2018 and batch vide its Order dated 01.09.2020. The same is also relied upon by the Respondent Commission in its para 76-77 of the Impugned Order.

49. Appellant submits that the Respondent Commission as well as PGCIL are legally and factually wrong in placing reliance on the aforesaid decision and that there are key factual aspects which distinguishes the Appellant's case from the edifice of liability imposed qua generating company in the decision of Appeal No. 51 of 2018 and the same are recapitulated as under:

I. Subject LILO was part of Southern Region Transmission System Strengthening

50. In Appeal No. 51 of 2018, the Tribunal in its judgment dated 01.09.2020, specifically at paragraph 3.5, recognized that the LILO in question was purely interim and temporary. It was necessitated because the commissioning of the transmission system under the Bulk Power Transmission Agreement (BPTA) was scheduled to occur after the commissioning of the generating stations.

51. In contrast, the Appellant's case is materially different. As per Annexure-3 of the BPTA entered into between the Appellant and PGCIL, the LILO of both circuits of the Tuticorin JV–Madurai 400 kV D/C quad line at the Tuticorin Pooling Station formed part of the Southern Region System Strengthening scheme. Accordingly, PGCIL was contractually obligated to construct the said LILO under the terms of

the BPTA.

52. Therefore, unlike the temporary LILO in Appeal No. 51 of 2018, which served only as a provisional measure to facilitate power evacuation until the main transmission system became operational, the LILO in the Appellant's case was envisaged as a permanent infrastructure component under the agreed transmission scheme.

II. Issues framed are distinct in present case and that of Appeal No. 51 of 2018

53. It is submitted that the issue raised by the Respondent Commission under para 73 of the Impugned Order relates to liability of transmission charges in the circumstance when PGCIL has admittedly, failed to construct upstream/downstream transmission system. The same is materially different from issue framed by this Tribunal in Appeal No. 51 of 2018, which is extracted as under:

“Whether in the facts and circumstances of the matter, the Central Commission was justified in passing the impugned order holding that the generators would have to bear transmission charges till their dedicated transmission lines are commissioned, under non-poc mechanism?”

54. It is also noteworthy to extract the issue canvassed and the conclusion reached by the Respondent Commission in Petition No. 112/TT/2013 on

07.10.2015, relevant portion is as follows:

“60. We have gone through the above mentioned provisions....In the instance case, the petitioner has commissioned the transmission system and the generator has not performed its part of the BPTA and hence the generator has to bear the transmission charges as provided in clause 2.0(a) and 2.0(c) of the BPTA. ”

55. The above is in sharp contrast to the finding recorded by the Respondent Commission in para 76 of the Impugned Order, which is as follows:

“76. We agree with the submission of TANGEDCO that the petitioner should have completed up-stream system i.e. Tuticorin-Salem and Tuticorin-Madurai line as per scheduled timeline so that all the assets provide their intended benefits.”

56. As can be seen from the above, in the case of Appeal No. 51 of 2018, considering that the generators had delayed the construction of their dedicated transmission lines and were using the temporary interim LILO constructed solely to evacuate power for supply to their beneficiaries, the transmission charges qua such LILO were imposed upon the generators, however, in the case of the Appellant, no non-POC charges qua the subject LILO could have been imposed upon the Appellant considering that the subject LILO was part of the overall transmission system and construction of the up-stream system beyond Tuticorin Pooling Station was delayed by PGCIL as a result of which no power could have

flowed through such LILO regardless of whether the Appellant's dedicated transmission line was commissioned or not.

57. As the dedicated transmission line was commissioned on 27.10.2016 whereas as per the ATS report dated 29.02.2024 (available on the website of CTUIL) the Tuticorin-Salem upstream line was commissioned in November, 2016 and Tuticorin-Madhugiri upstream line was commissioned in October, 2018 i.e. much after the Appellant's dedicated transmission line.

III. Subject LILO was never "put to use" for evacuation of power

58. It is submitted that another distinguishing factor which renders the entire claim of PGCIL non-est is the plain fact that the subject LILO for which non-PoC charges have been imposed, was never utilised for power evacuation and hence to rely on the decision in Appeal No. 51 of 2018 is entirely misconceived, inasmuch as the said fact relating to "use" of LILO formed the entire edifice in upholding the liability on generating companies. The relevant portion is as follows:

"10.24. ...What thus transpires is that the generating stations of the Appellants which also include dedicated transmission lines from generating stations to nearest pooling station of the second Respondent were not completed as per schedule mainly because of delay in completion of dedicated transmission line. Pending completion of the dedicated transmission lines of the Appellants, to enable evacuation of generated power, an

interim LILO arrangement was provided by the second Respondent/PGCIL. This is not in dispute that the power was scheduled through these LILO arrangements by the Appellant generators to the beneficiary discoms of Orissa & Bihar but the fact remains that the generating stations of the Appellants were not commissioned in their entirety...

10.25It is relevant to note that though power has flown though interim LILO arrangement but this has enabled to the sole benefit to the Appellant generators who have recovered their generation tariff even without completing dedicated transmission lines. We are, therefore, inclined to accept the contentions of the Respondent Discoms that without completion of all assets of the generators as well as the second Respondent, they should not be burdened with transmission charges”

IV. No transmission charges can be levied prior to operationalization of the LTA

59. Regulation 43 of the CERC (Terms and Conditions for Determination of Tariff) Regulations, 2014, mandates that transmission charges must be governed solely by the CERC (Sharing of Transmission Charges and Losses in Inter-State Transmission System) Regulations, 2010 (“Sharing Regulations, 2010”). Under the said framework, transmission charges for PGCIL can only be levied through the Point of Connection (PoC) mechanism.

60. However, the Respondent Commission, through the impugned order, has introduced an entirely distinct mechanism by imposing non-PoC charges upon the Appellant contrary to and beyond the scope of the Sharing Regulations, 2010 and thus ultra vires the Act.

61. Further, no transmission charges were legally leviable on the Appellant during the period 04.01.2015 to 27.10.2016, as the Appellant's Long-Term Access (LTA) had not yet commenced. The LTA was operationalized only on 01.12.2016, following the commissioning of the upstream transmission line from Tuticorin Pooling Station to Salem, as confirmed by PGCIL's letter dated 01.12.2016.

62. Therefore, the subject LILO was never used for evacuation of power from the Appellant's generating station to the designated delivery point during the disputed period. Additionally, PGCIL never sought recovery of non-PoC charges for the subject LILO from the Appellant before the Respondent Commission.

63. Despite this, the Commission erroneously devised an entirely new mechanism of recovery that lacks legal backing under the applicable regulations. Notably, PGCIL's own submissions in its Review Petition contradict the imposition of such charges.

64. It is also settled that a decision is only binding for what it actually decides and this Tribunal is not bound by what can be logically deduced from it. Further, a decision has to be seen in the facts it has been rendered and even a single fact can make a sea change. This principle is articulated by Earl of Halsbury L.C. in

Quinn v. Leathem [1901] AC 495, as under:

"Every judgment must be read as applicable to the particular facts proved, or assumed to be proved... A case is only an authority for what it actually decides."

65. The Hon'ble Supreme Court of India has adopted and reaffirmed this doctrine in *State of Orissa v. Sudhansu Sekhar Misra* (1968) 2 SCR 154 and in para no. 9 of the *Padma Sundra Rao vs. State of T.N. & Ors*, reported in (2002) 3 SCC 533, wherein the Hon'ble Supreme Court of India in a constitutional bench judgment has recognized and enunciated the above principle.

66. Therefore, in the light of the above discussion, the following can be summarised to be distinctive, thereby not making the judgment dated 01.09.2020 passed in Appeal No. 51 of 2018 and Batch as applicable to the facts and circumstance of the present appeal:

- (i) The issue framed by the Respondent Commission in the respective cases are different, since, in the case of Appeal No. 51 of 2018 the dedicated transmission line was delayed whereas the upstream and downstream assets were commissioned by Powergrid; on the contrary, in the present case, admittedly there was no upstream and downstream assets commissioned by Powergrid and the Commission framed issue to deal with the situation as to who shall bear the transmission charges if upstream/ downstream transmission system is not ready;

The above was neither the case in facts nor in law in Appeal No. 51 of 2018 and Batch;

- (ii) The second glaring distinction is that the subject LILO was never utilized by the Appellant for evacuating its power, admittedly the power has flown from its own LILO which loops in and loops out the generating bus bar with Tuticurin JV and Madurai 400/ 220 kV line. Therefore, the question of making any payment towards transmission charges does not arise.

67. In view of the above factual distinctions as well as the settled law, it is submitted that the earlier decision of this Tribunal in Appeal No. 51 of 2018 is not applicable to the present matter.

B. In re: Default of PGCIL attained finality in absence of challenge

68. The Appellant commissioned its Dedicated Transmission Line (DTL) on 27.10.2016, prior to the commissioning of PGCIL's upstream assets specifically, the Tuticorin Pooling Station-Salem Pooling Station line and the Salem PS-Madhugiri PS line which were commissioned only on 13.11.2016 and in October 2018, respectively. This clearly establishes that the delay in operationalizing the upstream transmission network lies with PGCIL.

69. The impugned order is vitiated by a fundamental inconsistency. At para 76, the Respondent Commission acknowledges PGCIL's failure to timely complete the upstream system. However, in the subsequent para 77, it erroneously concludes

that the Appellant must bear the liability for the commissioning of an asset which, in effect, remained non-operational due to PGCIL's default. This finding ignores two key facts: first, that the Appellant's DTL was commissioned even before the upstream system; and second, that evacuation did not occur through the subject LILO but through an interim LILO independently constructed by the Appellant at its own expense.

70. The contradictory reasoning reflects non-application of mind and a lack of a fair, reasoned determination. The finding of default on the part of PGCIL, recorded in para 76, has attained finality since it has not been challenged. It is a settled legal principle that a party cannot take advantage of its own wrong. This *doctrine nullus commodum capere potest de injuria sua propria* has been affirmed by the Hon'ble Supreme Court in *Union of India v. Major General Madan Lal Yadav* (1996) 4 SCC 127 and *Ashok Kapil v. Sana Ullah (Dead)* (1996) 6 SCC 342.

71. Therefore, in light of PGCIL's admitted failure to timely commission its upstream network, and considering that the Appellant bore the cost of constructing and operating an interim LILO, no Non-PoC transmission charges can lawfully be imposed on the Appellant.

C. In re: Submissions of PGCIL in Review Petition and its consequence thereof

72. The Tribunal is urged to take note of PGCIL's own submissions regarding:
(a) the applicable regulatory framework of the Respondent Commission governing the sharing of transmission charges, and

(b) the implications of any delay or default in the commissioning of the dedicated transmission line.

73. Specifically, in para 7 of its submissions, PGCIL categorically stated that recovery of transmission charges, as per the prevailing regulatory framework, can only be affected through the PoC mechanism.

74. It further clarified that the Respondent Commission is not empowered to permit recovery via any non-PoC route. PGCIL also submitted that in cases of delay in constructing the dedicated transmission line, the only permissible consequence under the Bulk Power Transmission Agreement is the invocation of the Bank Guarantee, not the imposition of non-PoC charges.

75. In light of the above, PGCIL, having previously disavowed any legal entitlement to claim non-PoC charges, cannot now reverse its position or justify such a claim. Its prior unequivocal submissions, made in Review Petition No. 61/RP/2016 and recorded in the Review Order dated 29.06.2017, bind it to the position that non-PoC recovery is impermissible.

D. No consideration is payable in the absence of utilization of the assets

76. This argument was advanced by the Appellant without prejudice to its other arguments. When the subject assets were never been utilized by the Appellant for evacuation of power, the question of making payment towards transmission charges for the subject LILO, does not arise.

E. In re: Scheme of Sharing under the CERC Sharing Regulations, 2010

77. The CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 (“Sharing Regulations, 2010”), framed under Section 178 of the Electricity Act, 2003, constitute the exclusive and exhaustive legal framework for the determination, allocation, and recovery of transmission charges for the use of inter-State transmission systems (ISTS). These Regulations introduced the Point of Connection (PoC) mechanism; a national pooling system aimed at socializing the costs of the inter-State transmission network among all Designated ISTS Customers (DICs).

78. Under the Sharing Regulations, the imposition of transmission charges is contingent on the actual “utilization” of the ISTS assets. Once an asset is utilized by any beneficiary, any recovery of transmission charges must strictly follow the PoC mechanism. Annexure-1 to the Regulations outlines the underlying philosophy of the PoC mechanism, which emphasizes that efficient pricing should reflect the marginal cost of utilization. The operative principle is “utilisation,” and pricing must be linked to it.

79. Accordingly, the moment a transmission asset is brought into use, recovery of associated charges must be affected through the PoC framework. The Regulations do not permit any alternative route for charge recovery once such utilisation has occurred.

80. Regulations 3, 4, and 7 of the CERC Sharing Regulations, 2010, further solidify the principle that all transmission charges must be recovered through the PoC mechanism: Regulation 3 stipulates that Yearly Transmission Charges (YTC) must be shared among all Designated ISTS Customers (DICs) who use the ISTS system. Regulation 4 mandates that YTC shall be apportioned into PoC charges to be borne by all such users.

81. Regulation 7 lays out the methodology for computing PoC charges, which includes conducting load flow studies and calculating nodal/zonal charges based on participation factors for each Application Period. The regulatory framework does not permit the imposition of transmission charges on an individual generator outside the PoC pool. All users must share the cost based on their utilisation of the ISTS, and no standalone charge outside this structure is permissible.

82. The architecture of the 2010 Sharing Regulations is founded on the principle of proportional cost sharing across the national grid, supporting the “one grid, one nation” policy. The imposition of direct, non-PoC charges on a single generator, as done in the Impugned Order, is contrary to this policy and exceeds the mandate of the 2010 Regulations.

83. Moreover, the Regulations make no distinction between temporary (such as LILOs) and permanent connectivity arrangements. The only determinant for liability under the PoC regime is actual utilisation of ISTS assets. Since the subject LILO was never utilised, no liability for transmission charges could lawfully arise under either the Electricity Act or the Regulations. In its earlier order dated 31.05.2010 in Petition No. 233 of 2009, the Respondent Commission approved

the transmission system for the Appellant's project and expressly stated that transmission charges and their sharing would be governed strictly by the Sharing Regulations, 2010.

84. This clearly shows that the PoC mechanism was the approved and applicable cost-recovery method for the Appellant's connectivity, regardless of the LILO's temporary character. The Impugned Order's use of a non-PoC mechanism thus directly contravenes both the regulatory scheme and the Commission's own earlier approval.

85. It is a firmly established principle of statutory interpretation that fiscal and economic regulations must be construed strictly. Any charge, liability, or method of recovery must be expressly provided for within the statutory or regulatory scheme. Courts have consistently applied this principle, including in the following decisions of the Hon'ble Supreme Court:

- i. District Registrar and Collector, Hyderabad & Anr. v. Canara Bank & Ors., (2005) 1 SCC 496 (Para 10);
- ii. Ranbaxy Laboratories Ltd. v. Union of India & Ors., (2011) 10 SCC 292 (Para 14).

86. In the present matter, the Sharing Regulations, 2010 constitute a complete and self-contained framework governing the recovery of transmission charges for inter-State transmission system (ISTS) assets. As such, the Respondent Commission has no authority to:

- i. Depart from the PoC mechanism prescribed therein;

- ii. Impose any direct or non-PoC based charges on the Appellant; or
- iii. Justify the exclusion of any transmission assets from the PoC pool on the ground of alleged delay in the Appellant's dedicated transmission line.

87. Therefore, the imposition of non-PoC charges through the Impugned Order is without legal basis and is in clear contravention of the mandatory framework laid down under the 2010 Sharing Regulations.

F. Procurer/Discom is liable to reimburse the Appellant for Transmission Charges as per the Power Purchase Agreement dated 19.12.2013

88. Without prejudice to the above, it is submitted that even assuming but not admitting any liability whatsoever, it is the ultimate beneficiary, TANGEDCO, which is liable to pay the transmission charges, be it under PoC/Non-PoC charges as per the PPA dated 19.12.2013 executed by the Appellant.

89. It is submitted that the Appellant has executed a long-term PPA dated 19.12.2013 through Case-I Tariff-based competitive bidding route with the TANGEDCO for the capacity of 558 MW RTC Power. Under the PPA, the procurer, i.e., TANGEDCO, is liable to reimburse the transmission charges to the Appellant, notwithstanding the mechanism under which the transmission charges are charged/recovered from the Appellant. The relevant provisions under the PPA dated 19.12.2013 are reproduced as under:

“Interconnection Facilities”:

shall mean the facilities on the Procurer's side of the Delivery

Facilities" Point for receiving and metering the electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipments, transformers, relay and switching equipment and protective devices, safety equipment and, subject to Article 6, the Metering System required for supply of power as per the terms of this Agreement;

“Interconnection Point”:

shall mean the point where the power from the Power Station switchyard bus of the Seller is injected into the interstate/intrastate transmission system (including the dedicated transmission line connecting the Power Station with the interstate/intrastate transmission system);

“Wheeling Charges" or "Transmission Charges"

shall mean the charges to be paid by the Seller and reimbursed by the Procurer as transmission tariff for usage of intervening CTU networks for the transmission of power from the Injection Point up to the Delivery Point, as approved by the Appropriate Commission (excluding the

charges for the STU network or charges of STU system operation or SLPC Charges, if any);

4.13 Transmission Losses

“4.13.1 Transmission losses from the Interconnection Point onwards would be borne by the Procurer, and power lost on account of transmission loss would be to the account of the Procurer.”

4.3 Procurer's Obligations

“4.3.1 Subject to the terms and conditions of this Agreement, the Procurer shall:

a) ensure the availability of Interconnection Facilities and evacuation of power from the Delivery Point before the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be;

b) be responsible for payment of the Transmission Charges (from the Injection Point onwards) and applicable RLDC / SLDC charges, limited to the charges applicable to the Contracted Capacity of Procurer. The Procurer shall reimburse any of the above charges, if paid by the Seller”;

4.4 Transmission/Wheeling Charges and RLDC/SLDC Charges

“4.4.1 The payment of POC and Non POC Charges to the CTU, from the Injection Point to the Delivery Point shall be paid by the Seller and would be reimbursed by the Procurer.

4.4.2 The payment of RLDC/SLDC shall be the responsibility of the Procurer.”

90. The PPA dated 19.12.2013 clearly stipulated the reimbursement of transmission charges from the Procurer under Article 4.3, read with 4.4.1, in respect of PoC and Non-PoC charges, both to the PGCIL. Therefore, the necessary direction should be made to TANGEDCO for the reimbursement of the transmission charges as per the terms of the PPA.

91. In view of the above, it is submitted that the present appeal needs to be allowed and the consequential prayer to be granted.

Written Submissions of the Respondent No.2, PGCIL, Appeal No. 206 of 2017 dated 23.10.2024

92. The contention of TANGEDCO regarding the regulatory approval for the subject assets, it is submitted that the Central Commission in the Order dated 31.05.2010 in P. No. 233/2009 has already given the regulatory approval for the complete transmission system associated with the IPP Projects in the Tuticorin

Area of Tamil Nadu, including the LILO.

93. The Central Commission has taken cognizance of the discussion held in the 30th SCM Meeting while passing the Impugned Order. The consequence, as agreed in the 30th SCM that the subject LILO was a permanent transmission line of the ISTS Grid, and it is not that the LILO was for an interim measure and would be removed after the commissioning of the dedicated transmission lines of both generators.

94. The aforesaid SCM meetings also have a statutory force under Section 29(4) of the Electricity Act, 2003, which reads as under:

“(4) The Regional power Committee in the region may, from time to time, agree on matters concerning the stability and smooth operation of the integrated grid and economy and efficiency in the operation of the power system in that region.”

95. As per the scheme of the Electricity Act, 2003, the decision of the Regional Power Committee, such as the Standing Committee on Power System Planning of Southern Region, arrived at by consensus, wherein TANGEDCO was also part of the same, which was done considering the stability and smooth operation of the regional grid. Further, the Central Commission has also granted Regulatory Approval for the subject transmission system vide its Order dated 31.05.2010 in P. No 233/2009.

96. Further, with regard to the reliance of TANGEDCO on the proviso to

Regulation 12 (2) of the CERC (Terms and conditions of Tariff) Regulations, 2014 (“Tariff Regulations, 2014”), it is submitted that same is erroneous and misleading since the said proviso talks about the interim arrangement of the system to the main/ system if the main scheme or the line is not commissioned on the COD of the generating station. However, in the present case, POWERGRID has already implemented the planned transmission system for the evacuation of power. TANGEDCO cannot merely rely on the said provision to wriggle out of the obligation to pay the charges for the subject assets.

97. Further, TANGEDCO was a direct beneficiary of the instant LILO lines as CEPL was evacuating 558 MW power under Short Term Open Access (“STOA”) route since commissioning of these lines till 30.06.2015 to TANGEDCO and subsequently under MTOA till 30.06.2018. In addition, these LILO lines were providing grid stability for the evacuation of power from Tuticorin JV and CEPL generation plants.

98. It is also pertinent to mention that the Central Commission has directed to recover the transmission charges of LILO lines from generators till commissioning of their dedicated lines, and accordingly, the entire transmission charges in the ratio of 50:50 were billed to CEPL & IBPML till 29.10.2016, i.e., the date of commissioning of dedicated line by CEPL, and subsequently, 50% of the same was included in the PoC mechanism corresponding to CEPL. Subsequently, on commissioning of the CEPL dedicated transmission line and Tuticorin pooling station - Salem pooling station 765 kV D/c line, LTA of 1100 MW Coastal Energen was operationalized w.e.f. 01.12.2016. Therefore, TANGEDCO has no cause of action to challenge the Impugned Order passed by the Central Commission as

even though it was enjoying power generated from CEPL generation power, it did not pay any transmission charges for these assets till the commissioning of dedicated line by CEPL i.e. 27.10.2016 and subsequently, 50% transmission charges which were to be paid regarding the transmission assets are for the use by the beneficiaries which has enabled the evacuation of power to it.

99. It is also ironic that on one hand, TANGEDCO is contending that it never utilized the subject LILO lines and therefore should not be asked to pay the transmission charges for the same. However, TANGEDCO has been using subject LILO lines since their commissioning. Similar arguments have also been placed by CEPL in Appeal No. 332 of 2017 wherein CEPL is contending that since subject LILO is being used since its commercial operation to supply power to TANGEDCO, it should not be made liable to pay and transmission charges ought to be recovered in accordance with Sharing Regulations, 2010. POWERGRID being a transmission licensee and having commissioned the LILO by investing substantial capital cost cannot be left remediless and ought to be allowed to recover its tariff. POWERGRID is concerned with the recovery of its transmission charges in an expeditious manner and cannot be put at a loss when its tariff is being determined under Sections 61, 62 & 79 (1) (d) of the Electricity Act, 2003.

100. With regard to TANGEDCO's contention that the LILO forms part of the common transmission system along with upstream connectivity and the COD cannot be declared in isolation, it is submitted that reliance is also placed on Regulation 6 and 7 of the Tariff Regulations, 2014, which provides for an enabling regulatory framework for tariff determination for whole or part of the transmission system. Regulation 6 and 7 of the Tariff Regulations, 2014, inter-alia, reads as

under:

"6. Tariff determination

(1) Tariff in respect of a generating station may be determined for the whole of the generating station or stage or generating unit or block thereof, and tariff in respect of a transmission system may be determined for the whole of the transmission system or transmission line or sub-station or communication system forming part of transmission system:

(2) For the purpose of determination of tariff, the capital cost of a project may be broken up into stages, blocks, units, transmission lines and sub-stations, forming part of the project, if required:

7.Application for determination of tariff

(2) The transmission licensee may make an application for determination of tariff for new transmission system including communication system or element thereof as the case may be in accordance with the Procedure Regulations, in respect of the transmission system or elements thereof anticipated to be commissioned within 180 days from the date of filing of the petition."

Further, Regulation 4(3) of the Tariff Regulations, 2014 provides as under: -

“

4. Date of Commercial Operation: The date of commercial operation of a generating station or unit or block thereof or a transmission system or element thereof shall be determined as under:

(3) Date of commercial operation in relation to a transmission system shall mean the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service after successful trial operation for transmitting electricity and communication signal from sending end to receiving end:

Provided that:

(i) where the transmission line or substation is dedicated for evacuation of power from a particular generating station, the generating company and transmission licensee shall endeavour to commission the generating station and the transmission system simultaneously as far as practicable and shall ensure the same through appropriate Implementation Agreement in accordance with Regulation 12(2) of these Regulations:

(ii) in case a transmission system or an element thereof is prevented from regular service for reasons not attributable to the transmission licensee or its supplier or its contractors but is on account of the delay in commissioning of the concerned generating station or in commissioning of the upstream or downstream transmission system, the transmission licensee shall approach the Commission through an appropriate application for approval of the date of commercial operation of such transmission system or an element thereof.

101. During the hearing, TANGEDCO heavily relied on the proviso to Regulation 4 (3) of Tariff Regulations, 2014 to contend that the present assets are dedicated transmission assets and the transmission charges ought to have been paid for only by the Generating Companies or that the transmission assets should have exactly matched with the commissioning of the Generators. In this regard the following are relevant:

- (a) LILO was never a dedicated transmission asset and was part of the common evacuation system as agreed to in the 30th SCM dated 13.04.2010.
- (b) Moreover, POWERGRID has not claimed any deemed COD approval under Regulation 4(3) of the Tariff Regulations, 2014. Therefore, when the main provision was not invoked, there can be no question of

applicability of any provision of Regulation 4 (3) of the Tariff Regulation, 2014.

102. Thus, the Tariff Regulations, 2014 contemplates both situations, first where the regular COD of transmission assets is achieved and second, where the transmission licensee, having completed the transmission asset is entitled to seek the declaration of COD under regulation 4(3)(ii) and recovery of tariff if the upstream or downstream system does not come. In the present case, POWERGRID was never seeking such a COD under regulation 4(3)(ii) but had achieved the actual COD of the LILO of both circuits on 04.01.2015 and 08.01.2015 respectively after successful trial operation. The LILO is providing service to the ISTS Grid including TANGEDCO from the date of its COD and POWERGRID should be entitled to recover its entire transmission charges.

103. This is not a case where after the COD of the dedicated transmission lines by CEPL & IBPML, the POWERGRID LILO would be dismantled or removed. The LILO would remain in service even after the construction of the dedicated transmission lines and tariff for the same ought to be recovered as per Sharing Regulations, 2010. In fact, the LILO is providing grid stability for the evacuation of TANGEDCO's power from Tuticorin JV and CEPL's plant itself.

104. It is also important to note that in the absence of the upstream system i.e., Salem pooling station - Madhugiri pooling station 765 kV S/c and Salem Pooling Station-Salem 400 kV D/C Quad Line which were delayed due to force majeure events, the CEPL power was evacuated by POWERGRID LILO and the Central Commission has not directed TANGEDCO to pay any transmission charges. It is

CEPL and IBPL that have been made liable to pay the transmission charges till they commission their dedicated transmission lines. Therefore, it could be said that TANGEDCO has no cause of action to challenge the Impugned Order as it cannot be considered as aggrieved party in the instant appeal. It cannot be the case that TANGEDCO being the beneficiary of the Subject Asset, now at this stage raises hyper-technical grounds to evade the payment of the usage of the Subject Assets, while still using the same. In this regard, POWERGRID places reliance upon the judgement dated 01.09.2020 passed by this Tribunal in Appeal No. 51 of 2018 & Batch, wherein this Tribunal has held as under:

“10.24 On the other hand, learned counsel for the Respondent Discoms of Orissa & Bihar have mainly relied upon the Regulation 8(5) and 8(6) of the Sharing Regulations, 2010 which is relevant regulation for determination of the specific transmission charges applicable for a designated ISTS customer. The Respondent Discoms have categorically referred to the Regulation 8(6) which reads thus:-

“.....In the instant case, the petitioner has commissioned the transmission system and the generator has not performed its part of the BPTA and hence the generator has to bear the transmission charges as provided in clause 2.0(a) and 2.0 (c) of the BPTA. Further, as per Regulation 8(5) and 8(6) of the 2010 Sharing Regulations, the generators having long term access are liable to bear the charges for the transmission

system till they achieve 'commercial operation'.....”

To further firm up our views in the matter, we have perused the judgments relied upon by the parties and also the impugned orders passed by the Central Commission. What thus transpires is that the generating stations of the Appellants which also include dedicated transmission lines from generating stations to nearest pooling station of the second Respondent were not completed as per schedule mainly because of delay in completion of dedicated transmission lines. Pending completion of the dedicated transmission lines of the Appellants, to enable evacuation of generated power, an interim LILO arrangement was provided by the second Respondent/PGCIL. This is not in dispute that the power was scheduled through these LILO arrangements by the Appellant generators to the beneficiary discoms of Orissa & Bihar but the fact remains that the generating stations of the Appellants were not commissioned in their entirety because of non-completion of dedicated transmission lines which were integral part of the generating stations. The Sharing Regulations, 2010 are crystal clear that the sharing mechanism as per Annexure I of the Regulation shall be effective only after commercial operation of the generator and till then it shall be responsibility of the generator to pay the transmission

charges. Further, as per Section 2(30) of the Electricity Act, the term generating stations are defined as under:-

(30) "generating station" or "station" means any station for generating electricity, including any building and plant with step-up transformer, switchgear, switch yard, cables or other appurtenant equipment, if any, used for that purpose and the site thereof; a site intended to be used for a generating station, and any building used for housing the operating staff of a generating station, and where electricity is generated by water-power, includes penstocks, head and tail works, main and regulating reservoirs, dams and other hydraulic works, but does not in any case include any sub- station;"

Additionally Section 2(16) is defined as under:-

"(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;"

10.25 Having regard to the provision of the Regulations notified by the Central Commission and various provisions contained in the Electricity Act, 2003, we are of the view that the Central Commission has analysed the various factors associated with the disputes raised in respective petitions and passed the impugned order rendering cogent reasoning and sufficient rationale. The Central Commission while passing the impugned order has made elucidated observations under Para 60 to 66 which leaves no further scope for any ambiguity or perversity. It is relevant to note that though power has flown through interim LILO arrangement but this has enabled sole benefit to the Appellant generators who have recovered their generation tariff even without completing the dedicated transmission lines. We are, therefore, inclined to accept the contentions of the Respondent Discoms that without completion of all assets of the generators as well as the second Respondent, they should not be burdened with transmission charges under POC mechanism which in turn will affect the end consumers.

10.26 In view of the above, we are of the considered opinion that pending COD of their entire generating stations (generating units & dedicated transmission lines), the Appellant generators are liable to bear the transmission charges for the completed assets of the second

Respondent till the commissioning of their dedicated transmission lines. Hence, the appeals are liable to be dismissed.”

105. In the aforesaid Judgment, though the LILO provided was for an interim arrangement, the Tribunal directed for payment of the transmission charges till the commissioning of the dedicated line of the generating station. The present case is one step ahead wherein LILO is final arrangement for evacuation of power and also agreed in the meetings, wherein the Appellant was part of the same.

106. TANGEDCO has raised certain vague grounds in its appeal regarding IEDC, O&M, license fee etc. but there is no clarity on why such a challenge must succeed. POWERGRID denies all such grounds and craves leave to clarify the issues, if raised during the course of arguments as the same were not raised during the last hearing dated 09.09.2024 in the present Appeal.

107. In view of the above facts and circumstances, it is respectfully prayed that the contentions raised by TANGEDCO are completely devoid of merits, wrong and therefore appeal is liable to be rejected by this Tribunal.

Final Written Submissions of the Respondent No. 2, PGCIL in Appeal No. 332 of 2017 dated 07.03.2025

108. The appeal challenges CERC's order dated 29.07.2016 in Petition No. 127/TT/2014. TANGEDCO has also filed a related appeal against the same order (Appeal No. 206 of 2017), for which separate written submissions have been

placed on record.

DETAILS OF THE ASSETS ALONG WITH COD: The Assets covered under the present Appeal are as follows:

Asset No.	Asset Name	Actual COD
Asset-1	Line in Line Out of one circuit of Tuticorin JV- Madurai 400 kV D/C (Quad) line at Tuticorin Pooling Station along with new 765 kV pooling station at Tuticorin (initially charges at 400 kV) and 1x80 MVAR 400 kV Bus Reactor at Tuticorin Pooling Station.	04.01.2015
Asset-2	LILO of 2 nd circuit of Tuticorin JV- Madurai 400 kV (Quad) Line at Tuticorin Pooling Station.	08.01.2015

(Hereinafter collectively referred to as “LILOs / Subject Assets”)

109. The Central Commission vide Impugned Order excluded the recovery of transmission charges of subject transmission assets from the Point of Connection (“PoC”) method and instead directed the generating stations i.e. the Appellant - Moxie Power Generation Limited (“MPGL”) (earlier known as Coastal Energen Private Limited) and Ind-Bharat Power (Madras) Limited (“IBPL”) to pay the same till the time they commission their dedicated transmission lines.

BRIEF SERIES OF EVENTS:

SR. NO.	DATE	EVENTS	AT PG. NO.
1.	27.08.2009	29 th meeting of the Standing Committee on Power System Planning (<i>read with Corrigendum dated 30.09.2009</i>) held and certain discussions held on the transmission system to be developed for MPGL & IBPL.	2 of the compilation filed by POWERGRID
2.	24.02.2010	Bulk Power Transmission Agreement (" BPTA ") was executed between MPGL (<i>then Costal Energen Private Limited</i>), IBPL and POWERGRID, then also performing the role of CTU.	
3.	13.04.2010	30 th SCM, the transmission systems associated with MPGL and IBPL were discussed and modified, which included the LILO of both circuits of the Tuticorin JV – Madurai 400KV Quad line at	7 of the compilation filed by POWERGRID

		Tuticorin Pooling Station – subject transmission assets.	
4.	31.05.2010	Order passed by the Central Commission in Petition No. 233 of 2009 according the regulatory approval for execution of certain transmission corridors which <i>inter alia</i> included the Subject Assets.	9 of the compilation filed by POWERGRID
5.	12.12.2011	The investment approval (“ IA ”) of the subject assets was accorded by the board of directors of POWERGRID.	
6.	20.06.2014	POWERGRID filed Petition No. 127/TT/2014 before the Central Commission seeking approval of transmission tariff for the tariff block 2014-2019 for the subject assets on the basis of anticipated COD.	
7.	24.12.2014	MPGL commissioned its generating units but not its dedicated transmission line.	

8.	04.01.2015	POWERGRID commissioned LILO of 1 st circuit on 04.01.2015 alongwith new 765 kV pooling station at Tuticorin and 1 x 80 MVAR 400 kV Bus Reactor at Tuticorin Pooling Station.	
9.	08.01.2015	POWERGRID commissioned the LILO of 2 nd circuit of Tuticorin JV-Madurai 400 kV (Quad) Line at Tuticorin Pooling Station.	
10.	24.12.2014 to 30.06.2015	MPGL started evacuating 558 MW power under the Short-Term Open Access (“ STOA ”) route from 24.12.2014 to 30.06.2015. MPGL was continuously using the LILO to evacuate the electricity which was supplied to TANGEDCO.	
11.	13.01.2015, 09.02.2016 & 15.06.2016	TANGEDCO filed replies to Petition No. 127/TT/2014 but MPGL even after repeated reminders neither appeared nor even filed any reply.	

12.	07.03.2015	38 th SCM was held, where it was discussed that MPGL is to construct a 400 kV Quad D/C line from its switchyard to Tuticorin Pooling Station. As an interim arrangement, this line has been partly completed by making LILO of one circuit of the NTPL-Madurai D/C line. After the commissioning of the Coastal Energen- Tuticorin P.S. 400 kV Quad D/C line, the NTPL- Madurai/Tuticorin Pooling Station D/C line will be restored.	55 of the compilation filed by POWERGRID
13.	01.07.2015	The STOA was converted to Medium Term Open Access (“ MTOA ”) for evacuating 558 MW and was valid till 03.06.2018.	
14.	16.02.2016	14 th Joint Co-ordination Committee meeting of IPPs granted LTA in SR wherein, IBPL had informed that Unit I is scheduled to be commissioned in June 2018 and Unit II has been abandoned. IBPL also informed that their dedicated	Page 60 - Annexure B of the reply filed by POWERGRID

		line i.e. Ind-Bharat – Tuticorin PS 400kV quad D/C is scheduled for completion by July, 2017.	
15.	10.06.2016	<p>15th Joint Co-ordination Committee meeting of IPPs granted LTA in SR wherein, IBPL informed that the Unit I is scheduled to be commissioned in December 2018 and Unit II stands abandoned.</p> <p>IBPL further informed that their dedicated line i.e. Ind-Bharath – Tuticorin PS 400kV quad D/C is scheduled for completion by September 2018.</p>	Page 74 - Annexure B of the reply filed by POWERGRID
16.	29.07.2016	Impugned Order was passed in Petition No. 127/TT/2014 approving the COD of the LILOs as 04.01.2015 & 08.01.2015 and deciding on the sharing transmission charges.	

17.	13.11.2016	Tuticorin Pooling Station- Salem Pooling Station 765 kV D/C line achieved COD.	
18.	29.10.2016	The dedicated transmission line from MPGL to Tuticorin pooling station (under the scope of the generator) achieved COD.	
19.	03.08.2017	Bill was raised by POWERGRID to MPGL for recovery of transmission charges as per Order dated 29.07.2016 in petition no. 127/TT/2014 for the period – 04.01.2015 to 27.10.2016.	
20.	11.08.2017	MPGL filed the present Appeal.	

110. As is clear from the above list of dates, the LILO for which the transmission charges were determined by the Impugned Order was part of the evacuation system from MPGCL & IBPL. The relevant decisions in the Standing Committee Meetings are quoted for ready reference:

**A. 29th meeting of the Standing Committee on Power System Planning
(read with Corrigendum dated 30.09.2009) dated 27.08.2009:**

“12.0 Discussions on the Inter State Transmission System (ISTS) Issues in respect of Long Term Open Access Applications (LTOA) made to the Central Transmission Utility (CTU) for Projects in Southern Region:

12.1 Requirement of transmission systems for providing long term open access to following five projects in Southern Region were discussed:

(i) East Coast Energy Pvt Ltd (4x660 MW) In Srikakulam, AP

(ii) NCC Power Project Ltd. (2x660 MW) in Srikakulam, AP

(iii) Coastal Energen Pvt Ltd (2x660 MW), Tuticorin area Tamil Nadu

(iv) IND Barath Power Madras Ltd (4x350 MW), Tuticorin area Tamil Nadu

(v) Singareni Collieries Company Ltd (2x270 MW) near Ramagundam, AP

.....

12.3.2 Transmission System for Coastal Energen Pvt Ltd (2x660 MW) and IND Barath Power Madras Ltd (4x350 MW projects in Tuticorin of Tamil Nadu:

- (i) Establishment of 765 kV pooling station in Tuticorin, Salem and Madhugiri (north of Bangalore) (initially charged at 400kV)***
- (ii) Coastal Energen generation switchyard- Tuticorin pooling station 400kV D/C Quad/ High capacity line***
- (iii) Ind-Barath generation switchyard Tuticorin pooling station 400kV D/c Quad/ High capacity line***
- (iv) Tuticorin Pooling station-Salem Pooling station 765kV D/C line initially charged at 400kV***
- (v) Salem pooling station-Madhugiri pooling station 765kV S/C initially charged at 400kV***
- (vi) Madhugiri-Yelahanka 400kV Quad D/C line***
- (vii) Tuticorin pooling station-Tuticorin JV 400kV D/C quad line.***

.....

12.3.4 Transmission charges for all the transmission systems at 12.3.1 and 12.3.2 above would be shared by all the IPPs of Southern Region who have applied for LTOA in proportion to the capacity for which LTOA had been applied/granted. These charges would be transferred to their beneficiaries as and when confirmed.

.....

12.4 Detailed Minutes of the discussion on LTOA application would be issued by PGCIL.

B. 30th Standing Committee on Power System Planning, dated 13.04.2010:

“5.0 Transmission System Associated with the Coastal Energen Pvt Ltd(2x600 MW) and IND Barath Power Ltd (2x660 MW) projects in Tuticorin area of Tamil Nadu:

*5.1 Chief Engineer, CEA explained that **the Tuticorin Pooling Station - Tuticorin JV Station (of NLC) 400kV D/C Quad line was inter-alia agreed as part of the transmission system associated with the Coastal Energen Pvt Ltd(2x600 MW) and IND Barath Power Ltd (2x660 MW) projects in Tuticorin area of Tamil Nadu. Later, NLC informed that they could spare only one bay at their Tuticorin JV station. As such, considering space constraint and better Capacity utilization of the 400kV quad D/C line, it is now proposed that instead of the Tuticorin Pooling Station - Tuticorin JV Station 400kV D/C line, both the circuits of Tuticorin JV-Madurai 400kV Quad D/C line may be LILoed at Tuticorin Pooling Station.***

He further stated that a new 765/400kV Substation at Salem Pooling Station (to be initially operated at 400kV) was also inter-alia agreed as part of the above transmission system. Connectivity of this new Salem S/S with existing grid was yet to be firmed up depending upon location of the new Salem Pooling Station. It is now proposed that Salem Pooling Station be connected with existing Salem 400kV S/S with a 400kV Quad D/C line.

5.2 After discussions, the above proposed modifications in the transmission system for the Coastal Energen Pvt Ltd(2x600 MW) and IND Barath Power Ltd (2x660 MW) projects in Tuticorin area of Tamil Nadu were agreed.”

111. In view of the above, it is submitted that the subject assets were part of a planned system and the regulatory approval for subject assets was also duly granted by the Central Commission vide Order dated 31.05.2010 in Petition 233/2010. It was only pursuant to the decision reached in the above 30th meeting of SCM and regulatory approval dated 31.05.2010 that POWERGRID constructed LILO from Tuticorin Pooling Station connecting it to Tuticorin JV-Madurai 400kV Quad D/C line to be used for evacuation of power generated at the above two generating stations. Further, LILO was utilized since the commissioning of MPGL generation for evacuation of the MPGL power to TANGEDCO under STOA/MTOA.

C. 38th Standing Committee on Power System Planning, dated 07.03.2015:

“23.0 ATS Tuticorin JV (2x500 MW) TPS of M/s NTPL

23.1 Director, CEA stated for power evacuation from the Tuticorin JV TPS, a 400 kV Tuticorin JV TPS Chekkanurani (Madurai) D/C Quad line with 2 x 315 MVA, 400 kV/220 kV ICT at Tuticorin JV TPS had been agreed. Accordingly. M/s. PGCIL has erected 2 nos. of 400kV NTPL Madurai DC Quad feeder lines. For evacuation of power from Coastal Energen, LILO of one circuit of the NTPL-Madurai D/C line was agreed as an interim arrangement.

23.2 Further, as per NTPL's letter M/s. PGCIL is scheduled to commission 400kV system of its 400kV/765kV pooling station at Ettayapuram, near Tuticorin shortly with 4 nos. of 400 KV bays. The existing 400kV NTPL - Madurai and 400kV Coastal Energen Madurai feeders will be shifted to pooling station. However, the 400kV tie between NTPL and M/s Coastal Energen would continue. So, with only 2 nos. of 400kV Ettayapuram PS Madurai feeders being available, stability of power evacuation system of NTPL would be of concern.

23.3 PGCIL informed that as per the agreed scope of power evacuation system of Costal Energen is to construct a 400kV Quad D/C line from its switchyard to Tuticorin Pooling Station. As an interim arrangement, this line has been part completed by making LILO of one circuit of the NTPL - Madurai D/C line. After commissioning of the Costal Energen Tuticorin P.S. 400kV Quad D/C line, the NTPL-Madurai/ Tuticorin Pooling Station D/C line would be restored.”

112. It is evident from the above that the subject assets were constructed to provide evacuation to the generators to avoid bottling up of power. The LILO of POWERGRID is a permanent asset of the ISTS and was agreed to as a revision of the earlier transmission system with the consent of all the Southern Region beneficiaries at the above-mentioned SCMs wherein MPGL has also participated. This LILO was in fact done since there was a certain space constraint as discussed in the 30th SCM Meeting.

113. The Central Commission has taken cognizance of the discussion held in the 30TH SCM Meeting while passing the Impugned Order. The consequence of the decision of the 30th SCM was that the subject LILO became a permanent transmission line of the ISTS Grid and it is not that the LILO was for an interim measure and would be removed after the commissioning of the dedicated transmission lines of both generators.

114. The aforesaid SCM meetings also have a statutory force under Section 29(4)

of the Electricity Act, 2003, which reads as under:

“(4) The Regional power Committee in the region may, from time to time, agree on matters concerning the stability and smooth operation of the integrated grid and economy and efficiency in the operation of the power system in that region.”

115. As per the scheme of the Electricity Act, 2003, the decision of the Regional Power Committee such as the Standing Committee on Power System Planning of Southern Region arrived at by consensus wherein, TANGEDCO was also part of the same which was done considering the stability and smooth operation of the regional grid is statutory in nature and binding on all the entities.

116. The grounds raised by MPGL in the memorandum of Appeal were limited to asserting that the transmission charges could only be recovered through a single mechanism—namely, through the PoC Pool. MPGL, in its grounds, has contended that, with effect from 01.07.2011, i.e., upon the notification of the CERC (Sharing of inter-state transmission charges and losses) Regulations, 2010 (“Sharing Regulations, 2010”), transmission charges could only be recovered through one mechanism, and no individual liabilities can be imposed on MPGL or any other generators. However, during the course of arguments, MPGL has raised different grounds by referring to Para 9 of the Impugned Order and contended that the instant asset, i.e., the LILO, would remain redundant until certain other elements, such as the *Salem pooling station - Madhugiri pooling station 765 kV S/c* and *Salem Pooling Station-Salem 400 kV D/C Quad Line*, which were part of the upstream connectivity, achieve commercial operation.

117. It is important to note that MPGL did not appear before the Central Commission during the proceedings in Petition No. 127/TT/2014 despite the notice. Further, MPGL has never raised the ground of the non-availability of the upstream system in any of its pleadings before this Tribunal. This argument has presumably been raised by MPGL only in response to POWERGRID's reference to a judgment dated 01.09.2020 in Appeal No. 51 of 2018 & Batch titled "*Jindal India Thermal Power Limited v. Central Electricity Regulatory Commission & Ors*" ("*JITPL Judgement*"), passed by a coordinate bench of this Tribunal, which entirely covers the grounds raised in the present Appeal.

118. Without prejudice to the foregoing, the non-availability of the upstream system would have no impact on the sharing of transmission charges for the LILOs. The LILOs in question achieved their COD on 04.01.2015 and 08.01.2015 and are a permanent feature of the ISTS grid. MPGL achieved COD on 24.12.2014, while its dedicated transmission line was commissioned only on 29.10.2016. MPGL was evacuating 558 MW of power through LILOs since December 2014 till the commissioning of the dedicated transmission line i.e. on 29.10.2016. MPGL also used the LILOs and evacuated 558 MW of power under STOA. The LILOs were continuously utilized to evacuate MPGL's power to TANGEDCO. Effective 01.07.2015, the STOA was converted to MTOA, and MPGL continued to evacuate over 550 MW of electricity through the LILOs. The non-availability of the upstream system had no bearing on the use of the LILOs or the recovery of transmission charges for the same.

119. MPGL has also cited the judgment of the Hon'ble Supreme Court in *Padma*

Sundara Rao (Dead) and Ors. v. State of T.N. and Ors, (2002) 3 SCC 533 on the concept of what constitutes a precedent. A perusal of Para 9 of the judgment further supports the proposition that the issue raised in the instant appeal is covered by the judgment of a coordinate bench of this Tribunal. It is also well settled that this bench of the Tribunal would be bound by the judgment of a coordinate bench especially when the issue of the generator not commissioning its Dedicated Transmission Line is identical in both cases. (REF: *Mahadeolal Kanodia v. Administrator-General of West Bengal* AIR 1960 SC 936 @ Para 19; *State of Bihar v. Kalika Kuer & Ors.* (2003) 5 SCC 448 @ Para 10).

120. The Central Commission, in the Impugned Order at Para 75, relied on its Order dated 07.10.2015 in Petition No. 112/TT/2013 to decide the sharing of transmission charges. It is the very Order dated 07.10.2015, read with the Review Order dated 16.02.2017, that stands upheld by the JITPL Judgment. Moreover, the second Appeal against the said judgment has also been dismissed. The similarities of the facts of both cases are summaries in the following table:

SR. NO.	PARTICULARS	PETITION NO. 112/TT/2013 (Order dated 07.10.2015)	PETITION NO. 127/TT/2014 (Order dated 29.07.2016)
1.	Assets covered	• Asset-I: LILO of Meramundali-Jeypore 400 kV S/C	• Asset 1- LILO of one circuit of Tuticorin JV-Madurai 400 kV D/C

SR. NO.	PARTICULARS	PETITION NO. 112/TT/2013 (Order dated 07.10.2015)	PETITION NO. 127/TT/2014 (Order dated 29.07.2016)
		<p>line at Angul Sub-station;</p> <ul style="list-style-type: none"> • Asset-II: one no. of 125 MVAR Reactor (1st) and associated bays at Angul Sub-station; • Asset-III: one no. of 125 MVAR Reactor (2nd) and associated bays at Angul Sub-station; • Asset-IV: one no. of 125 MVAR Reactor (3rd) and associated bays at Angul Sub-station; 	<p>(Quad) line at Tuticorin Pooling Station along with new 765 kV pooling station at Tuticorin (initially charges at 400 kV) and 1x80 MVAR 400 kV Bus Reactor at Tuticorin Pooling Station.</p> <ul style="list-style-type: none"> • Asset 2- LILO of 2nd circuit of Tuticorin JV- Madurai 400 kV (Quad) Line at Tuticorin Pooling Station.

SR. NO.	PARTICULARS	PETITION NO. 112/TT/2013 (Order dated 07.10.2015)	PETITION NO. 127/TT/2014 (Order dated 29.07.2016)
		<ul style="list-style-type: none"> • Asset-V: LILO of one Ckt. Talcher-Meramundali 400 kV D/C line at Angul Sub-station; • Asset-VI: LILO-I (Ckt.-III) of Rourkela-Raigarh 400 kV D/C line at Jharsuguda Sub-station; • Asset-VII: LILO-II (Ckt.-I) of Rourkela-Raigarh 400 kV D/C line at Jharsuguda Sub-station; • Asset-VIII: one no. of 125 MVAR 	

SR. NO.	PARTICULARS	PETITION 112/TT/2013 (Order dated 07.10.2015)	NO. PETITION 127/TT/2014 (Order dated 29.07.2016)
		<p>Reactor (1st) and associated bays at Jharsuguda Substation;</p> <ul style="list-style-type: none"> • Asset-IX: one no. of 125 MVAR Reactor (2nd) and associated bays at Jharsuguda Substation. 	
2.	Generators involved	<ul style="list-style-type: none"> • Jindal India Thermal Power Limited • M/s Vedanta Limited • IND Barath Energy (Utkal) Limited • GMR Kamalanga Energy Limited 	<ul style="list-style-type: none"> • Moxie Power Generation Limited (<i>formerly known as Coastal Energen Private Limited</i>) • Ind-Bharat Power (Madras) Limited

SR. NO.	PARTICULARS	PETITION NO. 112/TT/2013 (Order dated 07.10.2015)	PETITION NO. 127/TT/2014 (Order dated 29.07.2016)
3.	Review Order	Order dated 16.02.2017 in RP No. 24/RP/2015.	Order dated 29.06.2017 in RP No. 61/RP/2016.
4.	Details of commissioning of the generating station and the Dedicated Transmission Line (" DT Line ") by the Generators	<ul style="list-style-type: none"> • Vedanta (Sterlite) – Unit 1- 10.11.2010 Unit 2- 13.03.2011 Unit 3- 19.08.2011 Unit 4- 25.04.2012 DT Line- 06.11.2017 • Ind Bharat - Generation- 25.02.2016 DT Line- 25.03.2019 • GMR Unit 1- 29.03.2013 	<ul style="list-style-type: none"> • MPGL- Generation- 23.12.2014 DT Line- 27.10.2016 • Ind Bharat – Abandoned its project;

SR. NO.	PARTICULARS	PETITION 112/TT/2013 (Order dated 07.10.2015)	NO. PETITION 127/TT/2014 (Order dated 29.07.2016)
		Unit 2- 28.09.2013 Unit 3- March, 2014 DT Line- 21.12.2014 <ul style="list-style-type: none"> • Jindal Unit 1- 06.06.2014 Unit 2- 24.01.2015 DT Line-June 2014	
5.	Discussions regarding modification	Pursuant to discussions in the ERPC, interim LILOs were constructed to evacuate the power of the generators through the permanent LILOs established by POWERGRID until the commissioning of the DT Line.	Pursuant to the decision reached at the 38 th SCM, it was decided that a temporary LILO would be constructed connecting it to Tuticorin JV-Madurai 400kV Quad D/C line to be used for evacuation of power

SR. NO.	PARTICULARS	PETITION NO. 112/TT/2013 (Order dated 07.10.2015)	PETITION NO. 127/TT/2014 (Order dated 29.07.2016)
			generated at the two generating stations.
6.	Transmission charges	The transmission charges for the permanent LILOs of POWERGRID were directed to be borne by the generators until the COD of the entire generating station including the DTL. (Period – April 2013 to December 2015)	The transmission charges for the Permanent LILO / Subject Assets till the DT was directed to be borne by MPGL & IBPL till the DTL is declared under commercial operation by the concerned generating station. (@Para 77 of the Impugned Order) (Period – 04.01.2015 to 27.10.2016)

121. It is clear that the earlier judgment of this Tribunal applies on full fours to the present case, as the ratio laid down by this Tribunal establishes that the DT Line

also forms part of the generating station. The generating station cannot be considered to have achieved COD in the absence of the commissioning of its DT Line. Since this is an identical situation, the JITPL Judgment of this Tribunal would be applicable.

122. Regulation 8 (6) of the Sharing Regulations, 2010 which was in force at the time of passing of the Impugned Order provides as under:

“8. Determination of specific transmission charges applicable for a Designated ISTS Customer.

.....

(6) For Long Term customers availing supplies from inter-state generating stations, the charges payable by such generators for such Long Term supply shall be billed directly to the respective Long Term customers based on their share of capacity in such generating stations. Such mechanism shall be effective only after “commercial operation” of the generator. Till then, it shall be the responsibility of generator to pay these charges.”

123. This Tribunal has time and again held that the regulations framed by the Central Commission are binding on all, and a tariff Order cannot be passed in disregard of the provisions of the tariff regulations. (REF: Fatehgarh Bhadla Transmission Company Limited v. Central Electricity Regulatory Commission & Ors. (2023) SCC OnLine APTEL 16).

124. The consequence of accepting MPGL's submission would be that, despite utilizing the permanent LILOs established by POWERGRID to evacuate 550 MW of power, MPGL would not be obligated to make any payment to POWERGRID. Regardless of the provisions of the PPA between MPGL and TANGEDCO which have to be enforced before the relevant forum by filing appropriate proceedings, MPGL cannot deny the transmission charges to POWERGRID, who has duly commissioned its LILOs and also established power flow on the same.

125. The LILOs have been providing service to the ISTS Grid from the date of its COD and POWERGRID should be entitled to recover its entire transmission charges. This is not a case where after the COD of the dedicated transmission lines by MPGL & IBPL, the POWERGRID LILOs would be dismantled or removed. The LILO would remain in service even after the construction of the dedicated transmission lines and the tariff for the same ought to be recovered as per Sharing Regulations, 2010. In fact, the LILOs are providing grid stability for the evacuation of power from Tuticorin JV and MPGL's plant itself.

126. Without prejudice to the above submissions, it is contended that POWERGRID cannot be left remediless, having commissioned and achieved COD of the LILOs in time. The LILOs have also been utilized continuously since the COD for the evacuation of MPGL's power to TANGEDCO. It is ironic that TANGEDCO, in the cross Appeal No. 206 of 2017, has contested that LILO of the Tuticorin VI- Madurai 400 kV D/C line at Tuticorin Pooling Station is redundant and it is of no use to the beneficiaries unless and until the pooling stations and upstream connectivity is put under operation and therefore should not be asked to pay the transmission charges for the same; and on the other hand in the present

Appeal, MPGL is contending that since subject LILO lines are being used to supply power to TANGEDCO, it should not be made liable to pay and transmission charges ought to be recovered in accordance with Sharing Regulations, 2010.

Analysis and Conclusion

127. 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.

128. The Appellant in Appeal No. 206 of 2017 has prayed for the following:

- “1. to set aside the order dated 29.07.2016 passed by the Central Electricity Regulatory Commission in 127/TT/2014; 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.”*

129. The Appellant in Appeal No. 332 of 2017 has prayed for the following:

- “(i) to set aside the impugned order dated 29.07.2016 passed by the Respondent Commission in Original Petition No. 127/TT/2014, to the extent challenge in the present appeal;*
- (ii) to pass such other or further orders as this Respondent Tribunal may deem appropriate.”*

130. Before deciding these issues, it is necessary that the regulatory position on

transmission tariff and allocation of ISTS charges is examined. The tariff of the asset in question is to be determined under CERC (Terms and Conditions of Tariff) Regulations 2014, and its allocation is to be decided as per CERC (Sharing of ISTS Transmission Charges and Losses) Regulations 2010.

131. Regulation 6 and 7 of the Tariff Regulations, 2014, inter alia, read as under:

“6. Tariff determination

(1) Tariff in respect of a generating station may be determined for the whole of the generating station or stage or generating unit or block thereof, and tariff in respect of a transmission system may be determined for the whole of the transmission system or transmission line or sub-station or communication system forming part of transmission system:

(2) For the purpose of determination of tariff, the capital cost of a project may be broken up into stages, blocks, units, transmission lines and sub-stations, forming part of the project, if required:

7.Application for determination of tariff

(2) The transmission licensee may make an application for determination of tariff for new transmission system including communication system or element thereof as the case may be in accordance with the Procedure Regulations, in respect of the transmission system or elements thereof anticipated to be commissioned within 180 days from the date of filing of the petition.”

132. Further, Regulation 4(3) of the Tariff Regulations, 2014 provides as under:

“

4. Date of Commercial Operation: The date of commercial operation of a generating station or unit or block thereof or a transmission system or element thereof shall be determined as under:

(3) Date of commercial operation in relation to a transmission system shall mean the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service after successful trial operation for transmitting electricity and communication signal from sending end to receiving end:

Provided that:

(i) where the transmission line or substation is dedicated for evacuation of power from a particular generating station, the generating company and transmission licensee shall endeavour to commission the generating station and the transmission system simultaneously as far as practicable and shall ensure the same through appropriate Implementation Agreement in accordance with Regulation 12(2) of these Regulations:

(ii) in case a transmission system or an element thereof is prevented from regular service for reasons not attributable to the transmission licensee or its supplier or its contractors but is on account of the delay in commissioning of the concerned

generating station or in commissioning of the upstream or downstream transmission system, the transmission licensee shall approach the Commission through an appropriate application for approval of the date of commercial operation of such transmission system or an element thereof.

133. Regulation 12(2) reads as under:

“The “uncontrollable factors” shall include but shall not be limited to the following:

- i. Force Majeure events; and*
- ii. Change in law.*

Provided that no additional impact of time overrun or cost over-run shall be allowed on account of non-commissioning of the generating station or associated transmission system by SCOD, as the same should be recovered through Implementation Agreement between the generating company and the transmission licensee:

Provided further that if the generating station is not commissioned on the SCOD of the associated transmission system, the generating company shall bear the IDC or transmission charges if the transmission system is declared under commercial operation by the Commission in accordance with second proviso of Clause 3 of Regulation 4 of these regulations till the generating station is commissioned:

Provided, also that if the transmission system is not commissioned on SCOD of the generating station, the transmission licensee shall arrange the evacuation from the

generating station at its own arrangement and cost till the associated transmission system is commissioned.

134. Regulation 33 reads as under:

*“33. Computation and Payment of Transmission Charge for Inter-State Transmission System: (1) The fixed cost of the transmission system or communication system forming part 93 Tariff Regulations 2014-19 of transmission system shall be computed on annual basis, in accordance with norms contained in these regulations, aggregated as appropriate, and recovered on monthly basis as transmission **charge from the users, who shall share these charges in the manner specified in Regulation 43.**”*

135. Regulation 43 is quoted as under:

“43. Sharing of Transmission Charges: (1) The sharing of transmission charges shall be governed by the Sharing Regulations.

136. The allocation of transmission Charges and losses of the Inter-State Transmission System is governed by the Sharing Regulation. The CERC (Sharing of Interstate Transmission charges and losses) Regulation 2010 is reproduced as under:

“8. Determination of specific transmission charges applicable for a Designated ISTS Customer.

*(1) Based on the Yearly Transmission Charges determined by the Commission, the Implementing Agency shall determine the charges applicable to each Designated ISTS Customer **for use of the ISTS to the extent of the Approved Withdrawal or Approved Injection in the ISTS.** Each Designated ISTS Customer shall ensure that the forecast data of demand and injection for each season is furnished to the Implementing Agency as per the timelines described in these regulations for both peak and other than peak conditions as specified in Chapter 7 of these regulations;*

(5) In the case of the Approved Withdrawal or Approved Injection not materializing either partly or fully for any reason whatsoever, the Designated ISTS Customer shall be obliged to pay the transmission charges allocated.”

137. As the case put up before us, our attention was drawn to para 72 and 76 of the impugned order wherein we find that the Commission even after fully and explicitly recognizing that assets are not in any way useful for the beneficiaries without the upstream system and still decided to grant COD to the assets from 04.01.2015 and 08.01.2015 and put up the liability of payment of transmission charges on Appellant generating company.

138. Hence, before analyzing the regulatory and commercial aspects, we delve into the technical aspect of the background for the planning of the subject transmission system for evacuation of power from two generators namely CEPL (1200 MW) and Ind Bharat (1400 MW) and examine the role of these assets in

overall intended benefit which is evacuation of power from these generating stations to the beneficiary states.

139. The **transmission's single diagram** of the planned system, as agreed in the 30th SCM in 2010, clearly established that dedicated lines from two generators would terminate at Tuticorin pooling station, and power would be further evacuated to Salem Pooling station. For additional reliability, the assets in the instant Impugned Order provide for the LILOs of the existing Tuticorin (JV)-Madurai Line, which is evacuating 1000 MW of Tuticorin JV Thermal Plant.

140. From this, it is clear that till a dedicated transmission line is commissioned from these two generating stations up to the Tuticorin Pooling station and the Tuticorin Pooling station to Salem line and Salem pooling station is available, power from these generating stations cannot be evacuated on a reliable basis in the long term. Even if dedicated lines are not connected to the Tuticorin Pooling station, the LILOs can only transfer a part quantity of power, and the intended benefit cannot be achieved till the upstream system is ready.

141. Considering the points raised by the Appellants, various issues which fall under consideration, are discussed in the succeeding paragraphs.

Issue No. 1: *Whether the LILO of both circuits of the Tuticorin JV–Madurai 400 kV D/C Quad line was a permanent part of the regional transmission plan approved in the Standing Committee Meetings (SCM) or a temporary/interim arrangement necessitated by the failure to commission the upstream connectivity (Salem Pooling Station and beyond)?*

142. TANGEDCO submitted that in the 29th SCM held on 27.08.2009, a common evacuation scheme was discussed and approved for CEPL (now MPGL) and IBPML. This included 765 kV pooling stations at Tuticorin, Salem, and Madhugiri (initially operated at 400 kV), along with dedicated 400 kV D/C lines from each IPP to the Tuticorin Pooling Station and further transmission up to Salem and beyond. Importantly, the original plan did not include any proposal for LILO of the Tuticorin JV–Madurai line.

143. The modification proposing the LILO of both circuits at Tuticorin Pooling Station was introduced later in the 30th SCM held on 13.04.2010, due to space constraints at the Tuticorin JV substation of NLC, which had only one bay to spare. This modification, though approved, was not planned as the permanent part of transmission planning, but out of operational compulsion owing to upstream commissioning delays.

144. TANGEDCO contended that the LILO of both circuits of the Tuticorin JV–Madurai 400 kV Quad D/C line at Tuticorin Pooling Station was not part of the originally planned transmission system as per the 29th Standing Committee Meeting (SCM). Further argued that LILO was implemented only as an alternative arrangement by PGCIL due to its own failure to timely commission the upstream system, specifically the Tuticorin Pooling Station–Salem Pooling Station 765 kV D/C line.

145. TANGEDCO submitted that since the LILO arose due to PGCIL's failure to execute the upstream 765 kV lines on schedule, it cannot be construed as a

regular or originally contemplated part of the ISTS plan.

146. MPGL contended that the LILO was envisaged and implemented under the Southern Region System Strengthening scheme, as clearly reflected in Annexure 3 of the Bulk Power Transmission Agreement (BPTA) signed between MPGL and PGCIL. It formed a part of the permanent transmission infrastructure committed under the transmission plan to facilitate long-term evacuation from the generation plant.

147. However, MPGL maintained that actual utilization of the subject LILO never occurred, since power evacuation was achieved through other interim arrangements, and the upstream elements beyond Tuticorin were not ready. The delay in commissioning the Tuticorin–Salem and Salem–Madhugiri lines was attributable to PGCIL, and therefore, the LILO remained non-functional during the relevant period (04.01.2015 to 27.10.2016).

148. Thus, while the LILO may have been part of the agreed system under the SCM and BPTA, it was functionally stranded, and did not benefit the users, nor constructed as a temporary facility pending completion of other lines.

149. PGCIL submitted that the LILO of both circuits of the Tuticorin JV-Madurai 400 kV Quad D/C line at Tuticorin Pooling Station was approved in the 30th SCM, held on 13.04.2010. The SCM is a regional planning forum under Section 29(4) of the Electricity Act, 2003, and its decisions are binding. This proposal was adopted not as a temporary arrangement, but as a technical revision of the earlier plan due to practical constraints at the NLC JV substation.

150. It was further contended that the Central Commission, in its Order dated 31.05.2010 in Petition No. 233/2009, had granted regulatory approval for the transmission system, including the said LILO. As such, the LILO is a permanent element of the ISTS and cannot be treated as a provisional arrangement.

151. PGCIL asserted that any suggestion that the LILO was temporary due to a delay in commissioning the upstream system is incorrect. Instead, the LILO remained and continues to be a permanent part of the operational grid, including post-commissioning of the upstream lines and dedicated lines of the generators.

152. It is undisputed that the original evacuation scheme for the IPPs in the Tuticorin area was discussed in the 29th SCM held on 27.08.2009, wherein a comprehensive transmission system was proposed, including Tuticorin, Salem, and Madhugiri pooling stations. This scheme included dedicated lines from CEPL and IBPML to the Tuticorin Pooling Station, and no LILO of the Tuticorin JV–Madurai line was envisaged at that time.

153. The 30th SCM, held on 13.04.2010, introduced a modification to this scheme. Due to space constraints at NLC's Tuticorin JV substation (only one bay being available), it was proposed that instead of a direct 400 kV D/C line from Tuticorin Pooling Station to Tuticorin JV, both circuits of the existing Tuticorin JV-Madurai 400 kV line be LILO-ed at the Tuticorin Pooling Station. This proposal was agreed to and later approved by the CERC vide its order dated 31.05.2010 in Petition No. 233/2009.

154. Thus, factually and legally, the LILO was part of the revised transmission plan for the region and was not merely an interim or temporary measure.

155. Section 29(4) of the Electricity Act, 2003, is as follows:

“(4) The Regional power Committee in the region may, from time to time, agree on matters concerning the stability and smooth operation of the integrated grid and economy and efficiency in the operation of the power system in that region.”

156. Under Section 29(4) of the Electricity Act, 2003, the decisions taken by the Regional Power Committee or the SCM in furtherance of grid stability and coordinated transmission planning have legal sanctity. Therefore, the approval of the LILO in the 30th SCM, participated in by all stakeholders, including TANGEDCO, binds all parties.

157. We note that it is not in dispute that the subject LILO of both circuits of the Tuticorin JV-Madurai 400 kV D/C Quad line was implemented pursuant to the 30th SCM in January 2010, and regulatory approval was granted by the Central Commission vide order dated 31.05.2010 in Petition No. 233/2009. The said asset was constructed by PGCIL and declared to be in commercial operation in January 2015. Therefore, this asset was part of the integrated system planning and approved by the standing committee. During the planning process, certain configurations are changed. We disapprove efforts made by TANGEDCO to project this LILO as a temporary arrangement. Temporary arrangements are made near the SCOD to facilitate the evacuation of power and avoid bottling of power

when the generator is ready to inject and the system is not ready.

158. The LILO of both circuits of the Tuticorin JV–Madurai 400 kV Quad D/C line at Tuticorin Pooling Station was a permanent part of the transmission plan, as approved in the 30th SCM and sanctioned by the CERC in Petition No. 233/2009. Hence, the contention of TANGEDCO that this LILO was an interim arrangement is rejected.

Issue No. 2: *Whether the Central Electricity Regulatory Commission was justified in granting COD and imposing transmission charges for the LILO of both circuits of the Tuticorin JV–Madurai 400 kV Quad D/C line at Tuticorin Pooling Station on the generating companies (MPGL and IBPML), instead of including them in the PoC mechanism, particularly when the LILO was part of the planned ISTS system and not put to beneficial use during the relevant period?*

159. It was submitted by the Appellants that since the assets were not put to use, no recovery outside the PoC mechanism was permissible, and any transmission charges collected should be refunded in terms of the Commission's own findings and settled principles of cost recovery.

160. MPGL submitted that the imposition of transmission charges for the subject LILO was de hors the CERC Sharing Regulations, 2010, and that the LILO was part of the permanent transmission scheme under the BPTA. It was not a temporary arrangement. Since the upstream transmission system (Tuticorin–Salem and Salem–Madhugiri lines) was not commissioned until the MPGL's

dedicated transmission line (DTL) was in place, there was no actual usage of the LILO for the evacuation of power.

161. MPGL further contended that the Central Commission imposed non-PoC charges without any prayer to that effect by PGCIL and in complete contradiction to the regulatory scheme. The power was never evacuated through the subject LILO and, hence, the principles laid down in ***Jindal India Thermal Power Limited v. Central Electricity Regulatory Commission & Ors*** (Appeal No. 51 of 2018) did not apply to the present case. The imposition of transmission charges without operationalization of LTA and in the absence of usage was ultra vires the 2010 Sharing Regulations.

162. PGCIL asserted that the subject LILO was part of the permanent ISTS transmission system agreed in the 30th SCM and approved by the CERC in Petition No. 233/2009. It was never intended as a temporary arrangement and formed part of the coordinated transmission planning for the evacuation of power from CEPL (now MPGL) and IBPML. PGCIL further argued that the assets were declared COD on 04.01.2015 and 08.01.2015, respectively, after successful trial operation and were used for the evacuation of power under STOA and MTOA to TANGEDCO.

163. We have already ruled that the subject LILO is a part of the permanent ISTS system.

164. POWERGRID submitted that the Commission rightly excluded the LILO charges from the PoC pool until the DTLs of the generating companies were

commissioned and levied the charges on MPGL and IBPML. PGCIL cannot be deprived of the recovery of tariff for commissioned assets under Sections 61, 62, and 79(1)(d) of the Act.

165. PGCIL also contended that it did not seek a **declaration of deemed COD under Regulation 4(3)(ii) and hence the third proviso to Regulation 12(2) did not apply**. The LILO was never dismantled and continued to serve grid stability functions. Recovery of tariff was lawfully directed by the Central Commission.

166. However, the core of the present dispute lies in the allocation of transmission charges for this LILO during the period 04.01.2015 to 27.10.2016, when neither the upstream system (Tuticorin–Salem–Madhugiri line) was commissioned nor was the LTA of MPGL operationalized.

167. **The Commission itself, in paragraphs 72 and 76 of the Impugned Order, held that the LILO was redundant and of no beneficial use in the absence of the upstream system. Yet, in paragraph 77, the Commission proceeded to impose transmission charges on MPGL and IBPML outside the PoC framework. This inconsistency in approach is apparent.**

168. Appellant has raised two arguments in his support: first, that this asset is not useful for evacuation of its power, and second, there is no provision for recovery of its charge outside the PoC mechanism.

169. For the first argument, paragraph nos. 72 and 76 of the Impugned Order already mentioned that without the upstream system, the intended benefit of the

system cannot be realized. Here, it is clear that, as LILO being part of the associated transmission system, the intended benefit was to evacuate power from two generating stations on a long-term basis. As per POWERGRID, power was evacuated on a short-term and medium-term basis; hence, by not operationalizing Long-term access to these generators, thus, POWERGRID itself conceded that the intended benefit has not been achieved.

170. The claim of the Appellant MPGL that this LILO was not utilized for the evacuation of its power was examined with respect to the transmission system diagram. It clearly depicts that after commissioning of the generating station on 23.12.2014 to 27.10.2016 (date of completion of dedicated line from MPGL), power was evacuated from a temporary arrangement made by MPGL by a LILO of Tuticorin (JV)-Madurai line, and as the power from MPGL is not reaching Tuticorin Pooling stations, the LILO under instant case are of no use. Only after the commissioning of the dedicated line from MPGL –Tuticorin pooling station on 27.10.2016 flow of power on this LILO became possible. Hence, from the date of their COD 04.01.2014 & 08.01.2014 till 27.10.2016, these lines were of no use.

171. From the above, it is clear that till 27.10.2016, these LILO elements were neither used for evacuation of power from MPGL power stations nor it was, of any benefit to the grid, as no power was available at Tuticorin Pooling station, as neither power from MPGL nor Ind Bharat was reaching that pooling station.

172. The second contention of the Appellant is that there is no provision for recovery of transmission charges except the PoC mechanism. The regulatory position is slightly different. In accordance with the CERC Terms and Conditions

of tariff, 2014, the second proviso of 12(2) mentions that:

“Provided further that if the generating station is not commissioned on the SCOD of the associated transmission system, the generating company shall bear the IDC [and IEDC] or transmission charges if the transmission system is declared under commercial operation by the Commission in accordance with second proviso of Clause 3 of Regulation 4 of these regulations till the generating station is commissioned:”

173. In accordance with the various orders of this Tribunal, that dedicated line of the generating stations is an integral part of the generating station, and generating stations can be considered commissioned only when their dedicated line is commissioned. Although the generating station was able to evacuate its power through its own temporary arrangement, the dedicated line of MPGL-Tuticorin pooling station was not completed till 26.10.2016. Based on this requirement of a dedicated line, the integrated system was planned, and LILO, in the instant case, was part of that. So, till 25.10.2016, the generator along with its dedicated line was not commissioned.

174. Considering the second proviso of Regulation 12(2), the Commission could have decided the matter in the Impugned Order.

175. The Commission's decision in the Review Petition against the Impugned Order justified this decision so far as the allocation of transmission charge is considered, if approval of COD is found justified.

176. However, it is important to mention that while the Appellant has objected to COD of these assets and the Commission accepted that these assets are of no use to beneficiary still granted COD imposing these charges and did not invoke 12(2) as it was aware that as upstream system is not ready and so COD cannot be granted under 12(2) and rely on Regulation 8(5) of sharing Regulation.

177. To understand this, it is necessary that for providing COD under the provision of 12(2), it is necessary the transmission licensee needs to invoke Tariff Regulation 4(3(ii)), which facilitates COD when the transmission system is ready, and due to non-commissioning of generating stations, COD can be granted.

178. As the upstream system of POWERGRID was not ready, it did not apply under 4(3(ii)) and still sought COD. Also, POWERGRID has not requested for recovery of transmission charges of these assets from generating companies.

179. As the COD allowed by the Commission is not correct as per the legal process required to grant such COD i.e. Regulation 4(3(ii)) and condition required under Regulation 12(2) are not fulfilled, this liability could not be passed under the Regulations 8(6) under sharing Regulations which only allocate the transmission charge of whole pool (YTC) of ISTS system on the principle of usage.

180. The Commission wrongly made these generators liable for payment of transmission assets on the ground that, as dedicated lines are not ready, knowing fully well that even if their dedicated lines are ready, power cannot be evacuated

on a long-term basis (intended benefit) without the upstream system getting ready.

181. Hence, we are of the considered view that the grant of COD to these assets is bad in law as they serve no useful purpose, and the imposition of transmission charges on the generator is erroneous. By granting COD for these assets, the Commission failed to balance the interests of the Licensee and users of the system, while the revenue of the licensee was secured, but liability was imposed on users with no actual benefit, and this has been admitted by the Commission in paragraphs No. 72 and 76 of the order.

182. Considering this, we found that the decision of the Commission to grant COD of assets under consideration is not correct as per law, as the correct procedure has not been adopted, and consequent imposition of the transmission charge liability of these assets to generators is contrary to the provision of law and liable to be rejected.

Issue No. 3: *Whether, in terms of Regulation 12(2) and its third proviso of the CERC Tariff Regulations, 2014, PGCIL was required to arrange alternative evacuation at its own cost due to non-commissioning of the upstream transmission system, and if yes, whether the CERC failed to appreciate and apply the correct regulatory consequence?*

183. The third proviso to Regulation 12(2) of the 2014 Tariff Regulations provides that: *“if the transmission system is not commissioned on SCOD of the generating station, the transmission licensee shall arrange the evacuation from the generating*

*station at **its own arrangement and cost** till the associated transmission system is commissioned.”*

184. As a generating station is considered to achieve its COD only after completion of its dedicated line, which is originally planned. In the instant case, for MPGL, a dedicated line was completed on 25.10.2016, and POWERGRD's responsibility for an alternative arrangement was there; however, only partial power could flow through this LILO. Further, this matter in the instant appeal regarding transmission charges for the LILO of Tuticorin (JV)-Madurai Line is not relevant.

185. As decided earlier, this LILO is not a temporary arrangement and part of the system planned for giving long-term access to the generator; this provision cannot be invoked. Hence, POWERGRID cannot be saddled with the liability for this asset.

Issue No. 4: *If generators are not responsible for the payment of transmission charges of assets covered in the impugned order, whether this can be included in the POC pool and should be paid by the Designated customers of ISTS?*

186. As clarified under Issue No. 2 that the LILO assets in the Impugned Order were of no use till 27.12.2016 (date of commissioning of the Dedicated line of MPGL), either for evacuation of generator power or for the stability of the grid, because at Tuticorin pooling station, no power was available nor any upstream stream till Salem was ready.

187. However, before transferring this liability to POC Pool and burdening all DICs, it must be seen whether it is justified.

188. The allocation of transmission charge under the sharing Regulation 2010 is based on usage, and as the Commission in its Impugned Order, Para No. 76 explicitly mentioned that:

“76. We agree with the submission of TANGEDCO that the petitioner should have completed up-stream system i.e. Tuticorin-Salem and Tuticorin-Madurai line as per scheduled timeline so that all the assets provide their intended benefits

189. As the intended benefit of the planned associated transmission system for evacuation of power from the generating stations occurs to the DICs of PoC pool only if the power from the generating stations can be transferred on a sustained long-term basis, which has not happened in the instant case. Also, as the allocation of transmission charges to designated ISTS users (DICs) under the Sharing Regulation is based on Usage, in the absence of upstream system, the asset in the Impugned Order cannot be used; hence, inclusion of this asset in the PoC pool is also not justified.

190. We also make it clear that this Tribunal vide judgment passed in Appeal No. 51 of 2018, while granting the recovery of transmission charges of the LILO arrangement exclusively created for a generator which have not completed its dedicated lines, laid down the basic principle as mentioned under:

“10.25 We are, therefore, inclined to accept the contentions of the Respondent Discoms that without completion of all assets of the generators as well as the second Respondent, they should not be burdened with transmission charges under POC mechanism which in turn will affect the end consumers.”

191. Considering that the basic construct of Point of Connection transmission charges is based on Usage, the transmission charges of this asset cannot be included in the PoC mechanism, as no power was flowing through these LILOs and no benefit was occurring to the beneficiaries.

Issue No. 5: *Whether the delay in commissioning the upstream transmission elements (including the Tuticorin–Salem 765 kV line and the Salem–Madhugiri 765 kV line) was attributable to PGCIL, and if so, whether the financial burden arising due to non-commissioning of the complete evacuation system can be fastened upon the generators (MPGL and IBPML) or their beneficiaries (e.g., TANGEDCO)?*

192. TANGEDCO contended that the delay in commissioning of the upstream elements of the transmission system, namely the Tuticorin Pooling Station–Salem Pooling Station 765 kV D/C line, and the Salem Pooling Station–Madhugiri line, was entirely attributable to PGCIL. This delay rendered the LILO of the Tuticorin JV–Madurai line stranded and non-functional, which could not be used for any meaningful transmission of power.

193. TANGEDCO pointed out that, as per the third proviso to Regulation 12(2) of the CERC Tariff Regulations, 2014, when the transmission licensee fails to commission the transmission system by the SCOD of the generating station, it must arrange for power evacuation at its own cost. In this case, PGCIL failed to complete the upstream system within the prescribed timeline, and as such, cannot fasten the financial burden arising from this delay on the generators or beneficiaries.

194. Further, TANGEDCO emphasized that it had no role in causing the delay and that the LILO was not beneficially used by TANGEDCO during the relevant period. Hence, no financial liability can be imposed either on TANGEDCO or on the generators under these circumstances.

195. MPGL submitted that it had commissioned its Dedicated Transmission Line (DTL) connecting its generating station to the Tuticorin Pooling Station on 27.10.2016. In contrast, the Tuticorin–Salem 765 kV line was commissioned only on 13.11.2016, and the Salem–Madhugiri 765 kV line was commissioned even later, in October 2018. Thus, the LILO of the Tuticorin JV–Madurai line could not be put to use during this period due to the non-readiness of the upstream ISTS system.

196. MPGL argued that this delay was squarely attributable to PGCIL. It further pointed out that the CERC itself, in paragraph 76 of the Impugned Order, had recorded that *“the petitioner (PGCIL) should have completed up-stream systemas per scheduled timeline.... .”* Despite this finding, the Commission wrongly held MPGL liable to pay transmission charges, which was contrary to the statutory

scheme and the Commission's own reasoning.

197. The Appellant stressed that it cannot be made to pay for an asset (the LILO) which was not used by it due to PGCIL's failure to complete the transmission system, and relied upon the third proviso to Regulation 12(2), which clearly states that the transmission licensee shall bear the cost if the transmission system is not commissioned on time.

198. PGCIL, while acknowledging the delayed commissioning of the Tuticorin–Salem and Salem–Madhugiri 765 kV lines, submitted that these delays were due to force majeure and other unforeseen reasons. However, no material or evidence of such a force majeure was placed on record.

199. PGCIL asserted that it had declared COD for the LILO assets after successful trial operation in January 2015, and the generating company (MPGL) had started supplying power to TANGEDCO under Short-Term Open Access (STOA) and later under Medium-Term Open Access (MTOA), thereby benefiting from the network.

200. PGCIL contended that having operationalized the LILO and enabled power evacuation (albeit through alternative arrangements), it was entitled to recover transmission charges for the commissioned assets. It argued that the generators should bear the cost until their LTA was operationalized. It also relied on the decision of this Tribunal in Appeal No. 51 of 2018 to justify recovery from the generators.

201. The facts on record reveal the following:

- The LILO of the Tuticorin JV–Madurai line at Tuticorin Pooling station was declared under commercial operation on 04.01.2015 and 08.01.2015.
- MPGL's dedicated transmission line was commissioned on 27.10.2016. Till then, a temporary arrangement was made by MPGL to evacuate its power partially through a different LILO of Tuticorin JV–Madurai
- The upstream ISTS lines, namely:
 - Tuticorin Pooling Station–Salem 765 kV D/C line, was commissioned on 13.11.2016;
 - Salem–Madhugiri 765 kV line was commissioned in October 2018.

202. M/s Moxie Power Generation Pvt. Ltd. (formerly CEPL/MPGL) claimed that it did not actually utilize the subject LILO assets for the evacuation of power between 04.01.2015 and 27.10.2016, and hence is not liable for any payment liability for transmission charges (PoC or Non-PoC).

203. Thus, there is a clear time gap between the commissioning of the generating station and its dedicated line, and the commissioning of the upstream transmission system, which was essential for the evacuation of power through the ISTS.

204. **PGCIL has not denied the delay in completing the upstream system, and the Central Commission itself recorded this fact in paragraph 76 of the Impugned Order, holding that the petitioner (PGCIL) should have completed**

the upstream system as per the scheduled timeline so that all the assets provide their intended benefits.

205. This finding is significant and has attained finality, as PGCIL did not challenge it in appeal.

206. Further, there is no evidence that PGCIL placed on record regarding any “force majeure” which allegedly delayed the upstream transmission system. In the absence of any substantiation, the delay must be held as attributable to PGCIL.

207. It is a settled principle of law that a party cannot benefit from its own default. The Hon’ble Supreme Court, in ***Union of India v. Major General Madan Lal Yadav (1996) 4 SCC 127*** and ***Ashok Kapil v. Sana Ullah (Dead) (1996) 6 SCC 342***, reaffirmed the doctrine of *nullus commodum capere potest de injuria sua propria*-no one can be allowed to take advantage of their own wrong.

208. Therefore, the Commission erred in not giving full effect to its own findings recorded in the Impugned Order and the applicable regulation, and in fastening liability on the generators despite acknowledging that, in the absence of an upstream system, the intended benefits are not there, and it was evident that long term access for evacuation of power was not provided to the generator.

209. The delay in the upstream system and the role of POWERGRID are to be dealt with in the respective tariff petitions of those elements. As the assets under the Impugned Order were part of an integrated system planning, and the non-availability of the upstream system affects its utilization, this fact must be

considered while deciding the CoD of these elements, and the CoD of such transmission elements cannot be granted in isolation.

210. In view of the above,

- a) Due to the delay in both the dedicated line of MPGL and commissioning of the upstream transmission elements, namely the Tuticorin–Salem 765 kV D/C line and the Salem–Madhugiri 765 kV line, the LILO of the Tuticorin JV–Madurai 400 kV Quad D/C line remained non-functional and intended benefit has not achieved effective to the beneficiary due to non-availability of upstream system. Both these factors contributed concurrently. As is evident, even after the availability of a dedicated transmission line of MPGL on 27.10.2016, the full power of the plant could not be evacuated, and LTA was not made operationalized till all upstream elements were commissioned later.
- b) Consequently, no transmission charges of these assets can be recovered from the generating companies or specifically from TANGEDCO as the beneficiary of this generating station during the period of upstream non-commissioning.
- c) The CoD of the LILO of the Tuticorin JV–Madurai 400 kV Quad D/C line needs to be reviewed, taking into consideration the delay in the upstream system.

Summary:

Issue No. 1: The LILO of both circuits of the Tuticorin JV–Madurai 400 kV Quad D/C line at Tuticorin Pooling Station was a permanent part of the transmission plan, as approved in the 30th SCM and sanctioned by the CERC in Petition No. 233/2009. Hence, the contention of TANGEDCO that this LILO was an interim arrangement is rejected.

Issue No. 2: The decision of the Commission to grant COD of assets under consideration is not correct as per law because the correct procedure has not been adopted, and consequent imposition of the transmission charge liability of these assets to generators is contrary to the provisions of law and is rejected.

Issue No. 3: As the assets covered under the Impugned Order were not a temporary arrangement, POWERGRID is not liable to bear its cost, and CERC Tariff Regulation 2014 12(2) third proviso is not applicable.

Issue No. 4: The construct of Point of Connection transmission charges is based on Usage; the transmission charges of this asset cannot be included in the PoC mechanism, as no power was flowing through these LILOs, and no benefit was occurring to the beneficiaries.

Issue No. 5: As evident, even after the availability of a dedicated transmission line of MPGL on 27.10.2016, the full power of the plant could not be evacuated, and LTA was not made operationalized till all upstream elements were commissioned later. Hence, the CoD of the LILO of the Tuticorin JV–Madurai 400 kV Quad D/C line needs to be reviewed, taking into consideration the delay in the upstream system. TANGEDCO, though a power procurer from MPGL under STO/MTOA,

did not use or benefit from the LILO and hence cannot be held liable for any part of the charges relating to it.

ORDER

For the foregoing reasons as stated above, we decide as follows:

Appeal No. 206 of 2017 and Appeal No. 332 of 2017 are upheld, and the Impugned Order dated 29.07.2016 passed by the Central Electricity Regulatory Commission is set aside to the extent as observed herein above.

Neither TANGEDCO nor generators are liable to make any payment for the subject LILO during the relevant period (04.01.2015 to 27.10.2016).

The LILO is a permanent transmission system, therefore, POWERGRID is also entitled to transmission charges subject to the COD granted under the legal and relevant provisions.

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

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

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member

REPORTABLE / NON-REPORTABLE

pr/mkj/kks