

**In the Appellate Tribunal for Electricity, New Delhi
(Appellate Jurisdiction)**

Appeal No. 69 of 2014

Dated: 17th February, 2016

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

In the Matter of:

Lanco Kondapalli Power Limited

Registered Office:
Lanco House, Plot No.4,
Software Units Layout,
HITEC City, Madhapur,
Hyderabad – 500 081.

Also at:

Plant Office:
IDA, Kondapalli,
Ibrrhimpatnam Manda – 512 228
Krishan District,
Andhra Pradesh.
(Through its Chief Operating Officer)

... Appellant(s)/Petitioner

Versus

1. Central Electricity Regulatory Commission

3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi – 110001.

2. Power Grid Corporation of India

Registered Office:
B-9, Qutab Institutional Area,
Katwaria Sarai, New Delhi – 110 016.
(Through its Chief Manager – Commercial)

3. Western Regional Power Committee

F-3, MIDC Area, Andheri East,
Mumbai – 400 093.
(Through its Member Secretary)

4. Central Electricity Authority

Sewa Bhawan,
Rama Krishna Puram,
New Delhi – 110 066.

5. **The Chairman**
Chhattisgarh State Power Generation Co.Ltd.
Energy Info Tech Centre
Danganiya, Raipur (CG) – 492 013.
6. **The Chief Engineer (T&C)**
State Load Despatch Centre
CS Power Transmission Co. Ltd.
(A successor Company of SCEB)
Danganiya, Raipur,
Chhattisgarh – 492 010.
7. **The Managing Director**
Gujarat State Electricity Corporation Ltd.
Vidyut Bhavan, Race Course,
Vadodara – 390 007.
8. **Managing Director**
Gujarat Energy Transmission Corp. Ltd.
Sardar Patel Vidyut Bhavan,
Race Course,
Vadodara – 390 007.
9. **Managing Director**
Dakshin Gujarat Vij Co. Ltd.
Nana Varachha Road,
Kapodara, Surat – 395 006.
10. **Managing Director**
Paschim Gujarat Vij Co. Ltd.
Paschim Gujarat Vij Seva Sadan
Nana Mava Road, Laxminagar,
Rajkot – 360 004.
11. **Madhya Gujarat Vij Co. Ltd.**
Sardar Patel Vidyut Bhavan,
Race Course,
Vadodara – 390 007.
12. **Uttar Gujarat Vij Co. Ltd. (UGVCL)**
Visnagar Road,
Mehsana – 384 001.
13. **The Chief Engineer (LD)**
State Load Despatch Centre
Gujarat Energy Transmission Co. Ltd.
132 kV Gotri Sub Station Compound
Near TB Hospital, Gotri Road,
Vadodara – 390 021.

- 14. Chairman & Managing Director
Madhya Pradesh Generation Co.**
Block No.9 Shakti Bhawan,
Rampur, Jabalpur – 482 008.
- 15. Chairman & Managing Director
Madhya Pradesh Power Transmission Co.**
Block No.2, Shakti Bhawan,
Rampur, Jabalpur – 482 008.
- 16. The Managing Director
Madhya Pradesh Paschim Kshetra Vidyut Vitran Co. Ltd.**
GPH Compound, Pologround,
Indore – 452 003.
- 17. Chairman & Managing Director
Madhya Pradesh Madhya Kshetra Vidyut Vitran Co. Ltd.**
Bijli Nagar Colony, Nishtha Parisar,
Govindpura, Bhopal – 462 023.
- 18. Madhya Pradesh Poorv Kshetra Vidyut Vitran Co. Ltd.**
Shakti Bhawan,
Jabalpur – 482 008.
- 19. The Chief Engineer (LD)
State Load Despatch Centre**
MP Power Transmission Co. Ltd.
Nauagaon, Rampur,
Jabalpur – 482 008.
- 20. The Managing Director
Maharashtra State Power Gen. Co. Ltd.**
Vayushakti Nagar,
Navi Mumbai,
Maharashtra – 400 702.
- 21. The Managing Director
Maharashtra State Electricity Transmission Co. Ltd.**
Prakashgad,
C-19, E-Block,
Bandra Kurla Complex,
Bandra (E),
Mumbai – 400 051.
- 22. The Managing Director
Maharashtra State Electricity Distribution Co. Ltd.**
Admin Building, 407, Rasta Peth,
Pune, Maharashtra – 411 011.

- 23. The Chief Engineer (LD)
State Load Despatch Centre**
Thane-Belapur Road,
P. O. Airoli,
Navi Mumbai – 400 708.
- 24. The Chief Electrical Engineer
Electricity Department**
Government Bhavan, 4th Floor,
Panaji,
Goa – 403 001.
- 25. Secretary (Power)**
Plot No. 35, OI DC Complex,
Near Fire Station,
Somnath,
Nani Daman – 396 210.
- 26. Secretary (Power)
UTs of Daman & Diu and
Dadra and Nagar Haveli**
Electricity Department
Dadra & Nagar Haveli,
Khanvel – 396 230.
- 27. The Director (Commercial)
NTPC Ltd.,** NTPC Bhawan,
SCOPE Complex,
Institutional Area,
Lodhi Road,
New Delhi – 110 003.
- 28. The Director (Operations)
Nuclear Power Corp. of India Ltd.,**
Nabhikiya Urja Bhawan
Anushaktinagar,
Mumbai – 400 094.
- 29. The Executive Director
Tata Power Trading Co. Ltd.,**
Tata Power Mahalaxmi Receiving Station
Senapati Bapat Marg, Lower Parel,
Mumbai – 400 013.
- 30. The Director (Technical)
NHPC Ltd.,**
NHPC Office Complex,
Sector – 33, Faridaad – 121 003.

- 31. The Chairman & Managing Director
SJVN Ltd.,**
Himfed Building, New Shimla
Shimla (HP) – 171 009.
- 32. The Director (Technical)
THDC India Ltd.,**
Bhagirathipuram
Tehri, Uttaranchal – 249 001.
- 33. The Chairman
Bhakra Beas Management Board**
Sector – 19 B,
Madhya Marg,
Chandigarh – 160 019.
- 34. The Executive Director
National Load Despatch Centre**
18-A, Shaheed Jeet Singh Sansanwal Marg,
Katwaria Sarai, New Delhi – 110 016.
- 35. The Chairman & Managing Director
Delhi Transco Ltd.,**
Shakti Sadan, Kotla Marg,
New Delhi – 110 002.
- 36. The Managing Director
Indraprastha Power Generation Co. Ltd.**
Sub Station Building,
Ring Road, ITO,
Delhi – 110 002.
- 37. The Managing Director
Haryana Vidyut Prasaran Nigam Ltd.**
Shakti Bhawan,
Sector – 6,
Panchkula – 124 505.
- 38. The Managing Director
Haryana Power Generation Co. Ltd.**
Shakti Bhawan,
Sector – 6,
Panchkula – 124 505.
- 39. Chief Engineer (Plg. & Comml.)
State Load Despatch Centre**
Haryana Vidyut Prasaran Nigam Ltd. (HVPNL)
SLDC Complex, Sewah, Panipat – 132 108.

- 40. The Managing Director**
Distribution Co. of Haryana by rotation
Uttar Haryana Bijli Vitran Nigam Ltd.
Vidyut Sadan, Plot No. C16,
Sector – 6, Panchkula,
Haryana – 124 505.
- 41. The Chairman**
HPSEB Ltd.,
Vidyut Bhawan,
Shimla – 171 004.
- 42. Director (Planning & Contracts)**
H.P. Power Transmission Corp. Ltd.,
Barowalias House,
Khalini,
Shimla – 171 002.
- 43. The Principal Secretary**
Power Development Department
Civil Secretariat,
Jammu & Kashmir – 180 001.
- 44. The Managing Director**
Power Development Department
Civil Secretariat,
Jammu & Kashmir – 180 001.
- 45. The Chairman and Managing Director**
Punjab State Transmission Corp. Ltd.
PSEB Head Office,
The Mall,
Patiala – 147 001.
- 46. The Chairman and Managing Director**
Punjab State Power Corporation Ltd.
PSEB Head Office,
The Mall, Patiala – 147 001.
- 47. The Chairman and Managing Director**
Rajasthan Rajya Vidyut Prasaran Nigam Ltd.
Vidyut Bhawan, Janpath,
Jaipur – 302 005.
- 48. The Chairman and Managing Director**
Rajasthan Rajya Vidyut Utpadan Nigam Ltd.,
Vidyut Bhawan,
Jyoti Nagar, Janpath, Jaipur – 302 005.

- 49. The Chief Engineer (LD)
State Load Despatch Centre**
New SLDC Building,
Heerapura, Jaipur – 302 021.
- 50. The Managing Director
Distribution Co. of Rajasthan by Rotation**
Vidyut Bhawan, Janpath
Jaipur – 302 005.
- 51. The Chairman
UP Power Transmission Corp. Ltd.**
Shakti Bhawan,
14-Ashok Marg,
Lucknow – 226 001,
Uttar Pradesh.
- 52. The Managing Director
U.P. Rajya Vidyut Utpadan Nigam Ltd.**
Shakti Bhawan,
14-Ashok Marg,
Lucknow – 226 001,
Uttar Pradesh.
- 53. The Chief General Manager (Trans.)
State Load Despatch Centre, Energy System,**
5th Floor, Shakti Bhawan,
14-Ashok Marg,
Lucknow – 226 001, Uttar Pradesh.
- 54. The Managing Director
Distribution Co. of U.P. by Rotation**
Head Office 4-A,
Gokhale Marg,
Lucknow – 226 001, Uttar Pradesh.
- 55. The Managing Director
Power Transmission Corp. of Uttarakhand Ltd. (PTCUL)**
Vidyut Bhawan,
Saharanpur Road,
Majra, Near ISBT,
Dehradun – 248 001, Uttarakhand.
- 56. The Managing Director
Uttarakhand Jal Vidyut Nigam Ltd.,**
Maharani Bagh,
G.S.M. Road
Dehradun – 248 006, Uttarakhand.

- 57. The Managing Director
State Load Despatch Centre**
400 kV Substation,
Veerbhadra,
Rishikesh, Uttaranchal – 249 202.
- 58. The Chairman-cum-Managing Director
Uttarakhand Power Corp. Ltd.,**
Maharani Bagh, G.S.M Road,
Dehradun,
Uttarakhand – 248 006.
- 59. The Chief Engineer
Electricity Department**
Elect. Circle, 5th Floor, Deluxe Building,
U.T., Chandigarh – 160 009.
- 60. The Member Secretary
Northern Regional Power Committee**
18-A, Qutab Institutional Area,
Shaheed Jeet Singh Marg,
Katwaria Sarai,
New Delhi – 110 016.
- 61. The General Manager (Commercial)
Gujarat Urja Vikas Nigam Ltd.**
Sardar Patel Vidyut Bhavan,
Race Course, Vadodara – 390 007.

... Respondent(s)

Counsel for the Appellant(s) : Mr. S. Ganesh, Sr. Adv.,
Mr. C. S. Vaidyanathan, Sr. Adv.,
Mr. Amit Kapur, Mr. Vishal Anand,
Ms Divya Chaturvedi, Mr. Gaurav Dudeja
and Mr. Sambit Panja, Advs.

Counsel for the Respondent(s) : Mr. Anand K. Ganesan, Ms. Poorva
Saigal, Mr. Ishaan Mukherjee, Mr. Pradeep
Misra, Mr. Manoj Kumar Sharma,
Mr. Suraj Singh, Ms. Abiha Zaidi,
Mr. Dalip Kumar Dhyani Mr. Shashank
Pandit, Mr. M. G. Ramachandran,
Ms. Ranjitha Ramachandran,
Ms. Swagatika Sahoo, Mrs. Swapna
Seshadri, Ms. Anushree Bardhan,
Mr. M. Y. Deshmukh, Ms. Akshi Seem,
Advs.
Ms. Jyoti Prasad. Rep. for NLDC

J U D G M E N T

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

This is an appeal under Section 111 of the Electricity Act, 2003 filed by the appellant/petitioner, Lanco Kondapalli Power Ltd., which is a generating company, against the order dated 21.02.2014 passed by Central Electricity Regulatory Commission (hereinafter referred to as "**Central Commission**") in Petition No. 240/MP/2012, whereby the petition filed by the appellant/petitioner under Section 79(1)(c), read with Section 79(1)(f) of the Electricity Act, 2003 seeking a direction from Central Commission that the levy of transmission charges of Western Region based on revised Regional Energy Accounts (**REA**) for the period of March 2011 to June 2011 vide provisional bill dated 24.08.2012, raised by the respondent No.2 (M/s Power Grid Corporation of India Ltd.) is invalid in nature and accordingly the same be withdrawn with immediate effect, has been dismissed for the reasons that the learned Central Commission in its order dated 08.05.2013, in Petition No. 29 of 2011 in the case of *Jindal Power Ltd. Vs. Gujarat Urja Vikas Nigam Ltd. & Ors.*, by majority, had upheld the liability of the generating company not having the identified beneficiaries, to share the charges for inter-regional links even when it was not using these links and as a commercial entity under the Bulk Power Transmission Agreement (**BPTA**), executed between the appellant and the respondent No.2 (Power Grid), had agreed to share the transmission charges for regional assets as also for inter-regional links, hence, the appellant/petitioner cannot be allowed to retract from the commitment under the BPTA and also because the sanctity of the contract entered into by the parties with free will and for commercial gains is to be maintained. The Central Commission in paragraph 29 & 30 of its order dated 08.05.2013 in Petition No. 29 of 2011 noted as under :

"29. The above observations of the Commission also make it explicit that the transmission charges for regional assets and the inter-regional form one package and are to be shared by the beneficiaries, the generating companies etc. There was no possibility of differentiating between the intra-regional and inter-regional transmission charges as both together are the transmission charges to be shared under clause (7) of Regulation 33. As such the generating companies are liable to share the regional transmission charges as single charge.

30. *For the foregoing reasons, we uphold the petitioner's liability to share the transmission charges for the inter-regional links."*

- 02) The learned Central Commission in the Impugned Order has held that the appellant/petitioner is liable to share the transmission charges for the Western and Northern Regions, as well as the charges for inter-regional links applicable to these regions in accordance with Tariff Regulations. The Central Commission, in the Impugned Order, further held that the appellant had sought exemption from sharing the transmission charges and the charges for inter-regional links in exercise of 'Power to Relax' under Regulation 44 of the CERC (Terms and Conditions) of Tariff Regulations 2009 (hereinafter referred to as the '**Tariff Regulations 2009**') but since the said issue had been raised for the first time in the rejoinder, the same could not be looked into.
- 03) Thus the appellant, Lanco Kondapalli Power Ltd., is aggrieved by the impugned order since it has been wrongly fastened with liability to share transmission charges for Western and Northern Regions and charges for inter-regional links under the Tariff Regulations 2009 due to the following findings/reasons:
- (a) That the Central Commission has accepted the claim of the respondent No.2 (Power Grid) that the provisional bill is based on the Tariff Regulation 2009.
 - (b) That the Central Commission has wrongly held that the appellant is liable to share the transmission charges for these reasons under Regulation 33(2) of the Tariff Regulations 2009 based on the following incorrect observations:
 - (i) The appellant sought and was granted Long Term Open Access (**LToA**) to enable it to evacuate power outside Southern, Western and Northern Regions
 - (ii) Consequently, the appellant's generating station got connected to the inter-state transmission system of Western and Northern Regions, besides Southern Region.
 - (c) The appellant is deemed to be a user of transmission system of Western and Northern Regions since the transmission capacity in these regions is earmarked for the use of the appellant as per its requirement. No other

person is being considered for LToA against the transmission capacity reserved for the appellant.

- (d) That Regulation 33(7) of the Tariff Regulations 2009 is a residuary clause providing for payment of transmission charges by the generating companies. The appellant, admittedly, has not identified any beneficiary in Western and Northern Regions for off-take from its generating station. In the absence of any identified beneficiaries, the appellant cannot disown its liability to share the transmission charges for Western and Northern Regions.

04) The appellant's prayers in the instant appeal are as under:

- (a) Allow the appeal
- (b) Set aside the Impugned Order dated 21.02.2014 passed by the learned Central Commission in Petition No. 240 of 2012
- (c) Quash bills dated 24.08.2012, 28.02.2013 and 23.07.2013 raised by Power Grid for the period April, 2010 to June, 2011;
- (d) Restrain Power Grid to raise any further bills towards sharing of Transmission Charges in Western and Northern Region for the period prior to 01.07.2011; and
- (e) Pass such other or further orders as the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

05) On 30.05.2014, this Appellate Tribunal granted stay subject to Lanco's undertaking to keep the bank guarantee alive till the disposal of this appeal.

06) The appellant is a power generating company and has a gas based power plant at Kondapalli in Krishna District of Andhra Pradesh State with an installed capacity of 366 MW. In order to expand its gas based project in a phased manner, the appellant commissioned a IInd project with 366 MW capacity. The fuel for the IInd phase project was allocated from RIL KG D6 Basin, pursuant to the EGOM decision dated 28.05.2008. The respondent No.1, the Central Commission is a statutory authority constituted under the Electricity Regulatory Commission Act 1998 and is now functioning under the Electricity Act, 2003.

- 07) The respondent No.2, Power Grid Corporation of India Ltd. (in short Power Grid) has been notified as Central Transmission Utility (**CTU**) under section 38 of the Electricity Act, 2003.
- 08) The respondent No.3 is the Western Regions Power Committee and respondent No.4 is the Northern Region Power Committee constituted under Section 55(2) of the Electricity Act, 2003.
- 09) The respondent Nos. 5 to 29 are the Members of the Western Regional Power Committee. Respondent Nos. 30 to 60 are the Members of the Northern Region Power Committee. **Respondent No.61 is Gujarat Urja Vikas Nigam Limited and is the contesting party.**
- 10) The relevant facts for deciding this appeal are as under:
- a) That in terms of Central Regulations 2004, connectivity could be granted to generating company only if injection and drawal points were mentioned in the application which was difficult to identify the drawal points at the initial stage of the project, [Regulation 9(II)]. Noting this problem, to provide connectivity to the appellant, the Power Grid requested appellant to mention any regions as its direct beneficiary under CERC Regulations 2004.
- b) That on 25.01.2008, the Central Commission notified the CERC (Open Access in inter-state transmission) Regulations 2008, which came into effect on 01.04.2008 which was :
- (i) to govern Short Term Open Access (**STOA**) in terms of Regulation 1(2)
- (ii) specified transmission charges for STOA under Regulation 16(c) and,
- (iii) Repealed the provisions relating to short term open access as contained in CERC Regulations 2004 w.e.f. 01.04.2008 in terms of Regulation 28
- c) That on 25.02.2008 the appellant, on the basis of request of Power Grid, filed an application for grant of Long Term Open Access (**LToA**) for inter-state transmission of 350 MW power to Power Grid in accordance with CERC Regulations 2004 for a period of 25 years from its plant, situated at Kondapalli, Andhra Pradesh, in the following manner:
- (i) Western Region - 200 MW

(ii) Northern Region - 150 MW

- d) That on 19.01.2009, the Central Commission notified the Tariff Regulations 2009, Regulation 33 of which specifies the manner for calculating the regional transmission charges payable by the users of the regional transmission system.
- e) That in the SRPC meeting dated 03.03.2009, as communicated by Power Grid's letter dated 18.03.2009, the Members agreed that :

“Member (PS) CEA stated that as the proposal for connectivity to the Lanco project was already discussed and agreed at the SRPC forum and the project is to be commissioned shortly, the connectivity should be permitted so as to harness the additional generation in the prevailing scenario of power deficits. He further stated that project developer had indicated their target beneficiaries in NR & WR and in the absence of finalization of beneficiaries, the project authorities can sell power to any constituent(s) in SR/WR/NR following the short term open access regulations and by paying applicable short term transmission charges. It was, however, clarified that in any case project authority shall have to share transmission charges of southern region proportionate to their installed capacity. Chief Engineer (SP&PA), CEA referred to the Regulations-33 of the CERC's Tariff Regulation, 2009 where the issue has been covered in detail.”

- f) As such, apart from short term open access, in terms of Regulation 33 the Tariff Regulations 2009, the appellant was required to pay charges proportionate to their installed capacity, such that until appellant identified the beneficiaries of their project, the appellant will pay applicable short term transmission charges.
- g) That pursuant to the said meeting of the Southern Region Power Committee (**SRPC**), the appellant vide its letter dated 20.03.2009, requested Power Grid to forward the draft BPTA and other documents to be signed by the appellant.
- h) That the Power Grid, vide its letter dated 20.03.2009, informed the appellant that :

“(a) In view of the decision in Standing Committee Meeting on 03.03.2009, appellant is permitted to connect to the SR GRID.

- (b) *Reservation of firm inter regional capacity for transfer of power to WR & NR shall be made as and when it is approved in the WR and NR standing Committee/RPC forum.*
- (c) *In the meantime, Lanco is advised to sign the BPTA for sharing of transmission charges of Southern region.*
- (e) *Further, Lanco is advised to firm up beneficiaries in NR and WR and submit a confirmation to sign BPTA for NR WR and submit a confirmation to sign BPTA for NR, WR and inter-regional links to pay applicable charges so that the matter can be taken appropriately with NR and WR constituents in forthcoming meeting of concerned regions.”*
- i) That on 06.07.2009, based on the above agreement, LToA was permitted to appellant for a period of 25 years. Pursuant to the same, the Power Grid has been raising bills towards transmission charges to appellant in proportion to their installed capacity which have been duly paid by the appellant.
- j) That on 07.08.2009, the Central Commission notified the Connectivity Regulations. The requirement to specify the beneficiary for grant of connectivity was done away with [Regulation 8(1), (3) & (6)] and various provisions of Central Regulations 2004 including Regulation 9 and 16(i) were repealed.
- k) That on 29.08.2009, pursuant to the EGoM decision dated 28.05.2008, the fuel supply agreement was executed between Reliance and Lanco for a period of 5 years to provide 1.46 mmscmd gas from KG Basin which was enough to operate the plant at 75% Plant Load Factor (**PLF**).
- l) That on 02.09.2009, the BPTA was executed between Power Grid, respondent No.2, and the appellant for transfer of 350 MW power from appellant to (i)Northern Region 200 MW, (ii)Western Region 150 MW, in accordance with Central Regulations 2004 and Electricity Act, 2003. In the BPTA dated 02.09.2009, the appellant agreed to pay the transmission charges as under;

“Transmission Charges

And whereas Long Term transmission customer has agreed to share and pay all the transmission charges of POWERGRID including Foreign Exchange Rate Variation (FERV), incentive, income tax and any other charges and taxes etc. for the use of its transmission system of Western Region

(WR), Northern Region (NR) and Southern Region (SR) including inter regional links/ULDC/NLDC charges and any additions thereof.

M/s. Lanco Kondapalli Power Private Ltd. shall bear the Applicable regional transmission charges in a phased manner as per the following quantum of power to be transmitted:

*SR-350 MW, WR-350 MW
NR-150 MW (through WR)” @ 104-109 of the Petition)”*

- m) That in the 53rd meeting of the Commercial Committee of Western Power Region Committee dated 08.09.2009, the LToA granted to appellant by Power Grid vide letter dated 06.07.2009 was discussed and noted. As per the Minutes of Meeting there is no discussion to levy any charges under Regulations 33 of Tariff Regulations 2009 upon appellant in Western Region.
- n) The appellant achieved Commercial Operation Date (**COD**) on its gas based project in open cycle mode in 2009.
- o) That on 15.06.2010, the **Central Electricity Regulatory Commission Transmission Charges (Sharing of inter-State charges and losses) Regulations 2010** (hereinafter referred to as “**Transmission Sharing Regulations 2010**”) were notified, which came into effect on 01.07.2011, *inter alia*, to:
- “(a) Repeal Regulation 33 of the Tariff Regulations, 2009 and Regulation 16(1) and (2) of the 2008 Regulations*
- (b) Prescribe procedure for sharing of Inter-state transmission charges and Losses”*
- p) That the appellant achieved COD of its gas based project in combined cycle mode in July, 2010.
- q) That on 30.03.2011, the Ministry of Petroleum and Natural Gas (MoPNG) directed Reliance Industries Ltd. to impose pro-rata cuts on customers in the order of CGD (domestic and transport) power, LPG and fertilizers.
- r) That on 02.08.2011, the respondent, GUVNL for the first time requested Western Region Power Committee (**WRPC**) to :

- “(a) *Include appellant in working out the weighted average share for the apportionment of WR Transmission Charges, weighted average share of inter-regional link between western region with other regions and energy account of Western Region Power Committee for July, 2011 onwards;*
- (b) *Revise the monthly regional energy accounts for the period from LTOA becoming effective till June, 2011, and*
- (c) *Direct CTU-PGCIL to provide the details of commencement of different LTOA’s/MTOA’s to Western Region Power Committee and upload them on the website to avoid the non-consideration of LTOA/MTOA quantum by Western Region Power Committee in future.”*
- s) That a copy of the said letter, dated 02.08.2011, was never supplied to the appellant and the same was placed by GUVNL before the Central Commission in its reply. Further Power Grid never treated the appellant as its constituent in Western and Northern Regions, which is evident from the fact that the appellant was not issued with any notice for any of their meetings, whereas all other Members were invited for various meetings. Evidently, GUVNL requested to include appellant in working out appellant’s share of transmission charges in Western Region on the basis of Transmission Sharing Regulations 2010 for the period before and after July, 2011 (i.e. the date when Sharing Regulations became effective).
- t) That on 30.09.2011, the Ministry of Power (**MoP**) by its communication to AP Transco informed that on the recommendation of Government of Andhra Pradesh and EGoM decision dated 09.04.2009, the MoP recommended supply of gas to appellant/Lanco. Further, MoP sought an explanation as to what action had been taken by the Government of Andhra Pradesh for signing the PPA with Lanco.
- u) The **Transmission Sharing Regulations 2010** came into force on 01.07.2011, providing for a change in methodology for payment of transmission charges, namely sharing of point of connection basis. The sharing Regulations 2010 were amended w.e.f 24.11.2011 providing for payment of point of injection charges by long term access customers where the beneficiaries are not identified.

- v) The appellant, Lanco, was forced to tender an undertaking dated 28.11.2011 to Andhra Pradesh DISCOMs/AP Transco that the entire power generated from the available gas in its phase-II plant will be supplied to them only.
- w) That on 21.12.2011, the GUVNL reiterated its request to WRPC, as requested in its earlier letter dated 02.08.2011.
- x) That on 23.12.2011, pursuant to First Amendment to the Transmission Sharing Regulations, 2010, the Commercial committee of WRPC organized its 60th meeting, in which the committee on the basis of amendment to the Transmission Sharing Regulations 2010 erroneously agreed to include appellant in the REA for the period prior to implementation of Transmission Sharing Regulations, as under:

“In view of the above amendments to Central Electricity Regulatory Commission (Sharing of Interstate Transmission Charges and Losses) Regulations, 2010, Committee noted the same and agreed to incorporate following in the Transmission and Energy Accounts:

Demand POC charges of Lanco Kondapalli would be included in RTA PGCIL would communicate the date of effect of grant of LTA to Lanco Kondapalli, according to which REAs would be revised incorporating inclusion of Lanco Kondapalli for the period prior to implementation of new Transmission Charge Regulations, 2010 (i.e. 01.07.2011)”

- y) That on 30.12.2011, the difficulty faced by the appellant with regard to period of GSPA was recorded by MoP in its Office Memorandum dated 30.12.2011 as under:
- “Long term PPA cannot be insisted as GSPA is for five years while Long term PPA is for more than seven years. In consistence with GSPA and Standard Bidding Document, the PPA can be either for medium term or for short term. Medium term PPA can be co-terminus with GSPA. As such, there is no need of any modification as suggested by MoPNG. Once gas allocation gets extended after 5 years, PPA too can be extended.”*
- z) that in view of the said decision of MoP, appellant was required to supply entire power generated from its phase-II plant only to Andhra Pradesh State owned DISCOMs (AP DISCOMs) which are in Southern Region.
- aa) that in the commercial meeting dated 23.12.2011, held on WRPC, the respondent No.61, namely Gujarat Urja Vikas Nigam Ltd., stated that the LToA of the appellant to Western Region be incorporated in the REA of WRPC from the date of effect of grant of LToA and necessary revision in the REA be made

for the period prior to Point Of Connection (**POC**) charges regime under the Sharing Regulation 2010 w.e.f. 01.07.2011. It was agreed during a meeting that Power Grid would communicate a date of effect of LToA for the appellant, according to which the REA would be revised incorporating the inclusion of appellant for the period prior to implementation of new Sharing Regulation 2010 or pre-point of connection regime.

- bb) That on 30.03.2012, WRPC issued a revised REA for the period March 2011 to June 2011 (appx. Four months) on the basis of findings of the Commercial Committee of GUVNL dated 23.12.2011.
- cc) On 24.08.2012, the respondent Power Grid raised bill on the appellant towards the levy of transmission charges on Western Region based on revised REA dated 30.03.2012 for the period March 2011 to June 2011 issued by WRPC amounting to Rs.10,00,90,930/-.
- dd) That the appellant, through its letter dated 31.08.2012, requested Power Grid to withdraw the above bill and not to take any coercive action till the matter was resolved. The appellant requested WRPC to reconsider the revision of REA for the month of March 2011 to June 2011.
- ee) That on 07.09.2012 Power Grid conveyed to the appellant that it would be just and proper to pay the charge, billed by Power Grid in accordance with BPTA and REA issued by WRPC.
- ff) That the appellant through letter dated 10.09.2012 conveyed to Power Grid that they had taken up the matter with WRPC to resolve the issue requesting to withdraw power bill till the issue was settled.
- gg) That the appellant through its letter dated 10.09.2012 conveyed that during a meeting of Southern Region held on 03.03.2009 at Bangalore, it had been clarified that only the Long Term Transmission charges of Southern Region will be payable by the appellant, till long term beneficiaries are identified and for any power sold in any region, short term open access charges will be applicable and that since the appellant has not been able to identify any long term beneficiary due to various reasons related to fuel agreement, as required under case 1 bids. Further, it was also conveyed that neither the BPTA clause 2.9.9

nor the CERC (Open Access in Inter-State Transmission) Regulations 2004 permit Power Grid to impose transmission charges on the appellant.

- hh) That on 17.09.2012, GUVNL once again requested the WRPC that the issue of REA for a pre-POC period as agreed to and decided in the 61st commercial committee meeting and if required the same may be discussed in the ensuing meeting.
- ii) **That on 19.10.2012, the appellant filed the Impugned Petition, being Petition No. 240 of 2012, before the Central Commission to declare the provisional bill dated 24.08.2012 for the period March 2011 to June 2011 raised by the Power Grid on the basis of revised REA for the transmission charges is invalid and direct Power grid to withdraw the said provisional bill dated 24.08.2012 and further direct the WRPC not to revise REA for the period prior to 01.07.2011. The said Petition No. 240 of 2012 has been dismissed by Central Commission by the afore detailed impugned order dated 21.02.2014, which is under challenge before us in the instant appeal.** We may mention here that after the filing of the Impugned Petition on 19.10.2012 before the State Commission, an Invoice was raised by Power Grid on appellant towards levy of differential bill against transmission charges of Western Region for the period March 2011 to June 2011 for an amount of Rs.7,89,31,333/- on 28.02.2013. We may further mention here that on 01.03.2013, during the pendency of the impugned petition, the RIL stopped supply of gas to power project by implementing the directions of MoPNG dated 30.03.2011. On 25.03.2013, the appellant filed another Petition No. 63 of 2013 before the Central Commission to direct the Power Grid to relinquish LToA granted to Lanco from 250 MW to 0 MW and direct Power Grid to limit the region of drawees to Southern Region from the date of application dated 24.01.2012 and further direct Power Grid not to levy any compensation in terms of Regulation 18 of the Connectivity Regulations. We may further mention here that on 23.07.2013 an Invoice was also raised by Power grid on appellant towards levy of differential bill amount against transmission charges of Western Region for the period April 2010 to February 2011 for an amount of Rs.45,52,42,311/-.
- jj) That on 08.10.2012, the Commercial Committee of WRPC expressed that retrospective effect had not been given to the CERC's Inter-State Transmission

System (**ISTS**) Regulation 2010 (First Amendment). Therefore, while considering the share of the appellant in the revised REA from the month of March 2011 to June 2011 for sharing of transmission charges in Western Region, which pertains to pre-Point of Connection (POC) regime, and share of appellant had been considered as per LToA and prevailing Regulation at that point of time. Further, as intimated by Power Grid, the LToA targeted to Northern Region and routed through Western Region may also be considered for sharing of transmission charges of Western Region.

- 11) We have heard Mr. S. Ganesh, Mr. C. S. Vaidyanathan, Sr. Advocates, Mr. Amit Kapur, learned counsel for the appellant and Mr. M.G.Ramachandran, Ms. Swapna Seshadri, Mr. Anand K. Ganesan, Mr. Pradeep Misra for the respondents and we have also gone through the written submissions filed on behalf of both the parties and perused the impugned order including the material available on record.
- 12) The following issues arise for our consideration in the instant appeal:
 - (i) Whether the appellant is liable to pay the transmission and other applicable charges relating to the period march 2011 to June 2011 for the LToA taken on the ISTS of the respondent No.2/Power Grid from the Southern Region to Western Region and from Southern Region to Northern Region through Western Region?
 - (ii) Whether the Central Commission has completely ignored to deal with the fact that Power Grid had raised bills from December 2009 till June 2011, which were duly paid by appellant as per Regulation 33(7) of the CERC Tariff Regulation 2009 and BPTA dated 02.09.2009 and as such no charges are payable by appellant for the Northern and Western Region?
 - (iii) Whether the Central Commission failed to consider that the Power Grid has raised the impugned bill by retrospectively applying the amendment dated 24.11.2011 to the CERC Transmission Sharing Regulations 2010 for the period prior to 01.07.2011?

Since all these issues are inter related, they are taken up and decided together.

- 13) The following are the contentions of the appellant/Lanco Kondapalli Power Ltd. on the aforesaid issues:

- a) That the appellant has wrongly and illegally been fastened with liability to share the transmission charges for Western and Northern Regions and charges for inter-regional links under the ***Tariff Regulations 2009***.
- b) That the Central Commission has wrongly accepted the claim of Power Grid/respondent No.2 that the provisional bill for the Western and Northern Regions is based on the Tariff Regulations 2009. The provisional bills raised by respondent No.2 for the Western and Northern regions are actually not based on the Tariff Regulations 2009.
- c) That the learned Central Commission has failed to consider that as per Regulation 33 of the Tariff Regulations 2009 and the Minutes of Meeting (MoM) dated 03.03.2009, it was decided that in the absence of finalization of beneficiary in Northern Region and Western Region, the appellant will be liable to pay transmission charges for Southern Region and will also pay applicable Short Term Open Access charges, whenever the appellant sells power in Western Region and Northern Region.
- d) That based on Regulation 33 of Tariff regulations 2009 and MoM dated 03.03.2009, the respondent No.2/Power Grid raised invoices from December 2009 till June, 2011 which were duly paid by the appellant. The learned Central Commission failed to take in to consideration the fact that the Impugned Bills have been raised by Power Grid pursuant to the decision dated 23.12.2011 taken during the 60th meeting of the Commercial Committee of WRPC, wherein it erred in deciding to retrospectively apply the First Amendment to the Transmission Sharing Regulations 2010 for the period prior to 01.07.11, when the amendment to Transmission Sharing Regulations 2010 came into effect on 24.11.2011.
- e) That neither the respondent/Power Grid or WRPC nor the NRPC considered appellant as part of their constituents which is evident from the fact that appellant was never invited to any of the meetings held in Northern Region and Western Region, despite acknowledging the LToA granted to appellant in Western Region and Northern Region by WRPC and NRPC, no monthly bills were raised in terms of Regulation 23 of the Tariff Regulations 2009.

- f) That on the contrary, pursuant to the decision taken in the 60th meeting of WRPC, the respondent Power Grid has raised the Invoices illegally for the Western Region as detailed below:

<i>Date</i>	<i>Period</i>	<i>Amount (in Rs.)</i>
24.08.2012	March, 2011 to June, 2011	10,00,90,930
28.02.2013	March, 2011 to June, 2011	7,89,31,333
23.07.2013	April, 2010 to Feb. 2011	45,52,42,311
	Total	63,42,64,574

- g) That learned Central Commission has wrongly held that the appellant is a 'deemed user' of the transmission system of Western and Northern Regions since the transmission capacity in these regions is earmarked/reserved for the use of the appellant as per its requirement. No other person is being considered for LToA against the transmission capacity reserved for the appellant.
- h) That neither the Tariff Regulations 2009 nor the Transmission Sharing Regulations 2010 envisage the concept of 'deemed user'. Accordingly, Central Commission while passing the Impugned Order has acted beyond the Regulations and introduced words in the regulations in order to bring appellant within the ambit of Regulation 33(2). Such an act of the Central Commission is illegal and contrary to law.
- i) That Regulation 33(2) of the Tariff Regulations 2009 is applicable only to the 'user' of the transmission system. In case of unidentified beneficiary i.e. when the transmission line is not used by the utility, then Regulation 33(7) is applicable. It is precisely the case of the appellant that transmission charges in terms of Regulation 33(7) as decided in the MoM dated 03.03.2009 were billed by respondent No.2/Power Grid and the same were paid by the appellant.
- j) That the Central Commission has wrongly held that the appellant is liable to share the transmission charges for these regions under Regulation 33(2) of the Tariff Regulations 2009 based on the following incorrect observations:
- “(i) Appellant sought and was granted Long Term Open Access to enable it to evacuate power outside Southern Region to Western and Northern Regions.*

(ii) Consequently, the appellant's generating station got connected to the inter-state transmission system of Western and Northern Regions besides Southern Region"

- k) That the transmission charges payable under Regulation 33(1) and (2) of the Tariff Regulations 2009 are applicable to the 'users' of the transmission system. Admittedly, the appellant is not a user of the LToA in Northern and Western regions. As such, the Impugned Order erred in applying Regulation 33(2) when only Regulation 33(7) of the Tariff Regulations 2009 was attracted.
- l) That as per the Bulk Power Transmission Agreement (BPTA) dated 02.09.2009 entered into between the respondent/Power Grid and the appellant for transfer of 350 MW power from appellant to (i) Western Region (200 MW), (ii) Northern Region (150 MW), the transmission charges were payable for the use of the transmission system of Northern, Western and Southern region including inter-regional links/ULDC/NLDC charges and any additional charges thereof.
- m) That the only Regulation applicable to the appellant is Regulation 33(7). The appellant has paid the transmission charges (including sharing of transmission charges for Southern Region) as per the bills raised by Power Grid in terms of Regulation 33(7) and MoM dated 03.03.2009 accordingly, the appellant is not liable to pay any further transmission charges for the Western and Northern regions in the absence of any use of the capacity of the said Western and Northern regions. Multiple charges for the same capacity by respondent/Power Grid violate the principles set out in Section 61 and 62(6) of the Electricity Act, 2003.
- n) That Regulation 33(7) of the Tariff Regulations 2009 is a residuary clause providing for the payment of transmission charges by generating companies. The appellant admittedly has not identified any beneficiary in Western and Northern Regions for offtake from its generating station. In the absence of any identified beneficiaries, the appellant cannot disown its liability to share the transmission charges for Western and Northern regions. The appellant is not denying its liability to pay transmission charges in terms of Regulation 33(7). In fact, the appellant has paid the transmission charges pursuant to the bills raised by respondent No.2/Power Grid in terms of Regulation 33(7) and MoM dated 03.03.2009.

- o) That Regulation 33(7) of the Tariff Regulations 2009 only provides for transmission charges corresponding to plant capacity for which beneficiary has not been identified and shall be payable by generating company and it neither permits respondent No.2/Power Grid to charge the same capacity more than once, nor does it permit the respondent No.2/Power Grid to charge the same capacity in different regions.
- p) That the bill by respondent No.2/Power Grid raised on 28.04.2012, after expiry of one year and six months (i.e. 18 months) and the order of the Central Commission directing appellant to share transmission charges for Northern and Western region in effect burdens appellant to pay transmission charges for 350 MW (SR) + 350 MW (WR) + 150 (NR) = 850 MW which is over and above the Short Term Open Access charges for 350 MW. This will in effect result in payment of transmission charges for 1200 MW which is not the intent of the Regulation 33(7) of the Tariff Regulations 2009 and Section 62(6) of the Electricity Act, 2003.
- q) That further the learned Central Commission has not considered the appellant's prayer to relax applicability of Regulation 33(7) and has wrongly rejected the same on hyper technical ground that "***it is an established principle of practice that such an issue raised for the first time in the rejoinder cannot be looked into.***" The appellant had sought exemption from sharing of transmission charges and the charges for inter-regional links in exercise of 'Power to Relax' under Regulation 44 of the Tariff Regulation 2009 on account of peculiar facts of the appellant's plant *inter alia*:

"(i) There is no gas supply to appellant since 01.03.2013 as the supplier viz., Reliance Industries Ltd. ("Reliance"), has stopped supply of gas to the power project by implementing the directions of MoPNG dated 30.03.2011 as stated in its mail dated 01.03.2013.

(ii) Ministry of Power by its communications dated 30.09.2011, 22.03.2012 and 26.09.2012 has clearly indicated that the natural gas from KG D-6 Basin will be supplied to generators on the condition that the entire power will be supplied to Andhra Pradesh Discoms. Appellant was forced to tender an undertaking dated 28.11.2011 to AP Discoms/AP Transco that the entire power generated from the available gas in its Phase-II plant will be supplied to them only."

- r) That if connectivity would have been granted to appellant as per the Connectivity Regulations notified on 07.08.2009, prior to signing of BPTA dated 02.09.2009, the connectivity could have been obtained by appellant without specifying any beneficiary region. In such a situation, the transmission charges would have been payable only qua the long term/short term access availed by appellant and no further charges would have been payable by appellant under Tariff regulations 2009. Despite the same, the appellant honored its commitment as per the decision arrived at in SRPC meeting dated 03.03.2009 and respondent/Power Grid's letter dated 20.03.2009 to pay transmission charges as agreed by the parties, which are as per Regulation 33 of the Tariff Regulations 2009. In other words, the customers who were given connectivity under Connectivity Regulations in Southern Region are not even liable to share Southern Region charges, whereas, the appellant has been sharing Southern Region charges for 350 MW in addition to paying short term transmission charges to Southern, Western and Northern regions. As such no further charges are payable by appellant in terms of Regulation 33(7) of the Tariff Regulations 2009.
- s) That it is evident from record that for the first time after 25.11.2011, the appellant was required to pay both point of connection charges and also charges towards LToA to a target region without identified beneficiaries as under:

Regulations	ISTS Charges Payable Monthly for the Region	Additional ISTS Charges for the Sale of power to SR/WR/NR Region in short term
<i>CERC Tariff Regulation 2004 (from date of COD of the project)</i>	<i>Transmission Charges for Southern Region for Long Term Open Access Capacity</i>	<i>Applicable Short Term open Access Charges for short term sale of power in SR/WR/NR Region</i>
<i>CERC Tariff Regulation 2009</i>	<i>Transmission Charges for Southern Region for LToA Capacity</i>	<i>Applicable SToA/MToA Charges for short term sale of Power in SR/WR/NR Region</i>
<i>CERC Transmission Regulation 2010 (From 01.07.2011 onwards)</i>	<i>Injection Point of Connection Charges (PoC) for Southern Region at the Node for LToA Capacity</i>	<i>Injection PoC Charges as applicable for short term sale of power in SR/WR/NR</i>
<i>CERC</i>	<i>Injection PoC Charges</i>	<i>Injection PoC Charges as</i>

<i>Transmission Regulation 2011 (1st Amendment) (From 25.11.2011 onwards)</i>	<i>for Southern Region at the Node for LToA Capacity Plus Demand PoC Charges for the Target Region (s) @ the Minimum demand PoC rates in the target regions)</i>	<i>applicable for short term sale of Power in SR/WR/NR</i>
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- t) That on 06.02.2012, pursuant to the decision in 60th meeting of the Commercial Committee WRPC requested respondent No.2/Power Grid to intimate the date of effect of LToA to the appellant so that REA for the period prior to the implementation of the Transmission Sharing Regulations 2010 could be revised. On 15.03.2012, WRPC again requested Power Grid to intimate the effective dates and quantum of LToA of appellant targeted to Western Region without identified beneficiaries so as to make necessary revisions in REA.
- u) That the Central Commission ignored the fact that in the absence of any identified beneficiary, the power will be effectively absorbed in the concerned region where the generator is connected. Therefore, the charges for use of transmission system of the region on which the generator depends for transmission of power are to be shared by constituents of the region.
- v) The Tariff Regulations 2009 contemplates issuance of monthly bills by respondent No.2/Power Grid whereas in the present case, the impugned bills were raised by respondent No.2/Power Grid for the Western region only retrospectively, as under:

<i>Date</i>	<i>Period</i>	<i>Amount (in Rs.)</i>
<i>24.08.2012</i>	<i>March, 2011 to June 2011</i>	<i>10,00,90,930</i>
<i>28.02.2013</i>	<i>March, 2011 to June 2011</i>	<i>7,89,31,333</i>
<i>23.07.2013</i>	<i>April, 2010 to Feb 2011</i>	<i>45,52,42,311</i>
<i>Total</i>		<i>63,42,64,574</i>

- w) That the learned Central commission has failed to appreciate that the impugned bills were not issued in accordance with Tariff Regulations 2009 as the said regulations contemplate issuance of monthly bills. Had the respondent No.2/Power Grid treated the appellant as its long term customer in Western

and Northern Region, it would have issued monthly bills in respect of the said regions also.

- x) That admittedly, the applications of the appellant under short term regulations for short term supplies in Western and Northern regions were accepted by respondent No.2/Power Grid and accordingly, the bills were issued based on short term regulations. The reason for not treating the appellant as long term customer in Western and Northern regions is in accordance with understanding of the parties reached in the SRPC meeting dated 03.03.2009, wherein it was agreed that respondent/Power Grid will be issuing bills only under short term open access until such time that the appellant has not firmed up the beneficiaries in Western and Northern Regions. Accordingly, the appellant is paying the transmission charges for its LToA with respect to Southern region and ought not to be fastened with transmission charges for Western and Northern regions in the absence of any use of the capacity of the said Western and Northern Regions as stipulated in the MoM dated 03.03.2009 and the Power Grid's letter dated 20.03.2009.
- y) That the REA of Western Region was revised on 30.03.2012 for the period March, 2011 to June, 2011 and the bill dated 24.08.2012 was raised by Respondent No.2/Power Grid. Evidently, the bills were raised retrospectively applying the Transmission Sharing Regulations, 2010 as can be gleaned from the decision taken in 60th meeting of Commercial Committee dated 23.12.2011.
- z) That the decision dated 23.12.2011 taken by WRPC by retrospectively applying the Amendment to Transmission Sharing Regulations 2010 is contrary to the (a) statement of reasons to amendment to Transmission Sharing Regulations, 2010 and (b) Amendment to the said Regulations, 2010 and therefore, is illegal as held by this Appellate Tribunal in its judgment dated 24.01.2013 in the case of **BRPL vs. CERC reported as 2013 ELR (APTEL) 0600 (Para 14)**.
- aa) The amendment to the Transmission Sharing Regulations 2010 is prospective in nature and therefore, the bills raised by respondent/Power Grid by applying amendment to the Transmission Sharing Regulations 2010 retrospectively are liable to be quashed.

- bb) That the transmission charges are payable by appellant for actual use of transmission system which is evident from definition of '**long term transmission customer**' of Tariff Regulations, 2009 which stipulates that transmission charges are payable only when the customer uses transmission system. Further Regulation 33(1) and 33(2) of the Tariff Regulations 2009 clearly provides that the transmission charges are payable by the user of the concerned regional transmission system. Thus the appellant is liable to pay transmission charges for the 'use' of transmission system and not for obtaining LToA. The terms used in the BPTA are '**use**' and '**quantum of power to be transmitted**' clarify the position that the transmission charges are payable only once the appellant uses the transmission system and not otherwise.
- cc) The term '**use**' has been defined as '**the application or employment of something**' as per Black's Law Dictionary. The term '**use**' means '**to avail oneself of**', something done positively e.g. utilization of disposal. Mere non-use is not included in the word 'use' as per **State of UP Vs. Ramagya Sharma Vaidya AIR 1966 SC 78**.
- dd) That the learned Central Commission failed to consider the difference between '**use**' and '**long term open access**'. The LToA is obtained so that the entity can use the transmission system. However, use of the transmission system will happen only if: (i) there is any identified beneficiary and (ii) there is flow of power using the transmission system to the beneficiary.
- ee) That the transmission charges for Western and Northern regions are payable by appellant if there is actual use of transmission system and not merely for the grant of LToA, particularly, when even according to respondent/Power Grid it has not reserved any capacity for transfer of power to Western and Northern region.
- ff) That it is also an undisputed fact that respondent No.2/Power Grid has not made any system strengthening or made any investment in pursuance of the BPTA, which has also been recorded by the Central Commission in its order dated 21.02.2014 passed in Petition No. 63 of 2013 for the same project.
- gg) That in response to appellant's RTI application dated 02.04.2014 regarding the capacity considered/reserved/blocked in the Western Region for the appellant

towards LToA, Power System Operation Corporation Ltd. (**POSOCO**) vide its letter dated 29.04.2014 responded as under:

“Q1. Whether Western Regional Load Despatch Centre (WRLDC) or Power System operation Corporation (POSOCO) have ever received any information or request from Powergrid Corporation of India Ltd. (PGCIL) to reserve/block any capacity in the Western Region transmission system for Lanco Kondapalli Power Ltd., (formerly Lanco Kondapalli Power Ltd.) for the period from September 2009 to August 2011 towards Long term open access? If so please furnish copies of correspondence in respect of the same.

1. Western Regional Load Despatch Centre (WRLDC) has not received any information or request form Powergrid Corporation of India Ltd. to reserve/block any capacity in the Western Region transmission system for Lanco Kondapalli Power Ltd., for the period from September 2009 to August 2011 towards Long term Access.”

14) **Per Contra**, the respondents have argued as under:

- a) That as per the BPTA, the appellant clearly agreed to share the transmission charges of Western, Northern and Southern regions as well as the inter-regional link charges from September 2009 in terms of Tariff Regulations 2009 which were prevalent at the relevant time. Therefore, the Tariff Regulations, 2009 specifically contemplate a situation where the beneficiaries of LToA are not identified but the generating company still applies for and obtains LToA. This is because several generating companies on the basis of hoping to sell power from their generating station take and block the LToA by which they get priority and the electricity of others cannot flow through the system. Therefore, in such situation it should not be that the open access charges are not paid at all. Regulation 33(7) specifically states that if the beneficiaries are not identified, the generating company has to pay the transmission charges for the open access contracted.
- b) That in case the appellant had identified the beneficiaries to the extent of 200 MW in the Western region and 150 MW in the Northern region, automatically the liability to pay the transmission charges would have shifted to the identified

beneficiaries as per Regulation 33(1) and (2). However, the appellant did not identify the beneficiaries and therefore, the liability to pay the transmission charges for the period when the LToA was obtained and maintained squarely falls on the appellant.

- c) That it was open to the appellant to have restricted the sale of electricity within the Southern region without taking inter-regional LToA. However, the appellant took a commercial decision to sell power outside the Southern region and for the said purpose obtained and blocked the inter-regional LToA. Having taken benefit of such LToA, the applicable charges for inter-state LToA need to be paid by the appellant. The charges are for blocking the LToA capacity. The actual use of transmission line is not relevant.
- d) That the appellant did not take short term open access but applied for and obtained LToA. Further, the appellant signed the BPTA being fully aware of sharing the regional transmission charges of Southern region, Western region and Northern region, as well as relevant inter-regional link charges for the period of twenty five years. However, there was a wrong billing by Power Grid without appreciating the Tariff Regulations 2009. Therefore, GUVNL, by letters dated 02.08.2011 and 21.12.2011 brought this to the notice of the WRPC. At the 60th Commercial Committee Meeting of WRPC, based on the above discussion, it was decided to revise the REA for the pre-POC period i.e. prior to June 2011. Accordingly, WRPC carried out a revision of monthly REAs for the period from March 2011 to June 2011 on 30.03.2012 and thereafter Power Grid raised the relevant bills on the appellant. Although, WRPC ought to have carried out revisions of monthly REAs for the period from September, 2009 to June 2011 based on Power Grid's letter dated 29.06.2012, in response to WRPC's letter dated 08.06.2012, wherein it was informed to WRPC that as per the BPTA signed by Power Grid and the appellant, the date of commencement of LToA was effective from September, 2009 with injection in Southern region of 230 MW for the period from September, 2009 to February 2010 with corresponding drawl in Western region of 150 MW and in Northern region of 80 MW for the period September 2009 to February 2010 and thereafter from March 2010 onwards, injection in Southern region of 350 MW with corresponding drawl in Western region of 200 MW and in Northern region of 150 MW.

- e) Thus if the liability to pay the LToA charges is there, as per the Tariff Regulations, 2009, read with the BPTA, the same needs to be paid by the appellant.
- f) That the appellant's contention that since the appellant applied for open access on 25.02.2008, which was granted by Power Grid on 19.01.2009, the open access was as per the Central Regulations 2004 and not as per the Tariff Regulations 2009 is ex-facie incorrect and cannot be accepted. The reliance placed on the Central Connectivity Regulations, 2009 also does not help the case of the appellant. It was not that the appellant only applied for connectivity and did not take LToA.
- g) That all users of a transmission system are beneficiaries. The term '**user**' means a person who has access to the long term inter-regional open access capacity. It does not mean or denote actual use of transmission line. There is no question of the appellant having been granted only connectivity and not LToA. At the time, when the appellant applied for and obtained the long term open access, there was no concept of connectivity at all. The Connectivity Regulations were notified only on 07.08.2009 and the appellant did not apply only for connectivity under the Connectivity Regulations.
- h) The appellant is wrongly contending that if the beneficiary is not identified, the generator is not required to share the regional and inter-regional charges. In case the appellant would have identified a beneficiary and signed a PPA, the quantum of LToA power of such beneficiary would have been included in the calculation of weighted average share of such beneficiary for sharing of the transmission charges. However, if the appellant's contention is accepted it would mean that sharing mechanism of regional as well as inter-regional charges will differ once the beneficiary is identified, even though the quantum and source of LToA remains unaltered which would lead to an absurd result.
- i) That merely because Power Grid made a mistake in raising invoices does not negate the provisions of Regulations 33(7) of the Tariff Regulations 2009. There is no violation of Section 61 and 62(6) of the Electricity Act, 2003.
- j) That there is no merit in the appellant's contention that the Power Grid has applied the First Amendment dated 24.11.2011 to the Transmission Sharing Regulations 2010 retrospectively. In fact, GUVNL has been raising the issue that even for the period from June 2011, the REAs should be revised and the

charges for the same need to be levied on the appellant. However, the WRPC in its Commercial Committee meeting dated 08.10.2011 has taken the position that the amendment dated 24.11.2011 has not been given retrospective effect and therefore, the REAs cannot be revised from June, 2011 onwards even though, on the merits, the contention of GUVNL is correct.

- k) That by raising the revised bill, the Power Grid has not enforced the amendment dated 24.11.2011 to the Transmission Sharing Regulations 2010 retrospectively. The matter only pertains to the pre-POC regime i.e. up to 30.06.2011 which is governed by Regulation 33 of the Tariff Regulations, 2009. The Central Commission could not have relaxed the provisions of Regulation 33(7) of the Tariff Regulations 2009 because the contention was made by the appellant at the rejoinder stage. The Central Commission has rightly not exercised the 'power to relax' because this Appellate Tribunal has repeatedly held that the power to relax should be used only in extreme circumstances when a situation not contemplated arises.
- l) That an order dated 21.12.2014 of the Central Commission in Petition No. 63/MP/2013 relating to the issue of system strengthening etc. has no relevance to the present case because the issue before Central Commission in Petition No. 63/2013 was whether by surrender of capacity, there is any stranded capacity requiring the appellant to pay the relinquishment charges for such surrender of open access. Further, the reply to the RTI application of the appellant by POSCO's letter dated 29.04.2014 has no bearing on the liability of the appellant to pay the open access charges for the period from September, 2009 to June 2011 for which period, the appellant enjoyed the LToA. The fact that no capacity augmentation or capital expenditure was incurred by Power Grid was of no relevance at all. The charges levied on the appellant are for obtaining and blocking the LToA capacity which needs to be compensated by the appellant alone and cannot be loaded on others.

15. **Our consideration and conclusion:**

- (i) We have in the upper part of this judgment given details of the facts of the matter before us, rival submissions made by the parties on the issues involved in this appeal, hence, we do not feel any need to reproduce the same here again. Hence, we directly proceed towards our consideration and conclusion on the said aspects of the matter.

- (ii) The appellant/petitioner, Lanco Kondapalli Power Ltd., a generating company filed a Petition, being Petition No. 240/2012 before the Central Commission under Section 79(1)(c), read with Section 79(1)(f) of the Electricity Act, 2003, seeking direction from the Central Commission that the levy of transmission charges of Western Region based on the revised Regional Energy Accounts (REA) for the period from March 2011 to June 2011, vide provisional bill dated 24.08.2012, raised by the respondent/Power Grid is invalid and the same be withdrawn with immediate effect. The said Petition of the appellant has been dismissed by the Impugned Order dated 21.02.2014 of the Central Commission for the simple reasons that the learned Central Commission in its earlier order dated 08.05.2012 in Petition No. 29 of 2011 in the case of *Jindal Power Ltd. Vs. Gujarat Urja Vikas Nigam Ltd. & Ors.*, by majority, had upheld the liability of the generating company not having the identified beneficiaries, to share the charges for inter-regional links even when the generating company was not using these links and as a commercial entity under the BPTA executed between the appellant and the respondent No.2/Power Grid had agreed to share the transmission charges for regional assets as also for inter-regional links and further, the appellant/petitioner cannot be allowed to retract from the commitment under the BPTA and also because the sanctity of the contract entered into by the parties with free will and for commercial gains is to be maintained.
- (iii) Thus the learned Central Commission, in the Impugned Order, has held that the appellant/petitioner is liable to share the transmission charges for the Western and Northern region as well as charges for inter-regional links applicable to these regions in accordance with Tariff Regulations 2009. The learned Central Commission, in the Impugned Order, has further held that the appellant cannot be granted any exemption from sharing the transmission charges and the charges for inter-regional links in exercise of 'Power to Relax' under Regulation 44 of Tariff Regulations 2009 because the said issue had been raised, for the first time by the appellant in the rejoinder, the same could not be looked into. Thus the appellant is aggrieved by the Impugned order since it has wrongly been fastened with liability to share transmission charges of Western and Northern regions and charges for inter-regional links under Tariff Regulations 2009.

- (iv) The whole matter depends upon the interpretation of the various provisions of Regulation 33 of Tariff Regulations 2009 hence, a look at the said provisions is necessary to reach the correct conclusion which is reproduced as under:

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

- (a) *Amounts payable for the month for all components of inter-State transmission system (ISTS) in the region, charges for which have been agreed to be pooled and shared by all regional beneficiaries. These shall necessarily include all components of ISTS in commercial operation on 1.4.2008, as also components of transmission system associated with a generating station [at least one generating unit] of which was declared under commercial operation upto 31.3.2008.*
- (b) *Amounts payable for the month for those parts or the whole of all new transmission systems for which regional beneficiaries have agreed to pay the charges on pooled basis, or it has been so decided by the Commission. These may include an appropriate share of the total charges of a new associated transmission system commensurate with extra capacity built therein to cater to future generation addition and/or for system strengthening not directly attributable to the concerned power plant.*
- (2) *The above regional transmission charges (grossed up) shall be shared by the following:*
- (i) *All regional beneficiaries, in proportion to the sum of their respective entitlements (in MW) during the month in the inter-State generating stations in that region and in other regions, but excluding any generating capacity for which charges of associated transmission system are not being fully pooled.*
- (ii) *Beneficiaries in other regions having entitlements in any generating station in the concerned region, in proportion to such entitlement (in MW) during the month, but excluding any generating capacity for which charges of associated transmission system are not being fully pooled.*
- (iii) *Generating companies owning generating stations connected to inter-state transmission system in the region, but for which the associated transmission system has not been fully commissioned for any reason, in proportion to the gap (in MW) between the generating capacity commissioned up to the end of the month and the capacity for which the designated associated transmission system has been commissioned up to the beginning of the month.*

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

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

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

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

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

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

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

- (6) *Entitlements of Eastern Region beneficiaries in Chukha, Tala and Kurichchu hydro-electric generating stations in Bhutan shall be considered as their entitlements in ISGS in their own region, for the purpose of clauses (2)(i) and (3)(ii) above.*
- (7) *Transmission charges corresponding to any plant capacity for which a beneficiary has not been identified and contracted shall be paid by the concerned generating company.”*
- (v) The Tariff Regulations 2009 have been made applicable from 01.04.2009 and to remain in force for a period of five years from the date of commencement unless reviewed earlier or extended by the Commission. Regulation 33(2) provides that regional transmission charges shall be shared by all the regional beneficiaries, in proportion to the sum of their respective entitlement (in MW) during the month in the inter-State generating stations in that region and in other regions excluding any generating capacity for which charges of associated transmission system are not being fully pooled.
- (vi) **Regulation 33(3) further provides the manner in which the transmission charges for inter-regional links shall be shared unless specifically agreed otherwise. The main part of Regulation 33 which has been strongly argued by the contending parties is Regulation 33(7) of Tariff Regulations 2009, which provides for transmission charges corresponding to any plant capacity for which capacity has not been identified and contracted shall be paid by the same generating company. It means that in case the beneficiary has not been identified by a generating company, the transmission charges corresponding to the plant capacity shall be paid by the concerned generating company. According to the appellant, Regulation 33(7) is fully applicable in the instant matter where as according to the respondent/Power Grid, Regulation 33(2) and (3) are applicable.**
- (vii) The case of the appellant/petitioner is that in terms of CERC Tariff Regulations 2004, the connectivity could be granted to the generating station only if injection and drawl points were mentioned in the application which was difficult to identify the drawl points at the initial stage of the project. The respondent/Power Grid having noted this problem to provide connectivity to the appellant had requested the appellant to mention any regions as its direct beneficiary under the CERC Tariff Regulations 2004. Accordingly, on

25.02.2008, the appellant on the basis of the request of the Power Grid, filed an application for grant of long term open access for inter-State transmission of 350 MW power to Power Grid in accordance with CERC Tariff Regulations 2004 for a period of twenty five years from its plant situated at Kondapalli, Andhra Pradesh, Western region-200 MW and Northern region-150 MW.

(viii) It was on 25.01.2008, the Central Commission identified CERC (Open Access in Inter-State Transmission) Regulations 2008 w.e.f. 01.04.2008 for the purpose which was :

- (i) to govern Short Term Open Access in terms of Regulation 1(2)
- (ii) specified transmission charges for short term open access under Regulation 16(c) and,
- (iii) Repealed the provisions relating to short term open access as contained in CERC Regulations 2004

(ix) We may further mention here that the learned Central Commission on 19.01.2009 notified its Tariff Regulations 2009, Regulation 33 of which deals with sharing of transmission charges. We may further mention here that after the notification of the Tariff Regulations 2009, on 19.01.2009, the Members in the Southern Region Power Committee meeting dated 03.03.2009 agreed that as the proposal for connectivity to the Lanco project was already discussed and agreed at the SRPC Forum and project to be commissioned shortly, the connectivity should be permitted so as to harness the additional generation in the prevailing scenario of power deficits. Since the project developer namely, Lanco had indicated their target beneficiaries in Northern region and Western region and in the absence of finalization of beneficiaries, the Lanco/appellant herein, can sell power by paying applicable short term transmission charges. It was further clarified in the MoM dated 03.03.2009 that in any case any project authority shall have to share transmission charges of Southern region proportionate to their installed capacity as provided under Regulation 33 of Tariff Regulations 2009 where the said issue had been covered in detail.

(x) As such the appellant, apart from short term open access in terms of Regulation 33 of Tariff Regulations 2009 was required to pay charges proportionate to the installed capacity until the appellant identified the beneficiaries of their project. The appellant will pay applicable short term applicable charges. In pursuant to the said meeting of the SRPC, the appellant

vide its letter dated 20.03.2009 requested the Power Grid, **to forward the draft BPTA and other documents to be signed by the appellant. Consequently, the Power Grid vide its letter dated 20.03.2009 informed the appellant that in view of the discussion in the said meeting dated 03.03.009, the appellant was permitted to connect to the Southern region grid, reservation of firm inter-regional capacity for transfer of power to Western and Northern region shall be made as and when approved in the Western and Northern region standing committee Forum and meanwhile, the appellant, Lanco, was advised to sign the BPTA for sharing of transmission charges of Southern region. The Lanco was further advised to firm up the beneficiaries in Northern and Western region and submit a confirmation to sign BPTA for Northern and Western region and inter-regional links to pay applicable charges so that the matter can be taken appropriately with Northern and Western region constituents in forthcoming meeting of the concerned regions.**

- (xi) Thus on 06.07.2009, based on the above agreement, the long term open access was permitted to the appellant for a period of twenty five years. Pursuant to the same, Power Grid has been raising bills for the transmission charges in proportion to their installed capacity which have been duly paid by the appellant. A BPTA was executed between the appellant and the respondent No.2/Power Grid on 02.02.2009 for transfer of 350 MW power from appellant to Northern Region-150 and Western Region-200 MW. The appellant agreed to pay transmission charges as per BPTA which is reproduced as under:

“Transmission charges: The long term transmission customer has agreed to share and pay all the transmission charges of POWERGRID including Foreign Exchange Rate Variation (FERV), incentive, income tax and any other charges and taxes etc. for the use of its transmission system of Western Region (WR), Northern Region (NR) and Southern Region (SR) including inter regional links/ULDC/NLDC charges and any additions thereof.

It was further provided in the BPTA that the appellant shall bear the applicable regional transmission charges in a phased manner as per the quantum of power to be transmitted.

- (xii) We want to note here that on 15.06.2010 the CERC Transmission Sharing Regulations 2010, which we have referred to above as the CERC Transmission

Sharing Regulations 2010, were notified and came into effect from 01.07.2011. This Transmission Sharing Regulations 2010 repealed Regulation 33 of the Tariff Regulations 2009 and Regulation 16(1) and (2) of the CERC (Open Access in Inter-State Transmission) Regulations 2008. The Transmission Sharing Regulations 2010 came into force on 01.07.2011 and prescribe the procedure for sharing of inter-state transmission charges and losses.

- (xiii) Thus as per Regulation 33 of Tariff Regulations 2009 and the MoM dated 03.03.2009 it was decided between the appellant and the respondent No.2/Power Grid that **in the absence of finalization of beneficiary in Northern and Western region, the appellant will be liable to pay transmission charges for Southern region and will also pay applicable short term open access charges whenever the appellant sells power to Western and Northern region.** We may further mention here that based on Regulation 33 of Tariff Regulations 2009 and MoM dated 03.03.2009, the respondent No.2/Power Grid raised invoices from December 2009 till June, 2011 which were duly paid by the appellant.
- (xiv) **Hereinafter, the genesis of the dispute between the appellant and the Power Grid started on 02.08.2011. It was on 02.08.2011, the respondent GUVNL for the first time requested the WRPC to include appellant in working out the weighted average share for the apportionment of Western region transmission charges, weighted average share of inter-regional link between Western with other regions and energy account of WRPC for July, 2011 onwards and revised monthly REAs for the period from long term open access granted to the appellant becoming effective till June, 2011 and directed the respondent/Power Grid to provide the details of commencement of different long term open access/medium term open access to WRPC and upload them on the website to avoid the non-consideration of LToA/MToA quantum by WRPC in future. Main contention of the appellant on this point here is that a copy of the said letter dated 02.08.2011 of GUVNL was never supplied to the appellant but the same was placed by GUVNL before the Central Commission for the first time in its reply. Power Grid has never treated the appellant as its constituent in Western and Northern regions and is established from the fact that the appellant was never issued with any notice for any of their meetings whereas all other Members were invited for various meetings.**

The GUVNL requested to WRPC vide letter dated 02.08.2011 to include the appellant in working out appellant's share of transmission charges in Western region on the basis of Transmission Sharing Regulations 2010 for the period before and after July, 2011, the date when Transmission Sharing Regulations became effective. We may again mention here that Transmission Sharing Regulations 2010 notified by the Commission came into force on 01.07.2011 providing for a change in methodology for payment of transmission charges, namely sharing of point of sharing basis. These Transmission Sharing Regulations 2010 were amended by First Amendment w.e.f. 25.11.2011 and provided for payment of Point of Connection (POC) charges by long term open access customers whereby beneficiaries are not identified. It was at that stage the appellant, Lanco was forced by respondents to tender an undertaking dated 28.11.2011 to Andhra Pradesh Discoms/AP Transco that entire power generated from the available gas in the phase-II plant of the appellant will be supplied to them only.

- (xv) Material on record further depicts that on 23.12.2011, pursuant to First Amendment to the Transmission Sharing Regulations 2010, the WRPC agreed to include the appellant in the REA for the period prior to the implementation of the Transmission Sharing Regulations 2010. The learned counsel for the Power Grid has been consistently arguing before us that the said provisional bills were not raised on the appellant based on Amendment of 2011 when Transmission Sharing Regulations 2010 were amended but it was based on Regulation 33 of the Tariff Regulations 2009.
- (xvi) We have carefully gone through the proceedings of the Commercial Committee meeting of WRPC on 23.12.2011, wherein they held that the demand of POC charges of Lanco would be included in RTA and Power Grid would amend the date of effect of grant of LToA to Kondapalli according to which REAs would be revised incorporating inclusion of the appellant for the period prior to implementation for the aforesaid period.
- (xvii) Consequently, pursuant to Commercial meeting dated 23.12.2011 of the WRPC, the WRPC issued revised REA on 30.03.2012 for the period March 2011 to June 2011 for the appellant. On 24.08.2012, the respondent/Power Grid raised bill on the appellant towards the levy of transmission charges on Western region based on revised REA dated 30.03.2012 for the period March 2011 to June,

2011 amounting to Rs.10,00,90,930/- (**disputed bill**). We may further mention here that the appellant through letter dated 31.08.2012 requested Power Grid to withdraw the aforesaid disputed bill without taking any coercive action till the matter was resolved along with request to WRPC to reconsider the revision of REA for the aforesaid period namely, March 2011 to June 2011. The Power Grid on 07.09.2012 conveyed to the appellant that it would be just and proper to pay the charge, billed by Power Grid in accordance with BPTA and REA issued by WRPC. Ultimately, when none of the respondents responded to the request of the appellant through letter dated 10.09.2012 conveyed that during the meeting of Southern region held on 03.03.2009 at Bangalore it had been clarified that only the Long Term Transmission charges of Southern Region will be payable by the appellant, till long term beneficiaries are identified and for any power sold in any region, short term open access charges will be applicable and that since the appellant has not been able to identify any long term beneficiary due to various reasons related to fuel agreement, as required under case 1 bids. Further, it was also conveyed by the appellant in letter dated 10.09.2012 that neither the BPTA clause 2.9.9 nor the CERC Regulations 2004 permit Power Grid to impose transmission charges on the appellant. When all the requests repeatedly made by the appellant/petitioner failed, the appellant had no option but to file Impugned Petition before the Central Commission which has been disposed/dismissed by the Impugned Order which we have detailed above.

- (xvii) The main contention of the learned Senior Advocate for the appellant Mr.C.S.Vaidyanathan is that the Central Commission has failed to consider that as per Regulation 33 of the Tariff Regulations 2009 and MoM dated 03.03.2009, it was decided between the parties that in the absence of finalization of beneficiary in Northern region and Western region, the appellant would be liable to pay the transmission charges for Southern region and also applicable STOA charges, whenever the appellant sells power in Western region and Northern region. Based on the said Regulations and the MoM dated 03.03.2009, the Power Grid raised invoices from December 2009 till June 2011 and the same was duly paid by the appellant. Further the Central Commission failed to take into consideration the fact that the impugned bills have been raised by respondent No.2/Power Grid pursuant to the decision dated 23.12.2011 taken during the 60th meeting of the commercial committee meeting of the WRPC wherein, it erred in retrospectively applying the Transmission

Sharing Regulations 2010 for the period prior to 01.07.2011 as amended w.e.f. 24.11.2011. Further, the Central Commission has wrongly held the appellant to be a 'deemed user' of the transmission system of the Western and Northern regions since the transmission capacity in these regions is earmarked/reserved for the use of appellant as per its requirement and no other person is being considered for LToA against the transmission capacity reserved for the appellant because neither Tariff Regulations 2009 nor the Transmission Sharing Regulations 2010 envisage the concept of 'deemed user'. The Central Commission is not competent to introduce some words in the Regulations in order to bring the appellant within the ambit of Regulations 2009. The Regulation 33(2) of Tariff Regulations 2009 is applicable only to the 'user' of the transmission system. In case of non-identified beneficiary, i.e. when a transmission line is not used by a utility, then Regulation 33(7) of Tariff Regulations 2009 is applicable and it is precisely the case of the appellant that the transmission charges in terms of Regulation 33(7), as decided in the MoM dated 03.03.2009, were billed by respondent No.2/Power Grid and the same were paid by the appellant. Further contention of the appellant is that Central Commission ignored the fact that in the absence of any identified beneficiary, the power will be effectively absorbed in the concerned region where the generator is connected. Therefore, charges for use of transmission system of the region on which the generator depends for transmission of power ought to be shared by constituents of the region.

- (xviii) Contrary to the main contentions of the appellant, the submissions of the respondents are that in case the appellant had identified the beneficiaries to the extent of 200 MW in the Western region and 150 MW in the Northern region, automatically the liability to pay the transmission charges would have shifted to the identified beneficiaries as per Regulation 33(1) and (2). Since the appellant did not identify the beneficiaries hence, the liability to pay the transmission charges for the said period, when the LToA was obtained and maintained, squarely falls on the appellant. Further, it was open to the appellant to have restricted the sale of electricity within the Southern region without taking inter-regional LToA. Since the appellant took the commercial decision to sell power outside Southern region and for the said purpose obtained and blocked the inter-regional LToA, the appellant needs to pay the applicable charges for inter-State LToA. Further, the appellant did not take STOA but applied for and obtained LToA and since the appellant signed a BPTA, being fully aware of

sharing the regional transmission charges of Southern Region, Western Region and Northern Region, as well as relevant inter-regional link charges for a period of 25 years.

- (xix) **The learned counsel for the respondents have candidly admitted that there was, however, a wrong billing by the respondent/Power Grid without appreciating Tariff Regulations 2009, the GUVNL by the aforesaid letters, dated 02.08.2011 and 21.12.2011, brought this fact of wrong billing to the notice of WRPC and then the WRPC in its 60th meeting based on the said discussions decided to revise the REA for the pre-point of connection period prior to June 2011. Accordingly, the said provisional disputed bill was issued to the appellant/petitioner. In reply to the revision of monthly REAs for the period from September, 2009 to June, 2011 the respondents' submission is that although, the WRPC ought to have carried out revisions of monthly REAs for the said period, from September, 2009 to June, 2011, based on Power Grid's letter dated 29.06.2012, the monthly revision could not be done. Thus the learned counsel for the respondents candidly submits that Power Grid made a mistake in raising Invoices but it cannot result in application of Regulation 33(7) of the Tariff Regulations 2009.**
- (xx) Regarding application of the First Amendment dated 24.11.2011 to the Transmission Sharing Regulations 2010 retrospectively, the learned counsel for the respondents vehemently contended that in fact, the respondent/GUVNL has been raising the issue since June 2011. The REAs were revised after the said position had been taken in a commercial meeting of the WRPC, dated 08.10.2011 and the said revision of REAs could take place only after the First Amendment dated 24.11.2011 to the Transmission Sharing Regulations 2010.
- (xxi) We have seriously and cautiously considered the relevant contentions of the rival parties but we find no force or merit in any of the contentions raised by the respondents, including Respondent No.2/Power Grid. As per Bulk Power Transmission Agreement (BPTA) dated 02.09.2009 entered into between respondent/Power Grid and the appellant for transfer of 350 MW power from appellant to (i) Northern region – 150 MW and (ii) Western Region – 200 MW, the transmission charges were payable for the use of transmission system of Northern, Western and Southern region including inter-regional link charges and any additional charges thereof. Based on Regulation 33 of Tariff Regulations 2009 and Minutes of Meeting (MoM) dated 03.03.2009, the

respondent/Power Grid raised Invoices from December 2009 till June 2011 which were duly paid by the appellant till then there was no dispute regarding levy of transmission charges etc. between the parties. The Transmission Sharing Regulations 2010 came into force on 01.07.2011 to provide for a change in methodology for payment of transmission charges, namely sharing of point of connection basis. These Transmission Sharing Regulations 2010 were amended (First Amendment) w.e.f. 24.11.2011 providing for payment of point of connection/injection charges by LToA customers where the beneficiaries are not identified. Since the beneficiary of the appellant are not identified, the respondents (mainly Power Grid and GUVNL) in the aforesaid meeting included the appellant in the category of the power generating companies and revised his power bills for the period March 2011 to June 2011. The Regulation which is applicable in the case in hand is Regulation 33(7) of the Tariff Regulations 2009. The appellant has paid the transmission charges including sharing the transmission charges for Southern region as per the bills raised by Power Grid in terms of Regulation 33(7) and MoM dated 03.03.2009. Accordingly, the appellant is not liable to pay any further transmission charges for the Western and Northern regions in the absence of any use of the capacity of the said Western and Northern regions. Regulation 33(7) is the residuary clause providing for payment of transmission charges by generating companies having no identified beneficiary. The appellant admittedly has not identified any beneficiary in Western and Northern regions for off-take from its generating station. It is true that in the absence of any identified beneficiaries, the appellant cannot disown its liability to share the transmission charges for Western and Northern regions. In the case in hand, we may note here that the appellant is not denying its liability to pay transmission charges in terms of Regulation 33(7) of Tariff Regulations 2009, in fact the appellant has paid the transmission charges pursuant to the bills raised by respondent/Power Grid in terms of Regulation 33(7) and MoM dated 03.03.2009. This Regulation 33(7) only provides for transmission charges corresponding to plant capacity for which beneficiary has not been identified and shall be payable by generating company and it neither permits respondent No.2/Power Grid to charge the same capacity more than once, nor does it permit respondent No.2/Power Grid to charge the same capacity in different regions.

- (xxii) The bill raised by respondent No.2/Power Grid on 28.04.2012, after expiry of 1½ years and order of Central Commission directing the appellant to share

transmission charges for Northern and Western regions appear to be unjust, improper and illegal. The approach of the Central Commission is quite un-just, unreasonable and not appreciable in law. We may mention here that had the connectivity been granted to the appellant as per connectivity Regulation notified on 07.08.2009, prior to signing of BPTA dated 02.09.2009, the connectivity could have been obtained by appellant without specifying any beneficiary region. In such a situation, the transmission charges would have been payable only for the Long Term / Short Term Access availed by the appellant and no further charges would have been payable by the appellant under Tariff Regulations 2009. We are of the clear view that no further charges are payable by the appellant in terms of Regulation 33(7) of the Tariff Regulations 2009. On 06.02.2012, the WRPC pursuant to the commercial committee meeting of WRPC, requested respondent No.2/Power Grid to intimate the effect of LToA to the appellant so that the REA for the period prior to implementation of the Transmission Sharing Regulations 2010 could be revised. Again on 15.03.2012, WRPC again requested the Power Grid to intimate the effective dates and quantum of LToA of appellant targeting the Western region without identified beneficiaries so as to make necessary revision of Regional Energy Accounts (REA).

- (xxiii) Since all the exercises have been done after the First Amendment, w.e.f. 24.11.2011 to the Transmission Sharing Regulations 2010 attempting to implement the Transmission Sharing Regulations 2010 retrospectively, the appellant has wrongly been included in the category of the generating stations whose REAs were to be revised.
- (xxiv) The Central Commission has failed to consider that the impugned bills were not issued in accordance with Tariff Regulations 2009 as the said Regulations contemplate issuances of monthly bills. Had the respondent No.2/Power Grid treated the appellant as its long term customer in Western and Northern region, it would have issued monthly bills in respect of the said regions also.
- (xxv) Admittedly, the applications of the appellant under short term regulations for short term supplies in Western and Northern regions were accepted by respondent No.2/Power Grid and accordingly, the bills were issued based on short term regulations. The reason for not treating the appellant as long term customer in Western and Northern regions is in accordance with understanding of the parties reached in the SRPC meeting dated 03.03.2009, wherein it was

agreed that respondent/Power Grid will be issuing bills only under short term open access until such time that the appellant has not firmed up the beneficiaries in Western and Northern Regions. Accordingly, the appellant is paying the transmission charges for its LToA with respect to Southern region and ought not to be fastened with transmission charges for Western and Northern regions in the absence of any use of the capacity of the said Western and Northern Regions as stipulated in the MoM dated 03.03.2009 and the Power Grid's letter dated 20.03.2009.

- (xxvi) The REA of Western Region was revised on 30.03.2012 for the period March, 2011 to June, 2011 and the bill dated 24.08.2012 was raised by Respondent No.2/Power Grid. Evidently, the bills were raised retrospectively applying the CERC Transmission Sharing Regulations, 2010, as amended w.e.f. 25.11.2011, as can be gleaned from the decision taken in 60th meeting of Commercial Committee of WRPC dated 23.12.2011.
- (xxvii) We further note and observe that Amendment of 2011 to the Transmission Sharing Regulations 2010 is prospective in nature and shall be treated as prospective in nature because nothing contrary indicating the same to be retrospective in nature is mentioned in the said Amendment of 2011 hence the bills raised by respondent No.2/Power Grid under the garb of Tariff Regulations 2009 actually, indirectly, applying the Amendment to the Transmission Sharing Regulations 2010 retrospectively are liable to be quashed.
- (xxviii) We may further note here that as per the RTI reply dated 29.04.2014, regarding the capacity considered/reserved/blocked in the Western region for the appellant towards LToA, the Western Region Load Despatch Centre has not received any information or request from Power Grid to reserve/block any capacity in the Western region transmission system for Lanco Kondapalli for the period from September 2009 to August 2011 towards Long Term Open Access. In this view of the matter, the said disputed bill raised on the appellant by respondents is liable to be quashed because the respondent/Power Grid has not reserved any capacity of transfer of power to Western and Northern regions for the appellant. Further, the undisputed fact is that the respondent No.2/Power Grid has not made any system strengthening or made any investment in pursuance of BPTA, which has been recorded by the Central Commission in its another order dated 21.02.2014 passed in Petition No. 63 of 2013 for the same project. Thus we are unable to accept the contention of the

respondents' counsel that the reply to the RTI vide letter dated 29.04.2014 has no bearing on the liability of the appellant to pay the open access charges for the said period.

- (xxix) The Power Grid admittedly made a mistake in raising invoices, the said fact we have considered. The whole exercise appears to have been done after the First Amendment of 2011 to the Transmission Sharing Regulations 2010, an endeavor has been made by the respondents including the Power Grid to apply the said Amendment of 2011 to Transmission Sharing Regulations 2010 retrospectively and raised the bill upon the appellant which cannot be appreciated in any way.
- (xxx) In view of the above discussion, all the findings recorded in the Impugned Order are liable to be set aside and we find that the appellant is not at all liable to pay transmission and other applicable charges relating to the period March 2011 to June 2011 for LToA taken on the inter-State transmission system of the respondent No.2/Power Grid from the Southern region to Western region and from Southern region to Northern region through Western region. The Central Commission has committed illegality while dealing with the fact that Power Grid has raised the bills from December, 2009 to June 2011 which were duly paid by the appellant as per Regulation 33(7) of the Tariff Regulations 2009 and BPTA 02.09.2009. Consequently, we observe that no charges are payable by the appellant for Northern and Western regions and for inter-regional links. We observe that the Power Grid has raised the impugned bill by retrospectively applying First Amendment dated 24.11.2011 to the Transmission Sharing Regulations 2010 for the period prior to 01.07.2011. Consequently, all these issues are decided in favor of the appellant and against the respondents and the appeal is liable to succeed.

ORDER

- (16) The instant appeal, being Appeal No. 69 of 2014, captioned as *Lanco Kondapalli Power Limited Vs. Central Electricity Regulatory Commission & Others*, is hereby allowed and the Impugned Order dated 21.02.2014 passed by CERC in Petition No. 240/MP/2012 is hereby quashed. The said Petition filed by appellant/petitioner is hereby allowed. The provisional bill dated 24.08.2012 for the period March, 2011 to June, 2011 raised by respondent No.2/Power Grid on the basis of revised Regional Energy Accounts for the transmission

charges upon the appellant is, being invalid, hereby quashed. We order that in case the amount of the provisional bill dated 24.08.2012 has been deposited by the appellant/petitioner or any how deducted or recovered by the respondent including respondent No.2/Power Grid from the appellant/petitioner shall be returned to the appellant/petitioner with interest @ 7% per annum from the date of such deposit/deduction or recovery till the actual date of returning back the said amount of the provisional bill dated 24.08.2012. We further direct all the respondents, including WRPC and Power Grid, not to revise Regional Energy Accounts of the appellant/petitioner for the period prior to 01.07.2011.

No order as to costs.

Pronounced in the open court on this **17th day of February, 2016.**

(T. Munikrishnaiah)
Technical Member

(Justice Surendra Kumar)
Judicial Member



REPORTABLE / ~~NON-REPORTABLE~~