BEFORE THE APPELLATE TRIBUNAL FR ELECTRICITY

(Appellate Jurisdiction)

Appeal No. 169 of 2009 and Appeal No. 127 of 2009

Dated 20th January, 2011

CORAM: Hon'ble Mr. Justice M Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice Partha Sakha Datta, Judicial Member

In the matter of

1. Powergrid Corporation of India Ltd.
   Suadamani, Plot No.2, Sector 29,
   Gurgaon- 122 001.
   Haryana — Appellant

Versus

1. Central Electricity Regulatory Commission
   3d and 4h Floor, Chanderlok Building
   36 Janpath, New Delhi-110 001.

2. Karnatka Power Transmission Corporation Ltd.
   Kavery Bhawan, K. G. Road,
   Bangalore 560 009.

3. Tansmission Corporation of Andhra Pradesh
   Vidyut Bhavanam,
   Hyderabad 500 0049.

4. Kerala State Electricity Board
Vidyut Bhawanam
Thiruanathapuram 695 004

5.Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai- 600 002.

6. Electricity Department, Government f Pondicherry,
58, Subvhash Chandra Bose Salai,
Pondicherry 605 001.

7. Electricity Department, Government of Goa,
Vidyut Bhawan, Panaji, Goa 403 001. Respondents

Counsel for the Appellant: Mr. M.G. Ramachandran
Mr. Anand K Ganesan
Ms Swapna Seshadri
Ms. Sneha Venkataramani
Ms. Ranjitha Ramachandran
Mr. N.N. Chaturvedi
Mr. Atul Pandey,
Mr. Ramesh Jerath

Counsel for the Respondent: Mr. Ramji Srinivasan
Ms. Geetha Kovilan
Mr. Ziyaul Haq
Mr.P.R. Kovilan,
Mr. Vasudevan
Ms. Geetha Muthu Perumal

JUDGMENT

PER HON'BLE MR. JUSTICE P.S. DATA, JUDICIAL MEMBER

The Appeal No. 169 of 2009 and Appeal No. 127 of 2009 are being disposed of by this common judgment and order as they raise identical question of law.

2. The Appeal No. 169 of 2009 is preferred by the Power Grid Corporation of India Limited, an Interstate Transmission Utility against the order dated 9.6.2009 passed by the Central Electricity Regulatory Commission (for short, Commission) in Petition No.102 of 2007.

3. The facts are as follows:

4. During the period from 1.4.2006 to 31.3.2007 the operation of Talcher-Kolar HVDC system was under planned shut down as per the Annual Maintenance Plan which was approved by all the beneficiaries, who are the other Respondents herein, in their 407th and 408th

meetings of the Operation Coordination Committee of the Southern Region Power Committee (SRPC) held on 9.5.2006 and 9.6.2006 respectively. The planned shut down of the transmission system for a specific period for one pole of the bi-pole was to be considered as not available for the purpose of achievement of target availability under the CERC (Terms and conditions for the determination of tariff) Regulations 2004. The said Tariff Regulations 2004 prescribed normative availability for HVDC system at 95% and for the AC system at 98%.

5. According to the Appellant, in order to ensure such high availability, the Appellant has to take extreme care and caution and maintain several critical equipments to ensure reliable and secured supply of HVDC system. Time available for carrying out present maintenance and also urgent repairs in the event of breakdown/faults is only 5% of the total available time for HVDC system and 2% only of the total available time for AC system.

The Appellant draws out its annual maintenance plan for preventive maintenance, avail any shut down required, for exigencies of the system within the minimum limit of 5% and that too with the approval of the beneficiaries of the Southern Region. Now, while certifying the availability of the Talchar-Kolar Transmission System the Member Secretary, Southern Region Power Committee has doubled the outage time for calculation of availability for each of the three type of outage namely:

i) When one pole was taken out for the annual planned maintenance work and the second operating pole tripped, the total duration of the first and the second pole outage was doubled in calculation of availability.

ii) When one pole was under maintenance shut down, the outage period of this pole was doubled for calculation of availability.

iii) When bi-pole was under maintenance programme, the outage of both the poles was also doubled.

6. According to the Appellant, by the reason of double counting, the availability of the Talcher-Kolar HVDC system for the year 2006-07 was certified at 96.98% whereas if calculated properly in terms of the provisions of the Tariff Regulations, 2004, the availability would work out to 97.53%. In case of Talcher-Kolar HVDC system, when one pole was under approved shut down, the other pole tripped. The SRPC considered both the poles as unavailable and doubled the outage time of both the poles. Of both the poles, one pole was under planned shut down as per the annual maintenance plan duly approved. The Tariff Regulations 2004, clearly envisages that the two poles are to be considered independently and not together. The Appellant filed an application before the Commission under Regulations 12 and 13 of the Tariff Regulations, 2004 read with Regulations 86 of Central Electricity Regulatory Commission (Conduct Business Regulations)1999 for the approval of incentive based on the availability of the system for the years 2006-07. The Commission by the order impugned did not take cognizance of the circumstances necessitating in reduction in availability

and the member Secretary, SRPC. While issuing the availability certificate also overlooked the situation. The Commission ignored the details provided by the Appellant in the Petition and proceeded mechanically on the basis of the certificate issued by the Member Secretary, SRPC.

7. The CERC, Respondent No.1 despite service of notice did not put any counter affidavit against the memorandum of appeal, while out of the remaining six Respondents, it is the Respondent No. 5 Tamil Nadu Electricity Board (TNEB) which is contesting the Appeal by filing reply which is dealt with below.

8. TNEB averred that if the outage of any element causes loss of generation at ISGS then the outage period for that element shall be deemed to be twice the actual outage period for the days on which such loss of generation has taken place. This is the provision in Appendix III para 7 of the CERC Regulations 2004. It is contended that paras 5 and 6 of the said Appendix inter alia provide that transmission elements in outage following shut down elements availed of by other

agencies for maintenance of construction and their transmission system shall only be deemed to be available. Further, the outage of elements due to Acts of God and force majeure events beyond the control of a transmission licensee limited to a reasonable restoration time as allowed by the Member Secretary, SRPC and outage caused by grid incidence/disturbance not attributable to transmission licensee that could not be brought back to service after normalizing the grid disturbance will be considered as not available for whole period of outage and the outage time shall be attributable to the transmission licensee.

9. In the present case one pole was taken out for maintenance by Powergrid itself and not by any other agency and the other healthy pole tripped due to fault attributable to power grid. The generation from Talchar STPS Stage II had to be backed down as even the restricted evacuation facility was not available during the period of tripping of the 2nd pole, and the 1st pole which was under scheduled maintenance could not be pressed into Service immediately resulting in loss of generation. The Member Secretary, SRPC complied

with paras 5, 6 and 7 of Appendix III of CERC regulations 2004 while issuing the availability certificate.

10. The maintenance taken by Powergrid on pole I with the approval of the SRPC is not exempted from working out the availability of the transmission system. Similarly, the outage of the second pole due to fault is not attributable to any grid incident/disturbance. It is contended that non availability of both the poles necessitated backing down of generation as there was no other way by which the power could be transferred to Southern Region except through the 400 KV AC network of Eastern Region which has limited surplus capacity after evacuating the power from the first two units of this station belonging to Eastern Region.

11. It is contended that para 7 of the Appendix III of the Regulations 2004 clearly allows doubling of the outage period of any element that causes loss of generation at ISGS. As the Regulations have clearly provided for the method for working out availability of the transmission system, the Member Secretary, SRPC did not commit any error in issuing the availability certificate for the

period in question. If the Appellant is aggrieved because of the availability certificate issued by the Member Secretary, SRPC and of the order of CERC dated 9.6.2009 which were based on the Tariff Regulations 2004, the Appellant should have challenged the relevant 2004 Regulations.

12. It is further contended that the shut down was approved by SRPC on the basis of the statement made by AGM/SLDC that dispatch from Talchar STPS II would not be affected during single pole shut down of Talchar – Kolar, while during the bi-pole shut down alternate route would have to be explored to ensure full schedule from Talchar STPP stage II. There is no merit in the appeal of the Appellant in view of the fact that it has been given incentive of Rs.9.95 crores on the basis of the present availability.

13. On the basis of the pleadings as aforesaid, the issues that arise for consideration are as follows:

A) Whether the Central Commission was right in considering the two transmission systems in a

combined manner when the tariff Regulations, 2004 specifically provide that the each element in regional transmission system should be considered separately as alleged by the Appellant.

B) Whether the Central Commission was right in considering the two transmission systems forming part of Bi Pole including that part which was under scheduled maintenance as not being available because of the non availability of the other part of the Bi pole which was not available.

C) Whether the Central commission was right in law in not giving directions to the concerned authority/SRPC for issuance of Revised Availability Certificate when the Appellant specifically brought to the notice of the Central Commission the specific facts leading to the filing of the Petition No.120 of 2007.

14. We have heard Mr. M.G. Ramachandran, learned Counsel for the Appellant and Mr. P.R. Kovilan, learned Counsel for Tamil Nadu Electricity Board, the Respondent No.5. We have also gone through the impugned order and other records.

15. Mr. M.G. Ramachandran on behalf of the Appellant argued assiduously that the Central Commission committed error in not considering that one of the bi-poles which was under the maintenance related outage should not be taken for the purposes of the penal outage, and when the second part of the bi-pole which tripped the penal outage counting should have been restricted only to 2nd part while calculating the availability of Appellant's transmission system for the year 2006-07. The import of the Tariff Regulation 2004 along with its first amendment providing for calculation of availability of the transmission system as per Appendix III to the said Regulations provides that the availability of each category of the transmission element needs to be calculated based on weightage factor, the total hours under construction and non-availability hours for each element of that category. That is to say, the effect of the failure of the second part of the bi-pole cannot visit the first part of bi-pole which was under scheduled/ planned shut down.

16. It is thus elaborately argued that in terms of para 7 of Appendix III of the Regulations if the outage of any element causes loss of

generations at ISGS then the outage period for the element shall be deemed to be twice the actual outage period for the day on which such a loss of generation has taken place. Thus while certifying availability of the Telcher-Kolar transmission system the Member Secretary of the SRPC doubled the outage time in calculation of availability for each of the three types of outage as said above. The two Poles of the system cannot be considered in a combined manner so as to determine the availability as Tariff Regulations, 2004, Appendix –III specifically provides that each system, line or pole has to be considered separately. The SRPC made double counting of the non-availability of Pole-I by firstly taking the period of planned shut down of Pole-I under annual Maintenance Programme to be non-available and thereafter during the period when Pole-II got tripped, considered both the Poles-I and II to be non-available. Thus, for the duration of the shut down of Pole-II, the SRPC had treated Pole-I which is already not available under planned shut down to be again not available.

17. The main thrust of the submission of Mr. M.G. Ramachandran is that the shut down for the one Pole of the Bi-Pole was taken by the

Appellant with prior approval of all the constituents of the SRPC and accordingly if the pole is under approved shut down and the other pole trips resulting in disruption of schedule generating then consideration of outage of both the pole is not justified. The two Poles have to be considered independently as per prescribed regulations and accordingly when one pole was shut down for maintenance activities with the approval of the SRPC and the other pole which was in service tripped due to fault then the outage period has to be calculated of the Pole which only tripped. It is argued that the maintenance of HVDC substations and lines is to be done by Powergrid for reliable operation and grid stability. Whenever one or both poles are taken out for preventive maintenance or to correct the break down, the non-availability of adequate alternate route for evacuation of power from the Talcher Thermal Power Station to the Southern Region would occur. This would effectively lower the time available with the Powergrid for any further preventive/breakdown maintenance as the limit prescribed for HVDC system is only 5%, Therefore, treating the present case as a “loss of generation” under clause 7 attracting double outage is not justified.

18. It is argued further that the Commission has failed to take note that Talcher - Kolar HVDC link is the transmission system developed for evacuation of full power from Talcher Stage III to the Southern Region. Due to non-availability of alternate route for full evacuation of Talcher Stage-II power, such situation would arise but maintenance work of HVDC substation and line has also to be done and it is not desirable to impose penalty if shutdown is taken. It is more important to have a reliable operation with stable grid without any breakdown in the system. The annual maintenance/planned shut down is necessary for ensuring the robust transmission system and reliable operation during the entire expected life of the transmission asset. At the last leg of his argument Mr. Ramachandran submitted that when SRPC was not inclined to issue the availability certificate for the propose of incentive, as according to the Appellant, the availability improved to 97.53% against the certification at 96.98%, the Commission ought to have invoked Regulations 12 and 13 of the Tariff Regulations 2004 because it was not due to the fault of the Appellant that one Bi-Pole had to be shut down since shutting down was necessary only for the benefit of the beneficiaries and it was beyond the control of the Appellant that there was loss of the

generation and for the purpose of incentive outage of one pole was under planned shut down should not have been taken into consideration.

19`. Learned counsel for the TNEB, Respondent No. 5 submitted that it is the responsibility of the Appellant which undertook the activity of evacuation of power from generating stations and inter-state transmission of electricity to state grid and load centers to maintain its own system and shut down of Pole -I for its maintenance which is said to have been approved by the SRPC, and tripping of the Pole-II and consequential failure of generation during the period in question cannot but be attributable to the Appellant itself. On 09.05.2006 in the meeting of the Operation Coordination Committee it was discussed that dispatch from Talcher-Kolar STPC would not be affected during the single Pole shut down, and during the Bi-pole shut down alternate route would have to be explored to ensure full schedule from Talcher STPP. The constituents of the SRPC felt that maintenance of the units of Talcher should be planned in coordination with bi-Pole shut down or vice-versa so that they are ensured of their full schedule from Talcher. Even the restricted evacuation facility was

not available during the period of tripping of the healthy pole which resulted in loss of generation, and resultantly transfer of electricity to the southern region was affected. The SRPC on 03.05.2007 certified the availability of the Talcher-Kolar transmission system at 96.98% as against 97.53% as claimed by the Appellant strictly in terms of the Regulations 2004, particularly paragraph 5, 6 and 7 of Appendix III to the said Regulations and the CERC rightly did not interfere with the availability certificate of the SRPC. It is argued that paragraph 5 of the Appendix III to the Regulations, 2004 clearly provides that outage period due to shut down of transmission elements availed of by other agency or agencies for maintenance or construction of their transmission systems shall only be deemed to be available. In the present appeal the transmission system of Talcher-Kolar HVDC bi-pole was shut down for the maintenance of the Appellant's own transmission system, which is owned and maintained by PGCIL itself. In the light of the Regulation and facts of the case, it is submitted that the contention of the appellants to deem the outage as available is unfounded.

20. Thus, it is submitted that the outage duration is completely attributable to the appellant and they cannot claim the outage period to be deemed as available. The Southern Regional Power Committee, therefore, rightly certified the availability to 96.98 as against 97.53, an additional 0.55% increase in the availability as claimed by the appellants, during which the transmission system was factually not available. It is again not the case of the Appellant that outage has been caused due to any of the contingencies envisaged in paragraph 6 of the Appendix III of the Regulations, 2004. The incentive is the reward payable by the constituents to the Appellant for maintenance of availability of the transmission line which cannot be claimed as a right and that too when the transmission line itself was not available.

21. Having heard the submissions of the learned counsel for the Appellant and the Respondent No. 5 it is first necessary to consider whether there has been computation of double outage as alleged by the Appellant. To consider this point it is necessary to note down the relevant provisions namely paragraph 5, 6 and 7 of the Appendix III to the Regulation 51 of the Tariff Regulations 2004.

22. Regulations 51 clearly provides that the target availability for recovery of full transmission charges is 98% in respect of AC system and 95% in respect of HVDC Bi-Pole links, and HVDC back-to-back stations. Note 2 to the said Regulation 51 provides that target availability shall be calculated in accordance with the procedure specified in Appendix III which says that in respect of HVDC links along with associated equipments at both ends shall be considered as one element. Similarly, in respect of HVDC back-to-back stations each block of HVDC back-to-back station shall be considered as one element.

23. The provisions laid down in paragraphs 5, 6 and 7 of the Appendix III which are the subject of interpretation while applying to the facts on hands are as under:

> *"5. The transmission elements under outage due to following reasons not attributable to the transmission licensee shall be deemed to be available.*
>
> *i) Shut down of transmission element availed by other agency/agencies for maintenance or construction of their transmission system.*

ii) Manual tripping of line due to over voltage and manual tripping of switched bus reactor as per the direction of RLDC.

6. Outage time of transmission elements for the following contingencies shall be excluded from the total time of the element under period of consideration.

i) Outage of elements due to Acts of God and force majeure events beyond the control of the transmission licensee. However, onus of satisfying the Member Secretary, REB that element outage was due to aforesaid events and not due to design failure shall rest on the transmission licensee. A reasonable restoration time for the element shall be allowed by Member Secretary, REB and any additional time taken by the transmission licensee for restoration of the element beyond the reasonable time shall be treated as outage time attributable to the transmission licensee. Member Secretary REB may consult the transmission licensee or any expert for estimation of restoration time. Circuits restored through ERS (Emergency Restoration System) shall be considered as available.

ii) Outage caused by grid incident/disturbance not attributable to the transmission licensee, e.g., faults in substation or bays owned by other agency causing outage of the transmission licensee's elements, tripping of lines, ICTs, HVDC back-to-back stations etc. due to grid disturbance. However, if the element is not restored on receipt of direction from RLDC while normalizing the system following grid

incident/disturbance within reasonable time, the element will be considered not available for whole period of outage and outage time shall be attributable to the transmission licensee.

7. If the outage of any element causes loss of generation at ISGS then the outage period for that element shall be deemed to be twice the actual outage period for the day(s) on which such loss or generation has taken place."

24. The facts are not in dispute that between 01.04.2006 to 31.03.2007 there was planned shut down as per annual maintenance plan of a pole of Talcher-Kolar HVDC system. It could not be disputed also that the planned shut down period of pole –I has to be considered as being not available for the purpose of deciding on the achievements of the target availability under the Tariff Regulations. The fact of the matter is that on certain days when the pole-I was under shut down for maintenance the pole-II of the bi-pole also tripped resulting in loss of generation.

25. The very contentions of Mr. M.G. Ramachandran that no computation of outage should have been done by the SRPC and also by the Central Commission because of said outage having been the logical outcome of the planned shut down duly approved by the

constituents of the SRPC and beyond the control of the Appellant is not acceptable because as we have seen in paragraph 5 of the Appendix III the outage shall be deemed to be available when the transmission element was availed of by other agencies for maintenance or construction of their own transmission system and when manual tripping of line was due to over-voltage. It is not deniable that what we call planned shut down was to the knowledge of the constituents of the SRPC who are the Respondent No. 2 to 7 herein but the fact remains that there was no generation because of shut down. It was a designed shut down, a planned shut down which cannot be said to be the cause of loss of generation not attributable to the Appellant.

26. The SRPC or for that matter the CERC cannot read more than what has been clearly provided in paragraph 5 of the Appendix III. Again, the loss of generation due to planned shut down cannot be attributed to be an Act of God or force majeure. Mr. Ramachandran seeks to invoke the doctrine of force majeure on the premise that shut down was inevitable for achievements of target availability of the transmission system. The loss of generation of electricity because of shut down cannot be said to be attributable to any other

factor/agency than the Appellant itself. Invocation of the doctrine of force majeure or Act of God or the force beyond the control of the Appellant cannot be extended to the case on hand. Equally is the fact true that during the period in question the second pole of the bi-Poles got tripped on certain specified dates resulting in loss of generation of electricity.

27. Now, as we have noticed in paragraph 7 of the Appendix III if the outage of any element causes loss of generation at ISGS then outage period for that element shall be deemed to be towards actual outage period for the days on which such loss or generation has taken place. In consideration of the facts and circumstances of the case there is no other alternative but to say strictly in terms of paragraph 7 of the Appendix III that the outage period for any element shall be towards actual outage period in respect of the days when there was no generation of electricity.

28.. Having given a look to the minutes of 407th meeting of the Operation Coordination Committee that took place on 09.05.2006 we find that it was observed that dispatch from Talcher STPP would not

be affected during single pole shut down of Talcher-Kolar, while during bi-Pole shut down alternative route would have to be explored to ensure full schedule from Talcher STPP. From the minutes of 407th meeting and that of 408th meeting we find the following schedule of shut down programme of Talcher-Kolar HVDC Pole –I and II:

S. No.	Line/ICT/Bus Reactor	Date of shut down	Duration (hrs.) from to	Remarks
1.	Talcher–Kolar HVDC Pole-I	24.05.2006 to 26.05.2006	0800 to 1800 (3 days on daily basis)	AMP Works
2.	Talcher–Kolar HVDC Bipole	27.05.2006 to 28.05.2006	0800 to 1800 (2 days on daily basis)	AMP Works
3.	Talcher–Kolar HVDC Pole-II	29.05.2006 to 30.05.2006	0800 to 1800 (2 days on daily basis)	AMP Works
4.	Talcher–Kolar HVDC Pole-I	31.05.2006 to 02.06.2006	0800 to 1800 (2 days on daily basis)	AMP Works
5.	Talcher–Kolar HVDC Pole-II	05.06.2006 to	0800 to 1800 (2 days on	AMP Works

		06.06.2006	daily basis)	
6.	Talcher–Kolar HVDC Pole-I & II	03.06.2006 to 0406.2006	0800 to 1800 (2 days on daily basis)	AMP Works

29.. From the schedule it would appear that whenever there has been shut down of one pole outage has been computed only of that pole and when both the poles were shut down outage has been taken consideration separately in respect of the each of the said poles. The arguments of the learned Counsel for the Appellant that outage that arose as per the approval of the SRPC for carrying out maintenance activities should not have been computed is difficult to accept in view of the clear provisions in Paragraph-5 to the Appendix III of the Regulations 51. Therefore, the argument of the Appellant that when pole was taken out for the annual planned maintenance works and the second operating pole tripped due to fault there was double calculation of availability does not appear to be correct. Again, the argument that when one pole was under the maintenance shut down the outage period of this pole was wrongly doubled or the argument that when bi-pole was under annual maintenance programme the outage of both the poles was also doubled merit no justification. In

either of the two meetings of the SRPC it was not resolved, rightly so on the face of the regulations, that outage resulting in shut down of one bi-pole for maintenance would not be considered. On the other hand, shut down was conceded to only when it was given to understand by AGM/SRLDC that during shut down for maintenance the generation of power would not be affected and in case of bipole shut down alternate route would be explored. Paragraph 6 to the Appendix III has also provided that outage time of transmission element would only be excluded due to the Acts of God or force majeure event beyond the control of transmission agency and similar exclusion can be provided when outage is caused by grid disturbance which incident is not attributable to the transmission licensee. Therefore, none of the provisions of the paragraphs 5, 6 or 7 does comes to the aid of the Appellant for which as a last resort the Appellant took recourse to clause 12 and 13 of the Regulations 2004 which reads as under:-

> *"12. Power to remove difficulties: if any difficulty arises in giving effect to these regulations, the Commission may, of its own motion or otherwise, by an order and after giving a reasonable opportunity to those likely to be affected by such order, make such provisions, not inconsistent with these*

regulations, as may appear to be necessary for removing the difficulty.

13. Power to Relax: The Commission, for reasons to be recorded in writing my vary any of the provisions of these regulations on its own motion or on an application made before it by an interested person."

30. This not a case where any situation has arisen so as to compel the Commission to make an order for removing any difficulty and any order if made under this Clause definitely would be inconsistent with the Regulations. Power to relax clause is a provision that occurs in almost every enactment but when the intention of the authority that made regulations is very clear and conducive to the public policy then power to relax will be unwarranted as that would be on the contrary cause prejudice to the interest of one of the parties to the proceedings.

31. Thus, there has been no consideration of the two transmission systems in a combined manner as alleged by the Appellant and SRPC rightly issued availability certificate strictly in terms of the paragraph 7 of the Appendix II and there is no merit in the argument

that the Central Commission was not right in not giving directions to the SRPC for issuance of revised availability certificate.

32. Accordingly, the appeal No. 169 of 2009 has no merits and accordingly , we dismiss the same without costs.

APPEAL NO. 127 OF 2010

33. This Appeal is preferred by the same Appellant against the same set of Respondents challenging the order dated 30.04.2009 passed by the Central Electricity Regulatory Commission (Commission) in Petition No. 131 of 2008 whereby the Commission did not allow the claim of the Appellant towards the IDC on account of the loss of revenue due to shut down of Talcher-Kolar HVDC system amounting to Rs. 2,144.96 lacs and restricted the same to merely Rs. 396.09 lacs. The facts of the case are as follows:

34. One of the transmission systems owned and operated by the Appellant is the Talcher-Kolar HVDC Bipole catering to the Southern Region. The line was proposed to be upgraded in the larger interest of Respondent Nos. 2 to 6 who are the beneficiaries of the Southern Region. The investment for establishment of “upgradation of transfer

capacity" of Talcher-Kolar HVDC Bipole in the Southern Region was approved by the Board of Directors of the Appellant on 20.07.2005 at the estimated cost of Rs. 18.33 crores including interest amounting to Rs. 7.04 crores during the period of construction. Respondent Nos. 2 to 6 at their 134th meeting of the Southern Regional Electricity Beneficiaries at Bangalore agreed to the proposal for enhancement of the capacity of each Bipole of Talcher-Kolar HVDC Bipole link. The project was scheduled to be completed within 24 months from the date of the award and the package was awarded on 19.04.2006 and the system was commissioned and declared under commercial operation with effect from 01.08.2007 which was seven months ahead of the schedule time for commercial operation.

35. In connection with the commissioning of the above upgradation of Talcher-Kolar HVDC system, the Appellant required to shut down the HVDC (High Voltage Direct Current) system and then carry on the required procedures for upgradation. This was in accordance with the decision taken at the meeting mentioned hereinabove where the beneficiaries had approved of the shut down. The early commissioning and resumption of commercial operation benefiting

the Respondent 2 to 6, was possible in view of the shut down of the system as per the decision on 31.10.2006. Thus the Talcher-Kolar HVDC system was upgraded by enhancement of the transfer capacity of each pole of Talcher-Kolar Bipole link from the then level of 1000 MW to 1250 MW to be used under contingency conditions and by taking the minimum possible shut down for a period of 12.2 days in accordance with the decision taken at the meeting of the Southern Region beneficiaries dated 31.10.2006. The upgradation of the said line thus could not be undertaken without shut down and upgradation without shut down is an impossible act and beyond any control of the Appellant. Thus, according to the Appellant outage due to shut down is a force majeure event beyond the control of the Appellant and indeed is to be excluded for the purpose of determining the availability of the transmission system. Provisional transmission charges for the upgradation scheme were approved by the Commission by its order dated 26th February, 2008 and thereafter, the Appellant filed Petition No. 131 of 2008 for approval of the costs and other details. Now the Appellant approached the Southern Regional Power Committee (SRPC) for certification of the availability, but while certifying the availability of the transmission system the

Member Secretary of the SRPC attributed the outage duration/shutdown to the Appellant as a result of which the availability of the system tripped by 4.43% and thus certification came to 92.96% which was less than 95%, being the normative target availability for claiming full transmission charges thus causing loss of revenue to the Appellant on account of less recovery of notified fixed charges of Rs. 1187.16 lacs and on account of loss of incentive of Rs. 957.80 lacs. The Appellant claimed a sum of Rs. 1153.88 lacs on pro rata basis for the year 2007-08 and Rs. 1830.15 lacs for the year 2008-09. Thus the Appellant claimed approval of capitalization of Rs. 2144.96 lacs in the capital cost of the project as on the date of commercial operation on account of incentive and loss of fixed charges due to mandatory shut down for completion of upgradation work in the interest of the beneficiaries but the Commission by the order dated 30.04.2009 did not allow the claim of the Appellant to the full extent as was prayed for in the sum of Rs. 2144.96 lacs on account of upgradation of the transmission capacity and further limited the claim of the Appellant towards initial spares to 1.5% of the original capital costs despite the fact that upgradation work involved high technology imported items and long procurement time. The Central Commission committed

error in neither allowing loss of revenue etc. on account of 4.43% decrease in the availability that resulted due to shut down as capital cost forming part of the additional capitalization nor discounting the same as a reduction in availability of the transmission for the purpose of incentive. Either the amount lost to the Appellant on account of shut down should be treated as a necessary capital expenditure forming part of the additional capital costs related to the capitalization of upgradation work considering that but for the shut down the Appellant would have achieved 4.43% availability or the period of shut down should have been treated as being an outage due to force majeure event beyond the control of the Appellant within the meaning of paragraph 6 of Appendix III to the Tariff Regulations 2004.

36. Despite service of notice there has been no appearance of the CERC, and out of remaining five Respondents it is the Respondent No. 4 namely Tamil Nadu Electricity Board (TNEB) who is contesting the Appeal by filing a counter statement.

37. According to the TNEB, an event/act which the parties are aware of at the commencement of the contract cannot be termed as

force majeure. Secondly, the Appellant cannot, strictly in terms of Section 111 of the Electricity Act, 2003, beseech the Tribunal for relaxation of the ceiling norms towards the capitalization of the mandatory spares of 1.5% on the capital costs as that is the provision in Regulation 17 of the Tariff Regulations 2004. As per the Tariff Regulations 2004 the Appellant in addition to mandatory spares has been allowed maintenance spares under working capital to meet the outages/contingencies. The CERC is therefore, justified in disallowing the claim as it was neither in accordance with the Regulations nor in line with the prevailing accounting practice. CERC has indemnified the Appellant by allowing the actual expenditure incurred in lieu of the loss. Therefore, the claim towards the reimbursement of tariff and incentive during shut down period is not in line with CERC Tariff Regulations, 2004. It is further contended that consent of the beneficiaries for shut down of the line is normally taken in order to avoid any loss in generation / loss in supply which is totally related to different purposes, purely generic in nature, but this does not mean that concurrence has been given for payment of transmission charges together with incentive as impliedly contemplated by the Appellant.

38. Two questions that arise for consideration are:

(i) Whether the Central Commission is justified in disallowing the appellant the loss of revenue on account of reduction of availability of transmission system due to forced shutdown of HVDC system for up gradation purposes and is not considering the same as reduction in the availability of the transmission systems for the purpose of incentive?

(ii) Whether initial spares can be restricted to normative 1.5% of the original capital cost despite special circumstances, namely the upgradation of the line involving high technology import items.

39. Before the Commission in Petition No. 131 of 2008 the Appellant prayed for a number of reliefs, the principal being approval for capitalization of Rs. 2144.96 lacs in the capital cost of the project as at the date of commercial operation on account of the incentive and loss of fixed charges due to mandatory shut down availed of for

the purpose of completion of upgradation of the work in the interest of the beneficiaries.

40. The Commission referred to the Regulation 52(1) of the Tariff Regulation 2004 to say that subject to prudence check the actual expenditure incurred on completion of the project forms the basis for determination of the final tariff. The admitted capital expenditure actually incurred till the date of commercial operation and capitalized initial spares subject to ceiling norms of 1.5% would be the basis of the determination of the tariff. The Appellant claimed additional capitalization of Rs. 1682.92 lacs on works for the period from 01.08.2007 to 31.03.2008 over the capital expenditure of Rs. 7492.60 lacs as at the date of commercial operation. The Commission observed that since the additional expenditure is within the approved scope of work it was in order. Therefore, a sum of Rs. 1680.92 lacs, it being the audited capital expenditure from the date of commercial operation up to 31.03.2008, could be considered for the purpose of fixation tariff but the rest of the expenditure of Rs. 980.28 lacs was not based on the actual capital expenditure. The Appellant pleaded before the Commission that the upgradation of the transmission

capacity resulted in shutdown of the HVDC system which in turn resulted in loss of revenue and incentive to the extent of Rs. 2144.96 lacs and the project was commissioned ahead of the schedule by taking minimum possible shut down period to achieve maximum system availability for utilization by the beneficiaries.

41. The TNEB strongly opposed inclusion of Rs. 2144.96 lacs as was claimed by the Appellant in the matter of determination of final tariff. We find from the judgment and order of the Commission that the Commission was not inclined to accept the plea of the Appellant and it adhered to its own Regulations relevant for the purpose of determination of final tariff but allowed capitalization of Rs. 396.09 lacs only on account of loss of recovery on debt-liability and O&M expenses during the shut down period. The Commission further noted Regulation 52(1) of the Tariff Regulations which provides that the actual expenditure admitted by the Commission for the purpose of tariff could include capitalized initial spares subject to ceiling norm of 1.5% of the original project cost as on the cut off date of the project. The Commission in terms of the Regulations considered the capital

cost which was found justified and audited up to 31st March, 2008 but did not go beyond.

42. The CERC has already indemnified the Appellant by allowing the expenditure actually incurred during construction period as against the claim of the Appellant for opportunity loss. Again, the claim of the Appellant to treat the period of shut down as force majeure on the ground that when shut down which was not possible to carry out the work is an opportunistic approach. The request of the Appellant for capitalization on loss in profit is not in line with the Accounting Standards according to Institute of Chartered Accountants of India. An event which is beyond the control of the parties which they were not aware of can only be a force majeure.

43. Mr. M.G. Ramachandran, learned Counsel for the Appellant, referred to in course of his arguments Regulations 51, 60 and clauses 5,6, and 7 of Appendix III to the Regulations 51 of the Tariff Regulations 2004, and also regulations 12 and 13 of the said Regulations 2004 and put forward his interpretation of the said provisions to butteress his arguments in support of the Appeal. He has also referred to a judgment of this Tribunal in Appeal No. 157 of 2007 reported in 2006 ELR (APTEL)(499), NTPC versus MPEB 2004 ELR (APTEL) 7 and M.P. Trading Co. versus Torrent Power Ltd. And others, reported in 2009 ELR (APTEL) 124 and a decision of the Supreme Court namely : Hindustan Steel Ltd. Versus A.K. Roy (1969)3 SCC 513. We will come to their decision in the sequel.

44. Mr. M.G. Ramachandran argued that the up gradation of the Talchar-Klar HVDC bi-pole which was to evacuate 1250 MW per pole after such up gradation was not only approved by the beneficiaries of Southern Region in their meeting on 10.3.2004 but was intended basically to facilitate the beneficiaries alone and it is they who in their further meeting held on 16.3.2004 approved of the scheme for up gradation of the power grid. Again, it is for the benefit of the Respondents No. 2 to 6 that the scheduled up-gradation work was commissioned 7 months ahead of the schedule and the Powergrid completed the up gradation work taking minimum possible shut down and enhanced the capacity of each HVDC bi-pole from the existing 1000 MW to 1250 MW. In order to recover its tariff, the Powergrid has to make available its transmission system at a minimum of 95% and the incentive is allowed to Powergrid only if the Powergrid makes available its transmission system at the above said per centage. Unfortunately, the member Secretary, SRPC attributed the outage duration/shut down period to the Powergrid and declined to consider the same as deemed available. But the shutdown proposed to be taken by power grid was agreed to by the Respondents and the Central Electricity Authority. None of the Respondents have disputed that there was a need for taking shut down nor was any question raised that the period of shut down was unreasonable. It was humanly impossible to undertake up gradation work at a transmission line without taking shut down on it but the Central Commission failed to consider the effect of such shut down with regard to availability of the transmission system for the purpose

of determination of fixed charges and incentive payable to the Appellant. Since, the arguments runs the shut down was not attributable and beyond control of power grid such a circumstance should have been attributed to the Appellant. Accordingly, circumstance in which shut down was effected should have been considered as force majeure within the meaning of para 6 of Appendix III of the Tariff Regulations 2004. Mr. Ramachandran seeks to distinguish the words `Not attributable to the Transmission Licensee' and the words `beyond control of Transmission Licensee' The first expression occurs in sub-para 1 of para 6 of Appendix III to the Tariff Regulations 2004, while the 2nd one appears in sub-para II. Mr. Ramachandan seeks shelter beneath sub-para 1 of para 6. The judgment of this Tribunal in Appeal No. 157of 2007 reported in 2008 ELR (APTEL) 499 which TNEB should have considered in support of their attack against the Appeal is according to Mr. Ramachandran misplaced in view of the fact that the Tribunal in the judgment above, considered the scope of para 5 of Appendix III and not para 6 of Appendix III. Further, in appeal No. 157 of 2007, the issue was if the construction activity which was entrusted to the Utilities other than power grid, the outage of the existing line would have been considered as deemed available, then why should not the same facility be available to power grid, whereas in the present appeal the outage was caused by a planned shut down taken by the Powergrid with the approval of all the Respondents and the Central Electricity Authority. In the alternative, loss of revenue on account of shut down should have been taken as a part of the capital expenditure on the up graded HVDC system and to be serviced as capital cost with effect

from the date of commissioning of such up graded system. There was no justification what so ever for not considering the full loss of the fixed charges of Rs.1187.16 lakh and incentive of Rs.957.80 lakh thus totaling to Rs.2144.96 lakh. To meet the counter of the TNEB that clause 10 of the Accounting Standards stipulates that gross book value of the Self Constructed Fixed Assets shall be arriving at by applying the same principle as described in [para 9.1 to 9.5 of the Accounting Standards and stipulates that internal profits are eliminated in arriving at such cost of construction of the assets. Mr. Ramachandran argued that the last part of clause 10 has nothing to do with the loss of revenue of the nature involved in the present case. The Appellant is not claiming any profit to be included and the internal profit refers to profit booked on internal division work and furthermore, Accounting Standards refers to profit and not the revenue of loss and revenue deprived which are in the nature of cost. If the commercial establishment is required to close its operation to enable the power grid to construct the up gradation, it would have been paid the above cost which would be a capital expenditure in the hands of Appellant. Thus the Commission should have allowed either the amount 4.43% available which was lost by the Appellant on account of shut down period of shut down could have been considered as deemed outage due to force majeure. It is argued that the Commission did not consider the factors namely that the up gradation work involved high technology imported items, that no contractor would have supplied such few imported items as a result of which the spares had to be procured in a slightly higher quantity and it would have been very difficult and time consuming to procure the spares at a later date.

Therefore, there was a need to relax from the normative 1.5% provided in Regulation 52.1 of the Tariff Regulations 2004. The Central Commission which has inherent power to relax the norms should have exercised that power to meet the ends of justice, having agreed to Regulations 12 and 13 of the Regulations 2004 and Regulations 111, 112, 113, 114 and 115 of the CERC(Conduct of Business Regulations) 1999. On the last argument Mr. Ramachandran cited the decisions in **Hindustan Steel Ltd. v/s A.K. Roy (1969) 3 SCC 513, M.P. Trading Co. Ltd. V/s Torrent Power Ltd. & Ors 2009 ELR (APTEL) 124.**

45. The Tamil Nadu Electricity Board in its written submissions referred to a judgment of this Tribunal in Appeal No. 157 of 2007 which also dealt with the case of deemed availability of transmission elements during the period of shut down. The Tribunal held that the decision on deemed availability would be doing violence to the language used in para 5 of Appendix III to the Tariff Regulations since the issue has been settled once for all. The Appellant must not ask the Tribunal to decide the issue already settled. Secondly, the events which the parties are aware of at the time of entering into an agreement cannot be termed as force majeure. The parties were well aware of the contingencies that would arise out of shut down and the contingencies which were foreseen do not cover the doctrine of force

majeure. With regard to the arguments of the Appellant that the loss of 4.43% available should have been calculated as capitals expenditure, it has been argued that the loss of profit arising out of non availability of 4.43% is not the actual expenditure incurred and resultantly cannot be capitalized and to accept the contention of Mr. Ramachandran is to violate the mandatory Accounting Standards 10 which are as follows:

``***Self Constructed Fixed assets***

In arriving at the gross book value of self-constructed fixed assets, the same principles apply as those described in paragraphs 9.1 to 9.5. Included in the gross book value are costs of construction that relate directly to the specific asset and costs that are attributable to the construction activity in general and can be allocated to the specific asset. Any internal profits are eliminated in arriving at such costs"

46. It is further argued that the Commission has rightly restricted the ceiling of initial spares to 1.5% of the original project cost that stood audited as on 31.3.2008 leaving the balance estimated

expenditure of Rs.980.28 lakhs beyond the said date which was being unedited expenditure.

47. Having thus placed the sum total of the pleadings of the parties and their submissions- oral and written, we now proceed to consider the chief issues that comprise subject matter of the Appeal:

48. It is not denied that Talchar-Kolar HDVC was up graded for the benefit of the beneficiaries of the Southern Region so that additional power of 250 MW per pole could be evacuated in addition to its earlier capacity of 1000MW Further it is not disputed that standing committee of the Southern Region constituents in their meeting on 10.3.2004 and 16.3.2004 approved of the Appellant's scheme for up gradation . Accordingly, up gradation work was completed and the line was put under commercial operation 7 months ahead of the scheduled date as a result of which, there was shut down of 12.2 days per pole of the existing system. Unquestionably, because of the non availability of the system for 12.2 days following up gradation of the line , the availability of the said transmission system dropped by

4.43% and was certified by the SRPC at 92.6% being less than 95% in consequence of which the Appellant is said to have suffered loss of Rs.1187.16 lakh in the matter of tariff recovery and Rs.957.80 lakh on account of incentive. The major thrust of the Appellant is that as the up gradation benefited the Respondents and as it was not possible without the line being shut down for a limited number of days, the non availability of the system that resulted in loss of 4.43% cannot be attributed to the Appellant as it was beyond its control so much so that the circumstance squarely comes within para 6 of Appendix III of the Tariff Regulations 2004. As we have noted earlier, Mr. Ramachandran seeks to have shelter in sub clause I of Clause 6 of the Regulations 2004 which is reproduced below:

``*6. Outage time of transmission elements for the following contingencies shall be excluded from the total time of the element under period of consideration.*

i) Outage of elements due to acts of God and force majeure events beyond the control of the transmission licensee. However, onus of satisfying the Member Secretary, REB that element outage was due to aforesaid events and not due to

design failure shall rest on the transmission licensee. A reasonable restoration time for the element shall be allowed by Member Secretary, REB and any additional time taken by the transmission licensee for restoration of the element beyond the reasonable time shall be treated as outage time attributable to the transmission licensee. Member Secretary REB may consult the transmission licensee or any expert for estimation of restoration time. Circuits restored through ERS (Emergency Restoration System) shall be considered as available.

ii) *Outage caused by grid incident/disturbance not attributable to the transmission licensee e.g. faults in substation or bays owned by other agency causing outage of the transmission licensee's elements, tripping of lines, ICTs, HVDC back-to-back satins etc. due to grid disturbance. However, if the element is not restored on receipt of direction from RLDC while normalizing the system following grid incident/disturbance within reasonable time, the element will be considered not available for whole period of outage and*

outage time shall be attributable to the transmission licensee"

49. We are unable to accept the reasoning pointed out by Mr. Ramachandran for the principal reason that the force majeure is an event which is a result of elements of nature as opposed to one caused by human behavior. That is to say, the events which are force majeure are outside the control of the parties. Such events are basically unplanned, undesigned, uncontemplated in the normal course of things. But in the instant case, as we have repeatedly noted, the work of up gradation is a planned schedule, and designed act notwithstanding the fact such designed nature of work was for the benefit of the Respondents so that more power could be evacuated by up gradation of the system. As rightly pointed out by TNEB, no doubt the Southern Regional Power Committee have concurred with the Appellant's proposal of up gradation but that does not strongly signify that the said beneficiaries conceded to the position that the non availability of the system by 4.43% would be regarded as deemed available on the ground of beyond the control of the Appellant.

50. It was the Central Electricity Authority that proposed for up gradation which however, while putting forward the proposal did not recommend that the period of non availability would be considered as deemed availability because of uncontrollability of the Appellant. The SRPC simply concurred with the proposal of the CEA and it had no reason to deliberate upon the Appellant's contention that the eventual non-availability of the system for limited number of days would be considered as available on the ground of being beyond the control of the Appellant. Therefore, concurrence of SRPC is of no avail. Therefore, regarding nature of the work undertaken for improvement of the system, it could hardly be said that the period of shut down should come under the purview of doctrine of force majeure. It bears recall that force majeure is an event that occurs after the commencement of the work which the parties are not aware of on the commencement of the work, whereas in the present case, it is the event contemplated, designed, known to the parties and completed in accordance with the design. Therefore, the position does not cover under either of the clauses of para 6 of the Appendix III to the said Tariff Regulations 2004 which provided that deemed availability would be certified only when shut down was due to the

other agencies for maintenance or construction of the transmission system or manual tripping of the line due to over voltage and manual tripping of switched bus reactor as per the directions of RLDC. Therefore, as the position of law is what it is as we have noted, it is impossible to conclude that deemed availability have to be certified to the Appellant because of shut down on the ground of force majeure.

51. The other argument of Mr. M.G. Ramachandran that the loss of revenue on account of shut down should be taken as part of the capital expenditure on the up graded HVDC system and to be serviced as capital cost with effect from the commissioning of the up graded system is also difficult to accept. Regulation 33 of the Tariff Regulations 2004 defines capital cost as under:

``*33. Capital cost- Subject to prudence check by the Commission, the actual expenditure incurred on completion of the project shall form the basis for determination of final tariff. The final tariff shall be determined based on he admitted capital expenditure actually incurred up to the date o commercial operation of the generating*

station and shall include initial capital spares subject to a ceiling norm of 1.5% of he original project cost as on the cut off date."

52. We have noted that the CERC has already indemnified the Appellant by allowing expenditure actually incurred during construction period as against the Appellant's claming for opportunity loss. We have noticed that the Central Commission referred to Regulation 52, para 1 of the Regulations 2004 which provides that the actual expenditure incurred on completion of the project shall form the basis for determination of final tariff and it is the regulation pure simple, that final tariff would be determined on the admitted capital expenditure actually incurred up to the date of commercial operation of transmission system and shall include capitalized initial spares subject to ceiling norms of 1.5% of the original project cost. As against the claim for total recovery of Rs.2144.96 lakhs on account of tariff loss and loss of incentive, the CERC has observed that it allowed under recovery of transmission charges on account of shut down to the extent of loss, the recovery of debt liabilities and O&M expenditure during the period of shut down. Accordingly, pro-rata reduction for the interest on loans and O&M expenses for the

year 2007-08 was worked out by the Commission at Rs.369.09 lakh. It is not that CERC turned down the additional expenditure between the period from 1.8.2007 to 31.3.2008. Since the additional expenditure of Rs.1680.92 lakh was within the original scope of work, it was allowed. The loss of profit on account of shut down is again not definitely to be capitalized. As such treatment of 4.43% reduction in the availability to the system as capital expenditure forming part of the actual expenditure was rightly not considered as capital expenditure.

53. As regards non-allowance of Rs.957.80 lakh on account of incentive, the Commission rightly adhered to Regulation 60 of the Tariff Regulations, 2004 which is reproduced as follows:

> ``*60. Incentive: (1) The transmission licensee shall be entitled to incentive @ 1% of equity for each percentage point of increase in annual availability beyond the target availability prescribed under regulation 51, in accordance with the following formula:*
>
> *Incentive= Equity x (Annual availability achieved-target availability)/100*
>
> *(2) Incentive shall be shared by the long-term customers in the ratio of their average allotted transmission capacity for the year"*

54. It is well settled that incentive is a reward for maintaining the availability of the line and cannot be claimed as a matter of right. Rightly, the Commission did not consider the sum of Rs.957.80 lakh as a part of the capital cost.

55. Now, the Appellant claims for relaxation of norms pertaining to initial spares on the ground that up gradation work involved high technology, imported items and higher quantity of spares procured since no contractor/supplier was agreeable to supply a few imported items. This can hardly be considered to be a special factor justifying relaxation of the norms as already held earlier, the actual capital expenditure would include capitalized initial spares subject to the ceiling of 1.5% of the original project cost. Therefore, the Central Commission did not commit any wrong in restricting itself to its own regulations.

56. Power to relax as is conferred on the Commission under Regulation 13 of the Tariff Regulations 2004 is one to be judicially exercised only when it is necessary to meet the end of justice. It is

true that it is impossible to lay down universal norms and parameters in invoking the regulation 13, but it is equally true that it is not the case where relaxation of norms was necessarily to be done which it had been done would have caused imbalance and hardship to the Appellant. It is not the case where inherent exercise of power of the Commission in terms of the regulations 111 of CERC(Conduct of Business Regulations) 1999 was necessary to prevent the abuse of the process.

57. Mr. M.G. Ramachandran referred to a decision in Hindustan Steels Ltd. v/s A.K. Roy(ibid) which we find to be inapplicable to the facts and circumstance of the present case. It was the case of award of compensation instead of reinstatement which was caused where the Tribunal exercised discretions mechanically was deprecated by the Supreme Court. Reference to case of NTPC Ltd. (ibid) is of no avail on the ground of the decision in the said case being the factuality having no connection to the facts, circumstances of the present case and the legal position obtaining in the given situation. Similarly, the case of M.P. Trading Co. Ltd.(ibid) was on the different factual matrix and is not applicable to the instant case. For us, it is

not necessary again to discuss the Tribunal's decision in PGCIL v/s CERC (ibid) which has been relied on by the contesting Respondents. In that case the observation of this Tribunal was in connection with construction of the term `Agency' as it occurs in para 5 of Appendix III to the Tariff Regulations 2004 nor it is necessary for the purpose of disposal of the Appeal to refer to the clauses of the Accounting Standards as was argued by the contesting Respondent.

58. Situated thus, the Appeal is devoid of merit is disposed of without cost.

(Justice P.S.Datta) (Mr. Rakesh Nath) (Justice Karpaga Vinayagam)
Judicial Member Technical member Chairperson

Dated January, 2011

Index: Reportable/Non-Reportable