

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 394/MP/2018

Coram:

Shri P.K.Pujari, Chairperson

Shri I.S Jha, Member

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of Order: 5th April, 2022

In the matter of:

Petition under Sections 79(1) (c) & (f) of the Electricity Act, 2003 read with Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium-Term Open Access in inter-State Transmission and related matters) Regulations, 2009 seeking directions in respect of an alleged LTOA of 216 MW granted to PTC India Limited for Merchant Trading of power from 1200 MW Teesta-III Hydroelectric Project in terms thereof.

And

In the matter of

PTC India Limited,
2nd Floor, NBCC Tower,
15, Bhikaji Cama Place,
New Delhi – 110066

....Petitioner

Vs

1. Power Grid Corporation of India Limited,
“Saudamini”, Plot No. 2, Sector-29,
Gurgaon -122 001

2. Teesta Urja Limited,
2nd Floor, Vijaya Building,
17, Barakhamba Road,
New Delhi-110 001

....Respondents

Parties Present:

Shri Parag P. Tripathi, Sr. Advocate, PTC
Shri Ravi Kishore, Advocate, PTC
Ms. Suparna Srivastava, Advocate, PGCIL
Shri Tushar Mathur, Advocate, PGCIL
Ms. Soumy Singh, Advocate, PGCIL
Shri Tarun Johri, Advocate, TUL
Shri Ankur Gupta, Advocate, TUL
Shri Jaideep Lakhtakia, TUL

Shri Swapnil Verma, CTUIL
Shri Shyam Sunder Goyal, CTUIL
Shri Siddharth Sharma, CTUIL
Shri Ranjeet Singh Rajput, CTUIL

ORDER

The Petitioner, PTC India Limited, has filed the present Petition seeking, *inter alia*, declaration that the Long-Term Open Access (LTOA) was neither granted nor applicable to the Petitioner in respect of balance quantum i.e. 216 MW on Target Region basis. The Petitioner has made the following prayers:

“(a) Declare that the LTOA was neither granted nor applicable to the Petitioner in respect of any balance quantum i.e. 216 MW on Target Region basis;

(b) Set aside the demand of the Respondent No.1 vide letters dated 10.10.2018 and 05.11.2018 to the Petitioner for opening the L/C in respect of alleged 216 MW LTOA on target basis; and

(c) Pending the disposal of the present petition pass an ad-interim order restraining the Respondent No-1 from taking any coercive action in this regard.”

Background of the case

2. The Respondent No.2, Teesta Urja Limited ('TUL') has set up a 1200 MW Teesta-III Hydroelectric Project of Teesta Urja Limited (in short 'the generating station/Project') located in the State of Sikkim on merchant trading basis. TUL and PTC India Limited (inter-State trading licensee) entered into a PPA dated 28.7.2006 for sale of 1200 MW excluding auxiliary consumption, free power, transmission and transformation losses up to the delivery point for the period of 35 years. As per the PPA, PTC was required to tie-up 70% of the contracted capacity on long term basis through Power Sale Agreements and balance 30% of the contracted capacity was to be traded by PTC on short term basis i.e. merchant trading.

3. During 15.9.2006 to 27.9.2006, PTC and the State Utilities of Rajasthan (100 MW), Uttar Pradesh (200 MW), Punjab (340 MW) and Haryana (200 MW) entered into back-to back Power Sale Agreements (PSAs) for sale and procurement of 70% of the contracted capacity on long term basis.

4. On 10.11.2006, the Petitioner made application to the Respondent No.1, Power Grid Corporation of India Limited (now CTUIL) for grant of LTOA for 35 years as per the provisions of the Central Electricity Regulatory Commission (Grant of Open Access) Regulations, 2004 ('Open Access Regulations, 2004') for 1032 MW for the period 1st year (year 1) to 15th year (year 15) and for 996 MW for the period 16th year (year 16) to 35th year (year 35) for sale of power to the then Punjab State Electricity Board (PSEB)/ Punjab State Power Corporation Limited (PSPCL) (340 MW), Haryana Power Generation Company Limited (HPGCL) (200 MW), Uttar Pradesh Power Corporation Limited (UPPCL) (200 MW), Rajasthan Discoms (100 MW) and the balance power for merchant trading.

5. Vide letter dated 2.1.2007, CTUIL informed the Petitioner that as the full power would be injected into the grid for onward transmission, the capacity of the transmission line should be planned to cater to 1200 MW Teesta-III project. Accordingly, CTUIL is going ahead with processing the application for LTOA for transfer of 1200 MW to the beneficiaries indicated in the application.

6. On 26.5.2009, CTUIL issued common intimation letter for providing LTOA for 25 years to nine LTOA applicants, including the Petitioner, PTC and generation projects located in the State of Sikkim. In the said LTOA intimation letter, capacity/ power to be transferred for Teesta-III HEP was mentioned as 1200 MW and

tentative beneficiaries were mentioned as PSEB (340 MW), HPGCL (200 MW), UPPCL (200 MW) and Rajasthan Discoms (100 MW), totalling 840 MW.

7. On 7.8.2009, the Commission notified the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 (Connectivity Regulations) and on 31.12.2009 approved the Detailed Procedures of CTUIL under Regulation 27(1) of the Connectivity Regulations which became effective from 1.1.2010.

8. On 24.2.2010, Bulk Power Transmission Agreement (BPTA) was executed between CTUIL, PTC and 6 other LTOA/LTA applicants of Sikkim generation projects for 840 MW. Subsequently, on 27.4.2010, BPTA was signed between CTUIL, Government of Sikkim and the Petitioner for transfer of Sikkim's share of free power from the Project, wherein Sikkim agreed to pay the transmission charges directly to CTUIL and to open Letter of Credit (LC) with CTUIL.

9. On 4.6.2010, BPTA was signed between CTUIL and long term beneficiaries of Teesta-III HEP, namely, HPPC, PSEB, UPPCL and Rajasthan Discoms and Petitioner, wherein all the beneficiaries agreed to pay the transmission charges directly to CTUIL and open Letter of Credit.

10. On 21.7.2017, CTUIL issued agenda for 12th Connectivity and LTA Meeting of Eastern Region and requested all LTOA applicants to attend the meeting. In the agenda items, LTOA quantum for Teesta-III project was mentioned as 1200 MW. On 28.7.2017, the Petitioner explaining the sequence of events in detail, requested

CTUIL to correct LTOA quantum for Teesta-III Project in the agenda items as 840 MW instead of 1200 MW.

11. CTUIL vide its letter dated 18.10.2017, informed PTC that LTOA has been granted to PTC for 1200 MW as per Open Access Regulations, 2004 and PTC is liable for payment of transmission charges corresponding to 216 MW of LTOA quantum which was on target basis. In response, the Petitioner vide its letter dated 5.12.2017 informed CTUIL that LTOA granted to PTC and the firm beneficiaries of Northern Region (NR) is 840 MWs only as per BPTA dated 24.2.2010 and no LTOA quantum has been granted on target region basis.

12. On 6.4.2018, CTUIL reiterated its earlier position that LTOA granted to PTC is 1200 MW and upon completion of the associated transmission system, the 1200 MW LTOA granted to PTC shall be operationalized and PTC, being LTOA customer, shall be liable to pay the applicable transmission charges.

13. CTUIL vide its letter dated 10.10.2018 informed the Petitioner that PTC is required to open a confirmed, irrevocable, unconditional and revolving LC of Rs.1304 lakh towards payment security mechanism in respect of 216 MW of LTOA granted to PTC for transfer of power on target basis. CTUIL vide its letter dated 12.10.2018 requested the Petitioner to either confirm beneficiary or indicate target region for alleged LTOA for 216 MW latest by 31.10.2018, else the 216 MW LTOA shall be considered as target LTOA in Eastern Region for all commercial and regulatory purposes.

14. In response, the Petitioner vide its letter dated 15.10.2018 informed CTUIL that there is no mention of LTOA on target region basis either in the BPTA or LTOA intimation letter and the balance power was for merchant trading. Further, the BPTA

was signed in line with Connectivity Regulations for 25 years, under which LTOA for a period exceeding 12 years but not exceeding 25 years can be granted where firm beneficiaries are identified and known to CTUIL, which was only for 840 MW. Accordingly, no LTOA in respect of balance power for merchant trading on target region basis was granted to PTC and PTC is under no obligation to open LC and payment for the said LTOA.

15. CTUIL vide its letter dated 5.11.2018 informed the Petitioner that the LTOA for 216 MW was granted to PTC on target basis and once again requested PTC to indicate the target region for 216 MW LTOA by 9.11.2018, failing which Eastern Region (being location of the generating station) shall be considered as the target region. CTUIL also requested PTC to open LC as informed earlier vide its letter dated 10.10.2018.

16. On 9.11.2018, the Petitioner reiterated that no LTOA has ever been applied by PTC on target region and as per the extent CERC Regulations, LTA can be granted to a trading licensee only for firm beneficiaries and no LTA can be granted to a trading licensee for merchant trading on target region basis. PTC maintained its position that the balance power was for merchant trading and accordingly, PTC is under no obligation to open LC and pay for transmission charges.

17. On 16.11.2018, Punjab State Power Corporation Limited (PSPCL) relinquished 340 MW LTA to CTUIL.

18. On 28.11.2018, CTUIL informed that 400 KV Teesta-III- Kishanganj D/C line was expected to be commissioned by 31.12.2018. Accordingly, LTOA/LTA of various generating stations in Sikkim was likely to be made effective from 1.1.2019.

19. In response, on 11.12.2018, the Petitioner requested CTUIL, without prejudice to its rights and contentions, for release of alleged 216 MW LTOA for utilization/ allocation to any other person/entity.

Submissions of the Petitioner PTC

20. The Petitioner has mainly submitted as under:

(a) CTUIL is unjustified in claiming that it had granted LTOA for 216 MW on target basis for merchant trading, as LTOA/LTA cannot be granted to a trading licensee for merchant trading/target region.

(b) CTUIL has failed to appreciate the fact that under Connectivity Regulations read with Detailed Procedures made thereunder, LTA cannot be granted to a trader in absence of a firm PPA and corresponding PSA for period for which LTA is permissible under the Regulation. In the present case, right from beginning, CTUIL was fully aware that balance power was for merchant trading and there was no corresponding PSA.

(c) CTUIL has wrongfully intimated to the Petitioner that if the Petitioner fails to indicate the target region, Eastern Region will be the default target region. There is no such provision in the Regulations which empowers CTUIL to choose a default target region. The target region has to be specifically mentioned in the BPTA and change of target region above 100 MW is not permissible as the LTA sanctioning and augmentation of transmission system, if required, is done after detailed system planning for transmitting power for specified quantum from the injection point to the drawal point. In this instance, CTUIL neither planned the capacity for transmission nor was aware of point of drawal for alleged LTOA quantum of 216 MW, which was for merchant trading where procuring/drawing entity changes from time to time.

(d) CTUIL by its admission in Petition No.292/TT/2013 had submitted on affidavit that LTOA quantum of Teesta-III is only 840 MW. Accordingly, now CTUIL cannot take a contradictory position and state that LTOA was granted for 216 MW on target basis as it is barred by the principle of estoppel.

(e) In the alternate, even admitting that the target region had not been identified in the BPTA or elsewhere, as the balance power was untied and had to be sold on merchant basis by a trading licensee, LTOA could not have been granted.

(f) It is a settled principle of law that if the Regulations does not permit grant of LTOA, the same cannot be granted under any circumstance. In the present instance, the Connectivity Regulations clearly barred grant of LTOA to a trading licensee for merchant trading and hence, grant of LTOA, if any, was void *ab-initio*, as the same was against the extent Regulations.

21. Reply to the Petition has been filed by the Respondents, Teesta Urja Limited and CTUIL and the Petitioner has filed rejoinders thereof.

Reply of Respondent Teesta Urja Limited

22. The Respondent, Teesta Urja Limited (TUL), vide its reply dated 19.6.2019 mainly has submitted as under:

(a) PTC has entered into a PPA dated 28.7.2006 (and not 28.07.2016, as erroneously mentioned by PTC) with TUL for purchase of entire 1200 MW of power from the Project of TUL for onwards sale on long term / short term basis. As per the PPA, PTC is required to obtain requisite open access from the 'Delivery Point' for supply of power to beneficiaries.

(b) In the case of Teesta-III HEP, the generator i.e. TUL, has neither applied for nor has it been granted LTOA and no LTOA agreement whatsoever has been signed by TUL. In respect of Teesta-III HEP, LTOA has been obtained by PTC. TUL does not have any financial obligation towards either grant of LTOA or for relinquishment of the same as TUL was neither an applicant for the LTOA nor has relinquished any LTOA.

(c) CTUIL be restrained from taking any coercive action in so far as the generation and supply of power of TUL is concerned, which may have adverse financial impact on TUL. Any coercive action will result in loss of generation and spillage of water at Teesta-III.

Reply of Respondent CTUIL

23. CTUIL, in its reply dated 28.6.2019, has mainly submitted as under:

(a) Under a comprehensive scheme for strengthening the transmission and distribution in the States of Arunachal Pradesh and Sikkim approved by the Government of India, number of generation projects having the total generation capacity of 4200 MW came to be implemented in these two States. Power generated from these projects was proposed to be evacuated through the system strengthening scheme approved by the Central Electricity Authority (CEA). One of the generation projects implemented under the aforesaid scheme was 6x200 MW (1200 MW) Teesta-III Hydroelectric Project of TUL. For sale of power to be generated from the project, TUL and the Petitioner (acting as an inter-State trading licensee) entered into PPA dated 28.7.2006, under which the Petitioner agreed to purchase at the Delivery Point the entire power generated from the project, excluding the auxiliary consumption, free power to the State of Sikkim and transmission losses incurred up to the delivery point.

(b) A "Purchaser" was defined in the PPA to mean one or more entities to which the Petitioner could sell the power purchased from TUL. The aforesaid arrangement was to be in force for a period of 35 years from the commissioning of the project.

(c) Thus, the contractual arrangement recorded under the PPA was that the Petitioner, as electricity trader, was to purchase entire billable power generated from the project of Respondent No.2 for onward sale to other entity(s) out of which at least 70% was to be on long-term basis. The power generated was to be delivered at the inter-connection point of Respondent No.1 or a transmission licensee and from there it was to be carried by the Petitioner or its Purchaser(s) through the use of ISTS.

(d) In accordance with the aforesaid PPA, the Petitioner entered into Power Sale Agreements (PSAs) with the following identified beneficiaries for onward sale of power purchased by it from Respondent No.2:

(i) the then Punjab State Electricity Board: 340 MW [PSA dated 15.9.2006]

(ii) Haryana Power Generation Company Limited: 200 MW [PSA dated 21.9.2006]

(iii) Uttar Pradesh Power Corporation Limited: 200 MW [PSA dated 27.9.2006]

(iv) Distribution companies in Rajasthan: 100 MW [PSA dated 27.9.2006]

(e) In each of the said PSAs, the “Delivery Point” was defined to mean the same interconnection point with CTUIL from where open access in accordance with the Regulations was available. The Petitioner as a trader was thus to purchase the contracted power at the delivery point and also sell it to the identified beneficiaries at the delivery point.

(f) Despite power sale to the identified beneficiaries having been agreed to take place at the delivery point, the Petitioner, in its commercial wisdom, not only agreed to avail open access into ISTS on behalf of the said beneficiaries, but also agreed to pay to CTUIL all charges that were payable to it for availing such access.

(g) For transferring power under the aforesaid arrangement, the Petitioner, on 10.11.2006 made an application to CTUIL for grant of LTOA into the ISTS for a period of 35 years from the date of commencement of open access in accordance with the then prevailing Open Access Regulations, 2004. As per the application, the quantum of power to be transmitted during the entire LTOA period was bifurcated into 1032 MW (for year 1st to 15th after considering 12% free power to Sikkim and 2% for auxiliary consumption and tie line losses) and 996 MW (for year 16th to 35th after considering 15% free power to Sikkim and 2% for auxiliary consumption and tie line losses). The power was to be injected into the pooling station of CTUIL at Siligudi through an integrated transmission system and was to be drawn by the following utilities in the ratio provided as under:

1) Punjab State Electricity Board – 340 MW

- 2) Haryana Power Generation Corporation Limited –200 MW
- 3) Uttar Pradesh Power Corporation Limited – 200 MW
- 4) Rajasthan Discoms – 100 MW
- 5) Balance Power for Merchant Trading in NR & WR

(h) The Petitioner thus confirmed that Respondent No.1 was required to carry out system studies for entire LTOA applied for, including for the power that it proposed to sell on merchant basis.

(i) Upon receipt of the aforesaid application and examining the same, CTUIL, vide its letter dated 2.1.2007, informed the Petitioner that since the entire power to be generated from the project was to be injected into the grid for onward transmission, the system was to be planned for catering to entire 1200 MW and further that additional transmission system was required for the same. In response, the Petitioner, vide its letter dated 25.1.2007, confirmed that CTUIL could take up the detailed studies for identifying strengthening of transmission system for transfer of above power to its beneficiaries in the Northern Region. It was on this unequivocal confirmation from the Petitioner that CTUIL proceeded with system studies for transfer of entire 1200 MW from the project of TUL.

(j) In Long Term Access Meeting of the Eastern Region held on 5.11.2007, the Petitioner's LTOA from Teesta-III HEP was considered as 1200 MW as a sub-part of 2823 MW of ten hydro projects who had applied for open Access in the upper part of Sikkim. This planning process for evacuation of power from Teesta-III HEP was therefore based on LTOA applied for 1200 MW by the Petitioner. The LTOA application received by CTUIL was further discussed in the Standing Committee Meeting on Power System Planning in the Eastern Region held on 5.11.2007. In the said meeting, it was discussed that since the inception of the process of LTOA grant, the quantum of LTOA was indicated as 1200 MW which, as stated above, had been confirmed by the Petitioner. The consideration of LTOA grant was thus accordingly for 1200 MW.

(k) In the meeting held on 1.5.2009 in regard to LTOA application for evacuation of power from advanced generation projects in Sikkim, Teesta-III

HEP project and its commissioning schedule was discussed, wherein the evacuation requirement for the said project was again stated as 1200 MW. It was recorded in the minutes of the meeting that implementation of the required transmission scheme for evacuation of the concerned generation projects in Sikkim including Teesta-III HEP was to be taken up on the assurance of the signing of BPTAs by the project developers. To this, the project developers accorded their consent. Thereafter, CTUIL issued the LTOA intimation for LTOA quantum of 1200 MW.

(l) After carrying out detailed studies and subsequently identifying the requirement of system strengthening for transfer of power as regards the Petitioner's application for 1200 MW LTOA, CTUIL, vide intimation dated 26.5.2009, granted LTOA to the Petitioner as also to other LTOA applicants/generators in Sikkim and requested them to provide the undertaking to sign the requisite BPTA for sharing of transmission charges corresponding to their share of power transfer at the earliest.

(m) The Petitioner was granted LTOA under Open Access Regulations, 2004. Under the said Regulations, transmission customers were divided into two categories, namely, long-term customers and short-term customers. The persons availing or intending to avail access to ISTS for a period of 25 years or more were long-term customers. LTOA was to be allowed in accordance with the transmission planning criteria stipulated in Grid Code. There was no specified conditionality whatsoever attached with LTOA grant when the LTOA was applied for by a trading licensee (as was subsequently introduced under the Detailed Procedure notified by this Commission).

(n) Open Access Regulations, 2004 were repealed and replaced by Connectivity Regulations vide Gazette Notification dated 10.8.2009 and came into effect from 1.1.2010. Accordingly, LTOA grant made to the Petitioner under the Open Access Regulations, 2004 as the Petitioner continued to be governed by the said Regulations notwithstanding the enactment of the Connectivity Regulations. That the Connectivity Regulations made provision in Regulation 27 for formulating a Detailed Procedure for grant of connectivity and LTOA.

(o) Detailed Procedure made under Connectivity Regulations was applicable for the applications for grant of connectivity and LTOA to be made after the notification of the Connectivity Regulations. The Petitioner's LTOA having already been granted prior to the notification of the Connectivity Regulations, the above Detailed Procedure was not applicable to the LTOA grant made to it. The Petitioner has contended that except for 840 MW power which it has tied up for purchase by the identified beneficiaries in the Northern Region, no liability qua the balance power evacuated from the project of TUL be fastened upon it. According to CTUIL, the Detailed Procedure notified under the Connectivity Regulations being not applicable to the LTOA grant made to the Petitioner, the entire LTA quantum granted under intimation dated 26.05.2009 (including that to be transferred on merchant basis) together with all attendant liability towards payment of transmission charges, continued to subsist in favour of the Petitioner.

(p) For power evacuation from the generation projects in Sikkim, CTUIL had proposed implementation of High Capacity Power Transmission Corridor (HCPTC)-III for which regulatory approval was granted by the Commission vide order dated 31.5.2010 in Petition No.233/2009.

(q) Thus, the LTOA quantum from the project of TUL was taken into consideration while granting regulatory approval for HCPTC-III. The Petitioner was also a party to the said proceedings and it never raised any contention before the Commission as regards the LTOA quantum even when CTUIL had specifically stated power evacuation from the said project for entire 1200 MW. Importantly, during the proceedings in the above Petition, parties were aware that some of the LTOAs had been granted prior to the coming into force of the Connectivity Regulations; with regard to providing payment security mechanism to CTUIL for implementing the transmission system.

(r) Pursuant to LTOA grant, CTUIL entered into a BPTA dated 24.2.2010 with the Petitioner and six other generators in Sikkim under which CTUIL agreed to provide open access for a period of 25 years on payment of transmission charges from the scheduled date of open access of individual LTOA grantees.

(s) As per the BPTA, the Petitioner was required to pay transmission charges for total capacity of 1200 MW till the said charges were directly paid by the concerned State utilities to CTUIL. The details of Phase-I generation projects in Sikkim and their beneficiaries are as under:

Sr. No.	Applicant	Generation Project Capacity (MW)	LTOA Applied for (MW)	Location	Time Frame (Unit wise)	Long Term Access granted				Period of Long Term Access
						WR	SR	NR	ER	
1.	PTC India Limited	1200	200x6 = 1200*	Teesta-III	August 2011	-	-	840	-	25
2.										

**Out of 1200MW, PTC has signed PPA with state utilities; Total: 840MW viz PSEB (340MW), HPGCL (200MW), UPPCL (200MW) and Rajasthan DISCOMS (100MW). Separate BPTA is being signed by POWERGRID and concerned state utility (ies). Further, Sikkim will sign BPTA with POWERGRID for 144MW.*

(t) There was thus no ambiguity whatsoever that the LTOA quantum contracted by the Petitioner with CTUIL was 1200 MW and the Petitioner consciously agreed to pay transmission charges for entire 1200 MW power, which included a quantum which was on merchant power basis. This was so because it was well aware that the provisions of the Detailed Procedure notified thereunder were not applicable to the LTOA granted to it and as such, it continued to remain liable for payment of transmission charges for entire LTOA quantum.

(u) CTUIL also entered into a BPTA dated 04.06.2010 with the Petitioner and its beneficiaries for payment of transmission charges under the LTOA. In the Recitals to the said BPTA, it was reiterated that the LTOA had been granted to the Petitioner for 1200 MW out of which 216 MW was with the Petitioner on merchant basis (this reiteration was also recorded in BPTA dated 27.04.2010 executed by the Petitioner for supply of free power to the State of Sikkim). Under the aforesaid BPTA dated 27.04.2010, the beneficiaries agreed to pay transmission charges to CTUIL in proportion to their allocation from the project of TUL from its date of commercial operation.

(v) In this manner, for tied up power of 840 MW, the respective beneficiaries became liable to pay transmission charges to CTUIL and for balance 360 MW power (including 144 MW free power to Sikkim), the Petitioner became liable

to pay transmission charges to CTUIL. Under these contractual arrangements, the Petitioner undertook and agreed with CTUIL to pay transmission charges for 216 MW which it had retained with it for transferring on merchant basis. That being so, the Petitioner cannot contend before this Commission that the LTOA could not have been granted to it for power to be transacted by it on merchant basis and that there was no liability for payment of transmission charges for the said merchant power that could be imposed upon him.

(w) Initial activities for implementation of evacuation system commenced and were duly intimated to the Petitioner (and other generators) vide letter dated 16.10.2009 wherein it was requested to finalize the beneficiaries and their quantum of allocation at the earliest. It was also informed that as per the provisions of the BPTA, the Petitioner (and other generators) was required to furnish the required bank guarantee to CTUIL. In response, the Petitioner confirmed with the Respondent vide letter dated 30.10.2009 that beneficiaries for 840 MW had been finalized in the Northern Region and agreements had been signed with them; the balance power was to be sold on merchant basis in Northern Region and Western Region. The Petitioner also furnished to Respondent No.1 bank guarantee dated 24.02.2010 in the sum of Rs.10.8 crore for 216 MW quantum on merchant basis.

(x) In the meantime, various developments took place regarding load generation scenario because of which the transmission system associated with Phase-I generation projects in Sikkim was modified after discussions in various meetings. Accordingly, vide letter dated 7.10.2015, CTUIL intimated the Petitioner the corresponding changes in the transmission system. CTUIL vide letter dated 25.07.2017, requested the Petitioner to extend the bank guarantee.

(y) Vide letter dated 21.7.2017, CTUIL had circulated the Agenda for the 12th Connectivity and LTOA meeting of Eastern Region which included the discussion on modification in transmission system required for power evacuation from Sikkim IPPs and operationalization of LTOAs. Upon such circulation, the Petitioner, vide its letter dated 28.7.2017, for the first time raised the issue as regards the LTOA quantum under the LTOA granted to it.

(z) Thus, even when the LTOA had been granted for entire 1200 MW power and there was no applicability of the provisions of the Detailed Procedure to the Petitioner's LTOA, the Petitioner, in order to evade its statutory/contractual liability to pay transmission charges, requested CTUIL to make necessary corrections and change the LTOA quantum to 840 MW stating that it had "inadvertently" been mentioned as 1200 MW.

(za) In response, CTUIL, vide letter dated 18.10.2017, clarified that the LTOA granted to the Petitioner had at all times been for 1200 MW and had always been accepted by the Petitioner as such. However, the Petitioner continued to wrongly insist vide its letter dated 05.12.2017 that the LTOA granted to it and to its firm beneficiaries was for 840 MW only and that no LTOA had been granted to it on target region basis.

(zb) CTUIL vide its further letter dated 06.04.2018, reiterated that the grant of 1200 MW quantum of LTOA was made under the then applicable Connectivity Regulations wherein there was no specific requirement with regard to grant of LTOA to a trading licensee. As such, the LTOA was granted for entire 1200 MW. As regards the Petitioner's representation pertaining to submission of construction bank guarantee "*in good faith*", it was clearly specified that the said bank guarantee was required and had been submitted in accordance with the Commission's directions issued under Record of Proceedings dated 12.10.2010 wherein CTUIL had been directed to take bank guarantees from LTOA grantees under earlier Regulations in accordance with the provisions of the Connectivity Regulations. The Petitioner did not raise this issue regarding LTOA quantum at the time of signing of the BPTAs. Considering that the development of HCPTC-III had reached an advance stage, CTUIL informed that upon completion thereof, the entire 1200 MW LTOA granted to the Petitioner was to be operationalized. Being the LTOA customer, the Petitioner was liable to pay applicable transmission charges for the same.

(zc) While the matter stood as above, Respondent No.1, in compliance of the terms and conditions envisaged under BPTA, requested the Petitioner vide letter dated 10.10.2018 to open a confirmed irrevocable, unconditional and revolving Letter of Credit (LC) for Rs.1304 lakh with respect to remaining 216

MW quantum of LTOA in favour of Respondent No.1 towards payment security mechanism as per the Regulations of the Commission. Since the identified transmission system was on the verge of completion, Respondent No.1 requested the Petitioner vide letter dated 12.10.2018 to confirm firm beneficiary or indicate target region with respect to remaining 216 MW LTOA by 31.10.2018, else the 216 MW LTOA was to be considered as target LTOA in the Eastern Region for all commercial and regulatory purpose. In response, the Petitioner, vide letter dated 25.10.2018 again wrongly insisted that no LTOA had ever been granted to it on target region basis for merchant trading (for balance quantum) as the same was not permissible under the Connectivity Regulations. The Petitioner therefore denied that it was under an obligation to open any form of payment security mechanism for any alleged LTOA for transfer of power from the project of Respondent No.2. The Petitioner thus requested Respondent No.1 to withdraw its letter dated 10.10.2018 whereby notice was issued to the Petitioner for initiating regulatory actions.

(zd) Vide letter dated 5.11.2018, CTUIL again clarified as under:

- (i) As per clause 31.1.1(iii) of the Detailed Procedure, the applicants already granted LTOA under the Open Access Regulations, 2004 were provided option either to continue with the provisions of the said Regulations or to adopt the new Connectivity Regulations. However, the Petitioner did not exercise any option in this regard and signed the BPTA on 24.2.2010;
- (ii) Before grant of 1200 MW LTOA, matter had been deliberated in various meetings regarding grant of LTOA for generation projects in Sikkim. In every meeting, it was recorded that 1200 MW LTOA was to be granted to the Petitioner from the project of TUL;
- (iii) Upon grant of LTOA, the Petitioner had signed BPTAs with Respondent, CTUIL for transfer of power to firm beneficiaries for 840 MW and to Sikkim for 144 MW. The balance 216 MW for the first 15 years and 180 MW from the 16th year onwards was specifically indicated on the Petitioner's account and the Petitioner had agreed that it would

share and pay the transmission charges for this balance power. The Petitioner also submitted construction phase bank Guarantee of Rs.10.8 crore (@Rs.5 lakh/MW considering 216 MW LTA on target region basis) along with the signing of BPTA;

(iv) It was, therefore, clear that out of 1200 MW LTOA granted to the Petitioner, BPTAs for the quantum of 984 MW (840 MW+144 MW) were signed by NR and ER firm beneficiaries and the balance quantum of 216 MW (1200MW-840MW-144MW) remained granted on target basis to the Petitioner.

As such, CTUIL once again requested the Petitioner to intimate the target region for balance 216 MW latest by 9.11.2018 failing which the Eastern Region (being location of the generator) was to be considered as target region. The Petitioner, however, continued to insist vide letter dated 9.11.2018, on its wrongful request for modification of LTOA quantum.

(ze) It was noticed that one of the beneficiaries, namely, Punjab State Power Corporation Limited (PSPCL) was not scheduling power from the project of TUL and had requested the Petitioner to relinquish the LTOA granted for the purpose of transfer of power to PSPCL. On 28.11.2018, CTUIL informed that the LTOA of various generating stations in Sikkim was likely to be made effective from 1.1.2019 upon commissioning of the Teesta III – Kishanganj 400kV D/c (Quad) line. In the context of the communication from PSPCL, CTUIL vide letter dated 28.12.2018, requested the Petitioner to clearly and unequivocally communicate to it regarding its intention to relinquish 340 MW LTOA within a period of seven days from the date of issuance of the letter and informed that in the absence of a clear and unequivocal response within 7 days, CTUIL would be constrained to consider 340 MW as relinquished and the Petitioner would be liable to pay the applicable relinquishment charges.

(zf) Before the aforesaid line was commissioned, the Petitioner again contented that 216 MW LTA quantum was neither granted nor applicable to it as any balance quantum of power was to be traded on merchant basis. Accordingly, the Petitioner requested CTUIL to release the transmission corridor for utilization/allocation to any person/entity. In response, CTUIL vide

its communication dated 02.01.2019, notified the Petitioner regarding relinquishment and the consequent requirement of payment of compensation.

(zg) Pursuant to the Petitioner's communications seeking relinquishment of LTOA of 216 MW, CTUIL accepted the relinquishment of LTOA of 216 MW w.e.f. 12.12.2018. The Petitioner thus became bound to pay to CTUIL the relinquishment charges for 216 MW LTOA relinquished from 13.12.2018 as decided under the Orders of this Commission. LTOA of TUL was operationalized on 23.02.2019 and the transmission charges thereunder are being billed to the firm beneficiaries of TUL's generation project and Sikkim as agreed under the BPTA.

(zh) The Petitioner's contention that LTOA cannot be granted to a trader in the absence of a firm PPA and corresponding PSA for the period for which LTOA is permissible, is misconceived, wrong and not in accordance with the provisions of the Regulations of this Commission for grant of open access to ISTS as applicable from time to time. Further, the contention raised by the Petitioner that CTUIL has wrongfully intimated to the Petitioner that if the Petitioner fails to indicate the target region, Eastern Region will be considered the default target region, is misleading. The relinquishment has been considered from Eastern Region considering the location, i.e. the Home State (i.e. Sikkim) of the project.

(zi) The Petitioner has sought to rely upon the affidavit dated 25.08.2015 filed by CTUIL in the nature of a technical validation (TV)/compliance affidavit in Transmission Tariff Petition No.292/TT/2013 for approval of transmission tariff "Transfer of Power from Generation Projects in Sikkim to NR/WR Part-B" in Eastern Region" to contend that CTUIL has by its own admission expressed the LTOA of the Petitioner to be only 840 MW. In this regard, it is clarified that the reliance placed by the Petitioner on the above-stated affidavit dated 25.8.2013 in Petition No. 292/TT/2013, is entirely erroneous and misplaced. The information submitted by CTUIL was in response to a specific query of the Commission in ROP dated 26.3.2019 in Petition No.292/TT/2013 wherein, *inter alia*, the Commission had sought information pertaining to "list of

generators” who had sought LTOA for whom Part-A and Part-B of the system in question had been planned and not ‘long term customers’.

(zj) 216 MW LTOA granted to the Petitioner as merchant power on target region basis has continued to subsist in its favour from the date of grant till its relinquishment, notwithstanding the coming into force of the Connectivity Regulations and the Detailed Procedure framed thereunder. That being so, the Petitioner is bound to pay relinquishment charges for relinquished quantum of LTOA of 216 MW. No bill has been raised as 216 MW LTOA was relinquished vide letter dated 2.1.2019 and matter regarding relinquishment charges is *sub-judice* in Petition No.92/MP/2015.

Rejoinder by the Petitioner PTC to the reply of CTUIL

24. The Petitioner, vide its rejoinder dated 13.8.2019, has mainly submitted as under:

(a) The Petitioner had never applied for open access for Sikkim share of free power, which was clearly mentioned in its LTOA application dated 10.11.2006 and the same has been reaffirmed by CTUIL in paragraph 5 of its reply.

(b) The issue before this Commission is not regarding strengthening the transmission and distribution systems in the States of Arunachal Pradesh and Sikkim, but whether LTOA for 216 MW was ever granted to the Petitioner, as right from beginning CTUIL was fully aware of the fact that 216 MW of power was for merchant trading without any identified and crystalized beneficiaries. The PPA dated 28.07.2006 entered into between the Petitioner and TUL clearly specified that the Petitioner shall enter into Long Term PSA for 70% of the capacity. Subsequently, the Petitioner in September, 2006 entered into back to back PSAs with State Utilities of Punjab (340 MW), Haryana (200 MW), Uttar Pradesh (200 MW) and Rajasthan (100 MW), whereby 70% of the contracted capacity of the Project was tied-up on long term basis.

(c) The Petitioner had long term PSAs with only distribution licencees in the States of Punjab, Haryana, Uttar Pradesh and Rajasthan. These were mentioned as the drawee utilities in the LTOA application and the balance

quantum of power was mentioned for merchant trading. The LTOA application also mentioned the details of PSA dates with various beneficiaries.

(d) Article 9.1.1 of the PSAs with the said beneficiaries provides that all costs and open access related charges are reimbursable/payable by the Purchasers. Based on the assurance of Purchasers to reimburse/pay all open access related charges, the Petitioner under Article 4.1 of the PSAs undertook the obligations to (i) obtain on behalf of the Purchaser the LTOA and (ii) pay on behalf of the Purchasers the open access related charges to the CTUIL. Consequently, the Purchasers entered into a BPTA dated 04.06.2010 with CTUIL agreeing to share and pay the transmission charges to CTUIL in proportion to their allocation from Teesta-III from its date of commercial operation in accordance with the norm/notifications/terms and conditions issued by CERC from time to time and also agreed to open Letter of Credit in favour of CTUIL. Thus, from the reading of the PSA and the BPTA dated 04.02.2010, it is evident that the sole responsibility for payment in respect of the LTOA was that of the beneficiary and the Petitioner had acted only on behalf of the Purchaser(s) as per the terms of the PSAs.

(e) The Petitioner vide its letter dated 30.10.2009 to CTUIL has reiterated that the beneficiaries have been finalized in Northern Region with whom Agreements have been signed for 840 MW and the balance power would be sold on merchant basis in NR and WR.

(f) The Commission would appreciate that any open access application are standard formats which are required to be followed by all the applicants, without any qualification/ deviation. In this context, the Petitioner's LTOA application dated 10.11.2006 was with standard annexures enclosed therein, which provided for consent only for conducting system studies. The same cannot be construed in any other way for any other consent. However, it is pertinent to mention that the BPTA dated 24.02.2010 was signed as per Connectivity Regulations together with the nine LTA applicants of Sikkim after time lapse of more than three years during which various developments and regulatory changes took place which could not be ignored.

(g) The Petitioner vide letter dated 25.01.2007 had categorically intimated to CTUIL that the detailed study for identifying and strengthening of the transmission system for evacuation of power from the project of TUL was only for the States of Punjab, Haryana, Uttar Pradesh and Rajasthan in the Northern Region. Nowhere the Petitioner had requested CTUIL to carry out detailed study for entire quantum of 1200 MW.

(h) From the letter dated 02.01.2007 of CTUIL, it can be easily seen that being CTUIL, it took an unilateral decision to plan the transmission line considering the entire 1200 MW installed capacity of Teesta-III HEP and informed the Petitioner of its decision of going ahead with processing the application for LTOA for 1200 MW, without considering the fact that the identified beneficiaries were having PSAs only for 840 MW, which was known to CTUIL from the beginning. In this regard, reliance has been placed on the Commission`s order dated 16.10.2015 in Petition No. 210/MP/2014 wherein the Commission observed that it is evident that there is no uniformity in the treatment of free power from hydro stations connected to ISTS network. It is observed that most of the hydro generators had applied for LTOA for entire quantum of power and according to CTUIL, LTOA was granted as per their respective LTOA applications. It is, however, noted that there are certain cases where CTUIL has granted LTOA for capacity less than the installed capacity where the applicants had sought LTOA after reducing the free power component.

(i) It is observed from the Minutes of Meeting dated 5.11.2007 that 1200 MW is mentioned under the head "Capacity/ Power to be transferred". The Minutes of the Meeting also mentions the tentative beneficiaries, totalling to 840 MW only.

(j) It is observed from the minutes of meeting dated 1.5.2009 that TUL had informed that the project could be commissioned during August 2011 to January 2012. Further, during the meeting ED (Engg -II) mentioned that CTUIL may go ahead with the implementation of the above scheme based on the assurance of signing of BPTA by the project developers. The project developers agreed to the proposal. Thus, there was neither a request nor a confirmation regarding 1200 MW LTA by the Petitioner.

(k) The letter dated 26.05.2009 was only an intimation to the Applicants for grant of LTOA including the Petitioner. The quantum of power to be transferred from Teesta-III was mentioned as 1200 MW, which was the capacity of the project and the quantum of power to be injected from the Project. However, the list of beneficiaries indicated was only for 840 MW and there was no mention of any target region for balance power as the same was for merchant trading. It may be noted that target region for remaining eight generators were clearly mentioned in the said LTOA intimation letter. The Petitioner vide letter dated 30.11.2009 had informed CTUIL that agreements with the beneficiaries for 840 MW were signed and the balance power would be sold on merchant basis. Allocation/grant of LTOA becomes final only after signing of the BPTA and the LTOA intimation letter is only provisional in nature.

(l) In the LTOA application submitted by the Petitioner in 2006, LTOA was sought for 35 years as per Open Access Regulations, 2004. However, in the LTOA intimation letter dated 26.05.2009 issued by CTUIL common to all the nine applicants, the permitted open access was only for 25 years and nowhere it mentions the applicable regulations i.e. whether 2004 or 2009. Therefore, it cannot be denied that CTUIL has taken into consideration the draft Connectivity Regulations which was notified.

(m) Further, the BPTA signed between Respondent No.2 and seven long term customers on 24.02.2010 clearly mentions a quantum of only 840 MW of LTOA granted in the name of the Petitioner with the identified beneficiaries. The BPTA clearly mentions that the BPTA was in accordance with Connectivity Regulations and amendment thereof. Thus, in the instant case, the Petitioner being a trader, can be granted LTOA only to the extent that the trader has a valid contract for buying and selling of at least the same quantum of power and for such period of time for which LTOA has been applied for. At the time of grant of LTOA, the Petitioner had signed PSA for 840 MW only and as per Connectivity Regulations, CTUIL cannot grant LTOA beyond 840 MW.

(n) The Commission in its order dated 31.05.2018 in Petition No. 190/MP/2016 had observed that there is no provision for transfer of LTOA under the Connectivity Regulations and the LTOA granted to a person is non-

transferable. The logical interpretation of Regulations 34(2) (Repeal and Savings) of Connectivity Regulations is that the earlier LTOA granted as per Open Access Regulations, 2004 shall remain valid to maintain continuity, albeit the earlier granted LTOA shall be made consistent with the present Connectivity Regulations.

(o) Clause 31 of the Detailed Procedure specifically provides with treatment of LTOA applications already made to CTUIL. Clause 31.1.1 (iii) of the Detailed Procedure gave an option that in case where LTOA has been granted but BPTA was yet to be signed, the parties can opt either for Open Access Regulations, 2004 or adopt the new Connectivity Regulations. The BPTA signed on 24.02.2012, clearly mentions that LTOA is provided in accordance with Connectivity Regulations only.

(p) Clause 31.1.2 of the Detailed Procedures provides for treatment of long term open access application where system strengthening is required. The harmonious interpretation of the entire Regulations should be made to arrive at logical conclusion. Keeping in view of the various provisions of the Detailed Procedures, particularly the requirement of valid PPA and PSA, need for identified beneficiary for grant of LTOA to a trading licensee and the fact that identified beneficiaries were for 840 MW only as stated in the Petitioner's LTOA application dated 10.11.2006, the BPTA dated 24.02.2010 was signed by the Petitioner along with six other LTA applicants in accordance of Connectivity Regulations.

(q) The LTOA granted very clearly and unequivocally mentioned 840 MW only in NR.

(r) While granting the transmission licence to Teesta valley Power Transmission Limited, the Commission had observed that open access was made available for 70% of the project capacity i.e. 840 MW only and the said transmission lines were primarily being executed for evacuating the power to the identified beneficiaries located in Northern Region.

(s) CTUIL had filed Petition No.233/2009 for grant of regulatory approval and other relief for execution of evacuation system required in connection with grant of LTOA. In the present case, the only issue is whether CTUIL can and

has granted 216 MW LTOA in light of clear averment made by the Petitioner that this quantum of 216 MW of power was for merchant trading only.

(t) Without prejudice to above, the said petition was for approval of evacuation system for collectively 9 High Capacity Power Transmission Corridor and entailing investment of more than Rs.58,000 crore. Further, there were 90 Respondents in the petition and LTA agreements were signed with 37 applicants in a single day on 24.02.2010. The said Petition was disposed of by the Commission vide order dated 26.03.2020 wherein the Commission observed that 'in view of the above mandate of the Tariff Policy, we are of the view that the CTU should carry out consultation with the stake holders and satisfy itself about the bona fide nature of generation projects which are likely to materialize during the next three years and submit the detailed report about such projects, including the physical progress made wherever feasible and approach the Commission by first week of April, 2010.'

(u) One of the prayers in the said petition was regarding firming of the beneficiaries before Respondent No.1 makes any investment. The Respondent No.1 was apprehensive of making huge investment without having firm beneficiary. At that point of time, the Respondent No.1 was well aware that in the instant case, the firm beneficiaries are for 840 MW only and the balance capacity is for merchant trading. Now, the Respondent No.1 cannot take contrary position that it has granted LTOA to the Petitioner for the merchant capacity, which is never supposed to have firm beneficiary. Being CTUIL performing the statutory function and already having signed the BPTA on 24.02.2010, it was incumbent to put correct facts and figures in terms of the signed BPTA.

(v) In the BPTA dated 24.02.2010, it is clearly mentioned that LTOA for 840 MW was granted to the Petitioner. In fact, clause 2.0 of the BPTA dated 24.02.2010 clearly mentions that PTC's liability to pay the LTOA charges is only till concerned State utility enters into BPTA with PGCIL for payment of its share of LTOA charges and only to provide security that in case the identified beneficiaries do not sign the BPTA with CTUIL then only PTC shall be liable to pay the LTOA charges allocated for the beneficiaries.

(w) From Annexure-1 of the BPTA dated 24.02.2010, it is clear that LTOA granted to PTC was 840 MW only out of project capacity of 1200 MW, whereas in case of remaining 6 projects LTOA granted was equal to the installed capacity of their respective project. Further, it was also clarified that for 840 MW LTOA granted, separate BPTA would be signed with the beneficiaries i.e. Punjab, Haryana, Uttar Pradesh and Rajasthan. Thus, by no stretch of imagination it can be inferred that LTOA granted was for total installed capacity of 1200 MW.

(x) Subsequently on 04.06.2010, the BPTA was signed between Respondent No.1 and the long term beneficiaries in the States of Haryana, Punjab, UP, Rajasthan and the Petitioner in furtherance of the BPTA dated 24.02.2010 only for the purpose to crystallise the rights, obligations and liabilities in respect of 840 MW LTOA allocated to the above named beneficiaries for a period of 25 years. The purpose of the BPTA dated 04.06.2010 with beneficiaries was not to amend or to supersede the LTOA quantum specified in the BPTA dated 24.02.2010 which was signed by the seven LTOA applicants. Under the BPTA dated 04.06.2010, the long term beneficiaries in the States of Haryana, Punjab, UP, Rajasthan were liable and responsible to share and pay all the transmission related charges for the LTOA allocated to them.

(y) The Petitioner under a mistaken belief and in good faith had submitted the bank guarantee of Rs.10.8 crore for 216 MW of power, even though this quantum of power was on merchant basis. However, it was a *bona fide* mistake on the part of the Petitioner. The submission of bank guarantee cannot be treated as an acceptance by the Petitioner that the Respondent No.1 had granted LTOA in respect of 216 MW of power which was on merchant trading basis.

(z) The Respondent has informed vide letter dated 07.10.2015 regarding change in evacuation scheme of certain other generation projects in the State of Sikkim. However, the said letter only intimated about revision in the Annexure 2 & Annexure 3 of the BPTA dated 24.02.2010, which were actually Annexure 3 & Annexure 4 of the LTOA intimation letter dated 25.06.2009 enclosed in the BPTA dated 24.02.2010 and were related to changes in

transmission system to be implemented by generation developers. The said letter dated 7.10.2015 was not related to any changes in Annexure-1 of the BPTA dated 24.02.2010 which crystallises the LTOA grant quantum. Hence, mentioning of the said letter is out of place and not related to the present dispute.

(za) The Petitioner in reply to the letter dated 21.07.2017 of CTUIL regarding Agenda for 12th Connectivity, vide letter dated 28.07.2017 explained in detail the facts as stated above with respect to non-grant of LTOA for 216 MW. Further, as the claim against bank guarantee of Rs.10.28 crore has already been submitted by the Respondent No.1, the Petitioner in response to the CTUIL's letter dated 25.07.2017 extended the validity of said bank guarantee to avoid its encashment. However, the said bank guarantee was returned by CTUIL on 30.07.2018.

(zb) In response to Agenda for the 12th Connectivity and LTOA meeting of Eastern Region circulated by CTUIL vide letter dated 21.07.2017, the Petitioner vide letter dated 28.07.2017 explained the position in detail regarding grant of LTOA stating that LTOA for 840 MW only was granted and requested CTUIL to correct the LTOA quantum to 840 MW, instead of 1200 MW.

(zc) BPTA dated 24.02.2010 clearly mentions that the LTOA is granted under the Connectivity Regulations and the LTOA quantum is mentioned as 840 MW and not the LTOA quantum as claimed by CTUIL. As already stated above, under the Connectivity Regulations, LTOA to a trader can be granted to the quantum and period for which PPA and PSA have been entered into. In the instant case, it is an admitted fact that PSA for 840 MW only was entered into between the Petitioner and the Long-Term beneficiaries in the States of Rajasthan, Haryana, Punjab and Uttar Pradesh.

(zd) CTUIL vide letter dated 12.10.2018 wrongly requested the Petitioner to open the LC in respect of 216 MW, knowing fully well that the said quantum of power of 216 MW was for merchant trading. Further, no LTOA was granted and target region was not mentioned. CTUIL immediately vide letter dated 12.10.2018 requested the Petitioner to indicate the firm beneficiary or the

target region for 216 MW of power, otherwise, Eastern Region will be considered as the target region. This contention of the CTUIL is totally against the facts and the regulations, as there is no such provision in the regulations.

(ze) The contention of CTUIL that PSPCL had requested the Petitioner for relinquishment of LTOA is incorrect and misleading as PSPCL had directly requested CTUIL for relinquishment of the said LTOA. The letter dated 28.12.2018 of the CTUIL to the Petitioner was totally unwarranted, as PSPCL vide its letter dated 16.11.2018 had relinquished 340 MW LTOA and there was no need to seek further clarification/ confirmation from the Petitioner in this respect. This is relevant on account of the fact that as per the BPTA dated 04.06.2010, to which long term beneficiaries were signatories, had categorically confirmed that they would be responsible to pay all transmission related charges for their share of LTOA allocation. Further, the Commission in its order dated 08.03.2019 in Petition No. 92/MP/2015 in the matter of determination of stranded capacity and relinquishment charges, has held that the relinquishment charges are in the nature of transmission charges. Thus, the contention of CTUIL in letter dated 28.12.2018 that the Petitioner was liable to pay for the relinquishment charges are totally arbitrary and illegal.

(zf) The Petitioner vide letter dated 11.12.2018 while reiterating its stand that no LTOA was granted for 216 MW power and without prejudice to its rights and contentions, released the LTOA in respect of 216 MW for utilisation/ allocation by any other person/entity. However, CTUIL vide letter dated 02.01.2019 had wrongly intimated to the Petitioner that the Petitioner is responsible for the relinquishment charges.

(zg) As per the Connectivity Regulations, LTOA to a trader cannot be granted in absence of valid PPA and PSA.

(zh) CTUIL had categorically stated under an affidavit in Petition No. 292/TT/2013 that only 840 MW of LTA has been sought by generators and planned by CTUIL.

(zi) LTA was never granted in respect of 216 MW. Further, the BPTA in this respect clearly mentions that Connectivity Regulations is applicable and accordingly, in the instant case as the beneficiary was not identified, LTA in

respect of 216 MW could not have been granted. Accordingly, the Petitioner is not liable to pay for any charges including relinquishment charges in respect of 216 MW.

Hearing dated 11.11.2021

25. The matter was heard on 11.11.2021 through video conferencing. During the course of hearing, learned senior counsel and learned counsel for the Petitioner and the learned counsel for the Respondent No.1, CTUIL respectively advanced detailed submissions in the matter by relying upon their respective pleadings. Learned counsel for the Respondent No.2, Teesta Urja Limited submitted that dispute involved in the matter does not concern with TUL. However, the Commission may take into the account that any coercive action by the Respondent No.1 may result in loss of generation and spillage of water at Teesta-III Hydroelectric Project. Based on the request of the learned counsel for the Petitioner and the Respondent No.1, the Commission permitted the Petitioner and the Respondent No.1 to file their respective written submissions within two weeks with copy to the other side.

26. The Petitioner and CTUIL has submitted their respective written submissions and mainly reiterated the submissions made in the pleadings. The Petitioner vide its written submission has, however, made the following additional submissions:

(a) CTUIL cannot grant LTA under the Connectivity Regulations in respect of merchant trading where the beneficiary is not identified and/or there is no valid contract for selling of power. If CTUIL goes ahead and grants LTA in absence of any valid PPA with firm beneficiaries, the same shall be *void ab-initio* as per Section 23 of the Indian Contract Act, 1872.

(b) As per the observation of the Commission at Paragraph 2 of order dated 14.5.2009 in Petition No. 116/2008 in the matter of grant of transmission licence to Teesta Vallley Power Transmission Limited, it was clearly understood by all the parties, including CTUIL that the transmission lines were

primarily being executed for the beneficiaries located in the Northern Region with whom the Petitioner had signed the PPAs for a total quantum of 840 MW.

(c) Also, the Commission vide order dated 16.10.2015 in Petition No. 210/MP/2014 in AD Hydro case has held that an applicant cannot be liable for LTA for entire capacity and pay transmission charges accordingly. The Commission has also held that the party cannot be held liable to take LTA for entire capacity and pay the transmission charges. In the instant case also the Petitioner cannot be held liable for LTA for entire quantum power of the Project of TUL. The Petitioner is liable only to the extent of LTA that was granted as per the provisions of law.

Analysis and Decision

27. We have considered the submissions of the Petitioner and the Respondents and perused the documents available on record. The limited scope of the present Petition is whether LTOA was granted or could have been granted to the Petitioner in respect of the quantum of 216 MW.

28. The Petitioner made an application to CTUIL on 10.11.2006 for grant of LTOA for 35 years in accordance with the Open Access Regulations, 2004 for 1032 MW for the 1st to the 15th year (after considering 12% free power to Sikkim and 2% for auxiliary consumption and tie line losses) and 996 MW for the 16th to the 35th year (after considering 15% free power to Sikkim and 2% for auxiliary consumption and tie line losses) for sale of power to the beneficiaries stated in the application. The beneficiaries as stated in the application were:

- (1) PSEB - 340MW;
- (2) HPGCL - 200MW;
- (3) UPPCL - 200MW;
- (4) Rajasthan Discoms (100 MW); and
- (5) Balance Power for merchant trading in NR & WR.

29. After receipt of the aforesaid application, CTUIL vide its letter dated 2.1.2007 conveyed to the Petitioner that although the quantum of power to be transmitted has been indicated as 1032 MW for the 1st to the 15th year and 996 MW for the 16th to the 35th year, as the full power from the generating station would be injected into the grid for onward transmission, the capacity of transmission line should be planned to cater to 1200 MW power from the Project. Accordingly, CTUIL vide the said letter conveyed that it is going ahead with processing the application for LTOA for transfer of 1200 MW to the beneficiaries indicated in the application. It was also conveyed that the transmission system so far planned for implementation by year 2011 would not be able to transfer 1200 MW power from the TUL's Project to the States of Punjab, Haryana, Uttar Pradesh and Rajasthan in Northern Region and therefore, detailed studies need to be carried out for identifying the strengthening of transmission system. Accordingly, CTUIL requested the Petitioner to confirm the terms and conditions for carrying out the studies so that further action could be taken up.

30. In response, the Petitioner vide letter dated 25.01.2007 accorded its confirmation to CTUIL to take up the detailed studies for identifying the strengthening of transmission system for transfer of power from TUL's Project to the States of Punjab, Haryana, Uttar Pradesh and Rajasthan in Northern Region.

31. As per CTUIL, after deliberations on the Petitioner's application in various meeting, CTUIL vide intimation dated 26.05.2009 granted LTOA to the Petitioner for 1200 MW. CTUIL entered into BPTA dated 24.02.2010 with the Petitioner and six other generators in Sikkim.

32. The main contention of Petitioner is that the Petitioner had informed CTUIL from the beginning that balance quantum of power is for merchant trading, and once it is for merchant trading LTOA could not have been granted by CTUIL. The Petitioner in support of its argument has relied on Detailed Procedure issued under 2009 Connectivity Regulations which provides that a “trader must have a valid contract (or PPA) for buying and selling of at least the same quantum of power and period of time for which Long-term Access has been applied for”. Accordingly, the Petitioner has argued that it has been granted LTOA only for the quantum of 840 MW that is to the extent of PSAs signed with the beneficiaries. However, CTUIL has contended that the Petitioner had been granted LTOA for the quantum of 1200 MW. CTUIL has submitted that the BPTAs entered into among the Petitioner, CTUIL and the beneficiaries also indicate that the quantum of LTOA granted was 1200 MW.

33. We have considered the submissions made by the parties. We have perused the LTOA Application made by the Petitioner, LTOA grant issued by CTU and various BPTAs.

34. The details of LTOA Application dated 10.11.2006 made by Petitioner are as under:

4.	Details of power transfer equipment			
	i)	Quantum of power to be transmitted (MW)	Year 1-15	Year 16-35
			1032 MW (after considering 12% free power to Sikkim and 2% for Auxiliary Consumption & Tie Line Losses)	996 MW (after considering 5% free power to Sikkim and 2% for Auxiliary Consumption & Tie Line Losses)
	ii)	Peak load to be transferred	1032 MW	996 MW
	iii)	Average load to be transferred		
	iv)	Name(s) of the injecting utility	Teesta Urja Limited (TUL)	
	a)	Point(s) of injection of power	Powergrid Pooling Station at Silliguri	

			<i>through an integrated transmission system (SLD of proposed integrated system enclosed for reference)</i>	
	b)	<i>Its Quantum</i>	<i>1032MW (Year 1-15)</i>	<i>996MW (Year 16-35)</i>
	c)	<i>Voltage level of the EHV Substation (Nearest EHV substations and ownership of EHV Substations)</i>	<i>400 KV Interconnection/pooling point of POWERGRID at Siliguri</i>	
	d)	<i>Name(s) of concerned SLDC</i>	<i>Sikkim SLDC</i>	
	e)	<i>Name(s) of drawee utility</i>	<i>1) Punjab State Electricity Board - 340MW 2) Haryana Power Generation Corporation Limited- 200 MW 3) Uttar Pradesh Power Corporation Ltd.-200 MW 4) Rajasthan Discoms -100 MW 5) Balance Power for Merchant Trading in NR & WR</i>	
	a.	<i>Point(s) of drawl of power</i>	<i>Nearest ISTS connection Point for Drawee Utility</i>	
	b.	<i>Its quantum</i>	<i>Year 1-15</i>	<i>Year 16-35</i>
			<i>1032 MW (after considering 12% free power to Sikkim and 2% for Auxiliary Consumption & Tie Line losses)</i>	<i>996 MW (after considering 15% free power to Sikkim and 2% for Auxiliary Consumption & Tie Line Losses)</i>
	c.	<i>Voltage level of the EHV substation (Nearest EHV Substation and ownership of EHV Substations)</i>	<i>400 KV sub-station of POWERGRID for all drawee utilities.</i>	
	d.	<i>all drawee utilities.</i>	<i>SLDCs of Punjab, Haryana, Uttar Pradesh and Rajasthan</i>	
NOTE		<i>in case of mismatch between quantum of power injected and drawal then details of balance power to other beneficiaries should be furnished</i>		
	vi	<i>Electrical connectivity diagram of the EHV Substation where the Power is to be injected or drawal if it is not a POWERGRID substation.</i>	<i>N.A</i>	
5.		<i>Expected date of commencement of Transmission Open Access</i>	<i>From expected commissioning of the project progressively from November 2011 onwards.</i>	

35. Perusal of the aforementioned LTOA Application indicates that LTOA was sought for 1032 MW for initial 15 years and 996 MW from 16th to the 35th year. The

only quantum which was not applied for by the Petitioner was auxiliary consumption, tie line loss and free power to Sikkim. This clearly indicates that the quantum of LTOA sought for by the Petitioner was beyond 840 MW and it was not limited to the tied-up capacities under the Power Supply Agreements signed by the PTC with the various beneficiaries to the tune of 840 MW.

36. CTUIL vide intimation dated 26.5.2009 granted LTOA to the Petitioner as follows:

“Sub: Long Term Open Access for generation projects in Sikkim in advanced stage of commissioning.

....This is with reference to applications for grant of Long Term Open Access for evacuation of power from following project developers in Sikkim:

1. PTC India Limited for Teesta Urja Ltd. (LTOA applicant of Teesta III HEP)

.....

The intimation letter for providing Long Term Open Access is enclosed. It is requested that the respective generation project developers may provide the undertaking to sign the requisite BPTA for sharing of transmission charges corresponding to their share of power transfer at the earliest but not later than the date stipulated in the intimation letter.

.....

(c) Quantum of transmission capacity permitted: As per detailed indicated at Annexure – 2.

.....

(h) Due date to provide undertaking to sign BPTA: on or before 10-06-2009.

(along with the undertaking, applicant shall have to sign the requisite BPTA for sharing of transmission charge as mentioned above.)

.....

Annexure -2

Sr. No.	Name of the Developer/ Open Access Applicant	Name of generation plant	Capacity/ Power to be transferred	Tentative Beneficiaries	Generation expected to commence from
1	Teesta Urja Ltd./PTC	Teesta-III	200×6=1200 MW	PSEB-340 MW, HPGCL-200MW, UPPCL-200 MW, Rajasthan Discom-100 MW	August, 2011

37. Perusal of the aforesaid grant indicates that quantum of transmission capacity permitted was 1200 MW out of which tentative beneficiaries were indicated for 840 MW.

38. Subsequent to the grant of said LTOA vide letter dated 26.5.2009, CTUIL issued letter dated 16.10.2009 to entities to whom LTOA was granted including the Petitioner. The said letter dated 16.10.2009 reads as under:

“ We desire to invite your kind attention to our letter of even no. dated 01.10.2009 on the above subject. You may kindly recall that the provision of Long term Open Access granted for following IPPs in Sikkim.

Sr. No.	Name of the Developer/ Open Access Applicant	Name of the Generation Plan	Capacity/ Power to be transferred	Expected Commissioning schedule
1	Gati Infrastructure Ltd.	Chuzachen	49.5x2=99 MW	March, 2010
2	Teesta Urja Ltd./ PTC	Teesta-III	200x6 =1200 MW	Aug., 2011
3	Lanco Energy Pvt. Ltd.	Teesta-VI	125x4=500 MW	Nov, 2012
4	DANS Energy Pvt. Ltd.	Jorethang	48x2= 96 MW	Dec., 2011
5	JAL Power Corporation	Rangit IV	40x3=120 MW	June,2013
6	Shiga Energy Pvt. Ltd.	Tashiding	48.5x2 =97 MW	June, 2012
7	TT Energy Pvt. Ltd.	Tingting	49.5x2=99 MW	March, 2012
8	Madhya Bharat Power Corporation Ltd.	Rongnichu	48x2=96 MW	March, 2012
9	Gati Infrastructure Bhasmey Power Pvt. Ltd.	Bhasme	25.5x2 = 51 MW	March, 2012
Total			2358 MW	

It may kindly be recalled that in absence of specific beneficiaries i.e. drawee utilities, the Long term open access for utilization of ISTS was granted for target regions viz. Northern, Western & Eastern regions. Based on the above, the initial activities for the implementation of the evacuation system have already commenced. In this regard, it is once again requested to finalize the beneficiaries and their quantum of allocation at the earliest, failing which we may not be able to proceed with implementation activities.

Further, it is to emphasize that as per clause 6(a) of the initialed BPTA, the requisite Bank Guarantee at the rate of Rs.6 lakhs per MW is required to be furnished by all the developers at the earliest.”

39. The above letter dated 16.10.2009 has been issued prior to date of coming into effect of the 2009 Connectivity Regulations, which was 1.1.2010. Thus, the LTOA grant on target region for the quantum for which beneficiaries were not identified was clearly available with Petitioner as on 16.10.2009.

40. BPTA dated 24.2.2010 signed by the Petitioner with the CTUIL and the other long term transmission customers provides as under:

B) Each of the project developers i.e. the Long term transmission customer has agreed to share and bear the applicable transmission charges as decided by Central Electricity Regulatory Commission of the total transmission scheme as per Annexure-3 from the scheduled date of commissioning of respective generating units, corresponding to the capacity of power contracted from the said generation project through open access as indicated at Annexure- I irrespective of their actual date of commissioning.

..
2.0 ...*(c) Each Long term transmission customer (including its successor/assignee) shall pay the applicable transmission charges from the date of commissioning of the respective transmission system which would not be prior to the scheduled commissioning date of generating units as indicated by the respective developer as per Annexure-1. The commissioning of transmission system would be postponed only if the same is agreed mutually by concerned parties.*

...
List of Phase-1 Gen Projects and their beneficiaries

Applicant	Generation Project Capacity (MW)	LTOA Applied for (MW)	Location	Time Frame (Unit wise)	Long Term Access granted (MW)				Period of Long Term Access
					WR	SR	NR	ER	
PTC India Limited	1200	200x6 = 1200 MW*	Teesta-III	August, 2011			840		25 Years

** Out of 1200 MW, PTC has signed PPA with state utilities; Total: 840 MW viz PSEB (340 MW), HPGCL (200 MW), UPPCL (200 MW) and Rajasthan DISCOMS (100 MW). Separate BPTA is being signed by POWERGRID and concerned state utility(ies). Further, Sikkim will sign BTPA with POWERGRID for 144 MW."*

41. Perusal of above BPTA dated 24.2.2010 reveals that the Petitioner had applied LTOA for 1200 MW and PPAs signed by PTC with state utilities were for 840 MW for which separate BPTAs were to be signed by PSEB, HPGCL, UPPCL, Rajasthan Discoms and Sikkim.

42. BPTA dated 4.6.2010 signed by the Petitioner with the CTUIL and the beneficiaries (PSEB, HPPCL, Rajasthan Discoms and UPPCL) provides as under:

"And whereas PTC is a licensee and is desirous to avail Long Term Open Access in accordance with CERC (Open Access in Inter-State Transmission) Regulation, 2004 dated 30.1.2004 and Electricity Act 2003 to the transmission system of POWERGRID as per the following details:

Name of the Generating Station: Teesta III (Teesta Urja Ltd.) in Sikkim
Capacity: 1200 MW
*Beneficiaries: PSEB (340 MW), HPPC (200 MW), UPPCL (200 MW), Rajasthan DISCOMS (100 MW), SIKKIM (144 MW), **Balance (216 MW) – PTC***

Open Access is granted for a period of 25 years.”

43. Further, a separate BPTA was signed between the Petitioner, CTUIL and Power Department of Sikkim on 27.4.2010. The relevant extract of the said BPTA dated 27.04.2010 is as under:

Name of the Generating Station: Teesta III (Teesta Urja Ltd.) in Sikkim
Capacity: 1200 MW
Beneficiaries: - PSEB (340 MW)
- HPPC (200 MW)
- UPPCL (200 MW)
- Rajasthan DISCOMS (100 MW)
- SIKKIM - 144 MW (12% free power) for the first 15 years and 180 MW (15% free power) from 16th year onwards.

- PTC (Balance 216 MW for the first 15 year and 180 MW for 16th year onwards)

Open Access is granted for a period of 25 years.”

44. We observe that in the above mentioned LTOA grant and the BPTAs signed, the LTOA granted was for 1200 MW, which also included free power to Sikkim for which separate BPTA was signed on 27.04.2010.

45. We also observe that the Petitioner has furnished the construction bank guarantee of Rs.10.8 crore (@ Rs.5 lakh/MW) for 216 MW along with signing of BPTA on 24.02.2010 which have been revalidated from time to time. We further observe that the Petitioner had also requested CTUIL vide letter dated 11.12.2018 to release the transmission corridor for 216 MW for utilisation/allocation to any other person/entity.

46. Admittedly, the Petitioner for the first time vide its letter dated 28.7.2017, in response to the agenda for the 12th connectivity and LTA meeting of Eastern Region, raised the issue regarding quantum of LTOA by relying on the provisions of Clause 22.4 of the Detailed Procedure made under Connectivity Regulations and contended that the LTOA granted to it was for 840 MW only.

47. The Petitioner has referred to Detailed Procedure approved vide order dated 31.12.2009 in accordance with Regulation 27(1) of the 2009 Connectivity Regulations. As per Clause 31.1.1(iii) of the Detailed Procedure, long term access applications where the long term access was already granted and BPTA was yet to be signed, such applicants shall have the option either to continue with the provisions of Open Access Regulations, 2004 or to adopt the new Regulations, Connectivity Regulations. The Petitioner has relied on the provisions of the BPTA to establish that the BPTA was signed under the Connectivity Regulations and, thus, the Petitioner chose Connectivity Regulations over Open Access Regulations, 2004. As per the Petitioner, the procedure for making of application for grant of Long Term Access stipulated that a trader can make an application for LTA only if it had a valid contract (a PPA) for buying and selling same quantum of power with firm beneficiary. However, the Petitioner has submitted that it did not have a contract/PPA for selling power with firm beneficiary beyond 840 MW.

48. We do not find merit in the above contention of the Petitioner. The Petitioner is relying on a clause of the Detailed Procedure which is not applicable to the present case. The relevant portion of Clause 31.1.1 of the Detailed Procedure relied by the Petitioner is extracted as under:

*“TREATMENT OF PRESENT LONG-TERM OPEN ACCESS APPLICATIONS
ALREADY MADE TO CTU*

31.1. In line with the repealed regulations of Central Electricity Regulatory Commission (Open Access in Inter-state Transmission) Regulations, 2004, CTU has received numerous applications for Long Term Open Access.

1. Long Term Open Access Application where no system strengthening is required:

(iii) The Long term open access already granted and BPTA is yet to be signed shall have the option either to continue with the provisions of Regulations 2004 or to adopt the new Regulations, 2009.....”

49. Apparently, Clause 31.1.1 (iii) of the Detailed Procedure is applicable for LTOA Application made under Open Access Regulations, 2004 where ‘no system strengthening is required’, whereas in the case of the Petitioner, requirement for system strengthening for evacuation of power from TUL was clearly indicated by CTUIL as early as 2007 vide its letter dated 2.1.2007. Therefore, the above provision is not applicable in case of the Petitioner.

50. The Petitioner has contended that electricity trader is not eligible for grant of LTA without valid PPA under Detailed Procedure of 2009 Connectivity Regulations. The relevant clause of the Detailed Procedure relied on by the Petitioner is extracted as under:

**“PROCEDURE FOR MAKING APPLICATION FOR GRANT OF LONG- TERM
ACCESS TO ISTS**

22. OUTLINE

22.2 This Procedure is in accordance with the various provisions of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 hereinafter referred to as “Regulations”. This procedure is to be read in conjunction with the Regulations.

22.3 **This Procedure shall apply to the Applications made for Long-Term Access (LTA) to the transmission lines or associated facilities of the inter-State transmission system (ISTS), received by the Central Transmission Utility (CTU) on or after the date notified by the Commission of coming into force of the Regulations.**

22.4 Application for LTA can be made by a Generating station including a captive generating plant, a consumer, an electricity trader or distribution licensee, a State Government owning some quantum of power (like free power given to the State Government in which the hydro station is located, equity power given to a State for allowing a power station to be set up in the State). However, the power station from

which the power is being sourced or the load, as the case may be, should (i) already be connected to grid, whether the State grid or the inter-State grid, or (ii) have already been granted permission for connectivity to the grid or (iii) have already applied for connectivity to the grid or (iv) be making application for connectivity to the grid simultaneously with this application in line with the Regulations.

Note: (i) XXX

(ii) If the Applicant is an Electricity Trader, it must have a valid trading license as per CERC (Procedure, Terms and Conditions for grant of Trading License and Related matter) Regulations, 2009 and subsequent amendments thereof. The Trader must have a valid contract(or PPA) for buying and selling of at least the same quantum of power and period of time for which Long-term Access has been applied for.”

51. It is evident from the Clause 22.3 of the Detailed Procedure that the said provision is applicable to the new applications being made under the Connectivity Regulations on or after the same has come into force and is not applicable to petitioner who was granted LTOA under 2004 Open Access Regulations

52. In light of the aforesaid discussion, we find that the contentions raised by the Petitioner are devoid of merit and that Petitioner was granted LTOA for the disputed quantum of 216 MW. We observe that the since the said quantum of 216 MW has already been considered as relinquished vide CTU letter dated 2.1.2019 w.e.f 12.12.2018, the prayer of opening of LC does not survive.

53. The Petition No. 394/MP/2018 is disposed of in terms of the above discussions and findings.

Sd/-
(P.K. Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(I.S. Jha)
Member

Sd/-
(P.K. Pujari)
Chairperson