



**ORDER
OF THE
WEST BENGAL ELECTRICITY REGULATORY COMMISSION
IN CASE NO. WBERC/OA-57/09-10**

IN REGARD TO THE APPLICATION SUBMITTED BY INDIA POWER CORPORATION LIMITED (IPCL) FOR APPROVAL OF FINAL PROJECT COST TOWARDS CONSTRUCTION OF 220/33 KV SUB-STATION AT J. K. NAGAR, DISTRICT PASCHIM BURDWAN WITH ASSOCIATED TRANSMISSION AND DISTRIBUTION LINES AND SYSTEMS (PHASE-I) IN TERMS OF REGULATION 2.8.4.1 OF THE WEST BENGAL ELECTRICITY REGULATORY COMMISSION (TERMS AND CONDITIONS OF TARIFF) REGULATIONS, 2011 AS AMENDED AND REGULATIONS 2.5.1 AND 2.6.1 OF THE WEST BENGAL ELECTRICITY REGULATORY COMMISSION (CONDUCT OF BUSINESS) REGULATIONS, 2013.

PRESENT:

SHRI SUTIRTHA BHATTACHARYA, CHAIRPERSON

SHRI DURGADAS GOSWAMI, MEMBER

SHRI PULAK KUMAR TEWARI, MEMBER

DATE: 23.12.2020



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In Re the application submitted by India Power Corporation Limited (IPCL) for approval of final project cost towards construction of 220/33 KV sub-station at J. K. Nagar, District Burdwan with associated transmission and distribution lines and systems (Phase-I) in terms of regulation 2.8.4.1 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011 as amended and regulations 2.5.1 and 2.6.1 of The West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013.

FACTS IN BRIEF

- 1.1 This is in regard to the application submitted by India Power Corporation Limited (IPCL) for approval of final project cost towards construction of 220/33 KV sub-station at J. K. Nagar, District Burdwan with associated transmission and distribution lines and systems (Phase-I) in terms of regulation 2.8.4.1 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011 as amended (hereinafter referred to as the 'Tariff Regulations') and regulations 2.5.1 and 2.6.1 of The West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013 (hereinafter referred to as 'CB Regulations').
- 1.2 It was mentioned in the Order dated 13.02.2013 of this Commission on the petition of Disergarh Power Supply Corporation Limited (in short 'DPSCL') dated 27.11.2012 that *"DPSCL shall hand over the transmission line from LILO point up to proposed 220/ 33 kV J K Nagar substation to the West Bengal State Electricity Transmission Company Limited (in short 'WBSETCL') and submit the details of the cost associated with construction of the said transmission line with Auditor's Certificate to the Commission for approval of the final cost. WBSETCL shall reimburse the cost of such transmission line as approved by the Commission to DPSCL within 30 days from the date of intimation of determination of such cost by the Commission."*
- 1.3 The said order was modified by a letter dated 05.01.2016 issued by West Bengal Electricity Regulatory Commission (WBERC), specifying the following:

"

- a) *Recovery of depreciation, return on equity and interest on loan for creation of transmission assets handed over to WBSETCL shall be allowed to DPSCL. The operation and maintenance of transmission assets will be done by transmission company.*





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- b) *The component of the depreciation, return on equity and interest on loan for such transmission assets shall be submitted by DPSCCL along with their tariff petition for each control period. After examination the allowed amount will be passed through in the transmission tariff of WBSETCL. WBSETCL shall recover those cost so allowed in their tariff from the transmission system users and will pay to DPSCCL as may be directed in the respective tariff order of WBSETCL and DPSCCL.*
- c) *DPSCCL shall pay the transmission charge for using the transmission line in Long Term Open Access (LTOA) mode. Necessary provision shall be included in the connectivity agreement made by them with WBSETCL."*

- 1.4 This Commission issued another Order dated 22.11.2018 (against the petition filed by IPCL for final approval and also against the petition filed by WBSETCL to modify the order dated 13.02.2013 & also dated 05.01.2016), which specifies the mode of recovery of the Transmission line as under:

"..... Now, on the basis of the petition dated 20.07.2018 of WBSETCL, the Commission decides that IPCL shall hand over the transmission line from LILO point up to the J.K. Nagar substation to WBSETCL free of cost and WBSETCL shall maintain the line at their cost as it is forming a part of the State Transmission System under the ownership of WBSETCL.

IPCL shall recover the interest on loan, depreciation and return on equity, if any, on the approved project cost in their tariff."

- 1.5 IPCL has submitted a review petition on 26.12.2018 for review of the Order dated 22.11.2018 and has prayed for the following before the Commission:

- (i) To approve the project cost of 220 kV transmission asset as Rs 6656.08 Lakh





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(ii) To approve the mode of recovery of transmission cost as per Order dated 05.01.2016

- 1.6 The Commission decided to hear both IPCL and WBSETCL on the review petition. Accordingly, a hearing was held on 14.11.2019.
- 1.7 On hearing both the parties, viz., IPCL & WBSETCL, the Commission found that the original scheme of connectivity of the said substation with State Transmission Utility (STU) for transaction of power between the West Bengal State Electricity Distribution Company Limited (in short 'WBSEDCL') and IPCL has changed substantially and does not have much of relevance. The fundamental premises on which the Direction dated 05.01.2016 was issued, has ceased to exist. The Order dated 22.11.2018 was issued on the revised premises that the network would no longer be utilised to cater to the needs of consumers other than those of IPCL and therefore, those consumers naturally cannot be made to bear the cost of such investment for the project catering to consumers of IPCL only.
- 1.8 The Commission, without passing any Order, directed both the parties to discuss between themselves and to find out a mutually agreeable and better arrangement if possible, so that the infrastructure of the substation and the Transmission line can be utilised for larger consumer base. The Commission also directed IPCL & WBSETCL to submit the new scheme within 15 (fifteen) days from the date of receiving this Order.
- 1.9 Accordingly, both IPCL and WBSETCL have jointly submitted minutes of the meeting held on 25th November, 2019 and 10th December, 2019 between them to arrive at a new scheme in order to resolve the issue of recovery of the project cost, which inter-alia states that –
- i) On the proposal of IPCL to take over the 220 KV LILO line of J. K. Nagar 220 KV sub-station of IPCL as was done by WBSETCL in case of Bakreswar TPS, WBSETCL denied to accept the proposal of IPCL for the reason that





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IPCL is not a long term open access customer of WBSETCL. WBSETCL further explained that since WBSEDCL is a long term customer of WBSETCL and entire generated power from Bakreswar Thermal Power Station (in short 'Bakreswar TPS') is sold by the West Bengal Power Development Corporation Limited (in short 'WBPDCCL') from ex-bus of Bakreswar TPS, the Commission had ordered WBSETCL to take over the transmission lines constructed by WBPDCCL and cost of the transmission assets was refunded to WBPDCCL as per the order of the Commission.

ii) IPCL pointed out that the financing of the project was done by the banks / lenders based on the premises that the cost is reimbursable by WBSETCL but with the change in the mode of recovery it will impact both the consumers as well as lenders of IPCL. In reply, WBSETCL pointed out that by a supplementary agreement executed on 11.08.2015, IPCL had agreed to hand over the 220 KV transmission line asset to WBSEDCL free of cost. WBSETCL further submitted that WBSETCL had taken over the transmission line at zero cost in terms of agreement of IPCL with WBSETCL and that IPCL has been drawing over 100 MW (maximum 116 MW in September, 2019) power at J.K. Nagar only through short term open access. Therefore, there is no reason to pay the cost of transmission line to IPCL by WBSETCL in absence of any long term open access agreement with IPCL.

iii) In view of above, WBSETCL proposed that –

- a) IPCL has the option to become LTOA customer of transmission system of WBSETCL for 124 MW for 25 years at J.K. Nagar 220 KV sub-station based on the Commission's order / directives on this matter;
- b) On becoming LTOA customer of WBSETCL, the approved cost of transmission line taken over by WBSETCL shall be reimbursed during the lifetime of the assets in equal instalments as to be approved by the Commission.

iv) IPCL proposed that –





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- a) IPCL will seek LTOA from WBSETCL in phases and will come with LTOA application in time bound manner. Till such time, it is proposed that bilateral / open access arrangement may continue and such transmission charges so arising from the bilateral transaction could be offset and adjusted with LT charges payable upon entering into the LTOA agreement considering the fact that there will be no significant difference in the amount of recovery of charges from LT and ST open access consumers as per the WBERC (Open Access) (Amendment) Regulations, 2019;
- b) For recovery of cost of transmission line, one of the following options may be agreed:
- One-time reimbursement of entire approved cost of J. K. Nagar 220 KV Transmission line by WBSETCL within stipulated time and as specified by the Commission based on the approval of the proposal.
 - Reimbursement of total J. K. Nagar 220 KV transmission line cost in 72 monthly instalments as per the provisions of regulation 10.3 (f) of WBERC (Open Access) Regulations, 2007 or reimbursement of ROE, Depreciation and Interest by WBSETCL to IPCL as per Bakreswar model as deemed appropriate.
- v) In the subsequent meeting held between IPCL and WBSETCL on 10.12.2019, IPCL agreed to intra-state LTOA arrangement for drawl of power at J.K. Nagar 220 KV sub-station with WBSETCL for the quantum based on current usage for 124 MW and accordingly, submit application for LTOA to WBSETCL. After obtaining approval of the Commission, LTOA will be granted and necessary agreement will be executed by IPCL and WBSETCL. IPCL also agreed that based on the future load growth of IPCL, quantum of LTOA will be firmed up for future. IPCL also submitted that, in case of any incidence of Short Term Open Access (STOA) charge, being levied in addition to LTOA charges within granted LTOA





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quantum, the same shall be adjusted against annual LTOA charges, subject to approval of the Commission which has been agreed by WBSETCL.

vi) Regarding recovery of cost of transmission line, IPCL reiterated their views as has been expressed under paragraph iv (b) above.

vii) The final submission of WBSETCL was that –

- a) The process of recovery of cost of transmission line will be effected only after LTOA agreement of IPCL with WBSETCL for 124 MW, being approved;
- b) Regulation 10.3 (f) of WBERC (Open Access) Regulations, 2007 is not relevant here, since the provision applies to system strengthening and not arrangement of connectivity (which was provided based on the PPA between WBSEDCL and IPCL). Further, Bakreswar model is also not comparable, since Bakreswar is a generating station under generating licensee and the entire evacuation is utilized by WBSEDCL;
- c) IPCL had agreed to hand over the 220 KV transmission line assets to WBSETCL free of cost as per the supplementary agreement executed on 11.08.2015;
- d) Cost of the line shall be recovered during the lifetime of the assets in equal instalments to be approved by the Commission. Any other arrangement for recovery of cost of lines upfront or front-ended will create undue financial burden on WBSETCL as cost of the lines shall be recovered through tariff over the life of the assets only.

viii) Since both IPCL and WBSETCL could not come to a resolution regarding recovery of cost of the transmission line, they decided that the matter shall be placed before the Commission for final consideration and approval.

1.10 IPCL and WBSETCL have submitted the minutes of the meeting along with their letter under reference RA/II/002/19-20/1980 dated 26th December, 2019 and CE/CPD/IPCL/3114 dated 26th December, 2019 with a request to condone the





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delay in submission of the minutes of meeting held between IPCL & WBSETCL as per the direction of the Commission.

1.11 Upon going through the minutes, the Commission believed that a hearing of both IPCL and WBSETCL may be an effective measure to arrive at a conclusion in regard to recovery of transmission cost. Accordingly, a hearing was held on 27th January, 2020 at 2.30 hours at the office of the Commission, where the representatives from both IPCL and WBSETCL were present. Upon hearing both the parties, the Commission allowed one more chance to IPCL and WBSETCL on the basis of their joint prayer to discuss between themselves and find out a mutually agreeable and better arrangement within the ambit of the relevant Regulations and submit their views within one week (7 days) from the date of the order.

1.12 Next hearing was held on 14th September, 2020 at 14.30 hours. The Commission raised the following issues –

- i) Whether the LILO line with breaker is a part of transmission system or not;
- ii) If not, whether WBSETCL is agreeable if the said asset is controlled by IPCL;

1.13 Upon hearing both the parties, the Commission directed that –

- i) IPCL shall submit their written arguments to the Commission within seven days from the date of receipt of the order with a copy to WBSETCL;
- ii) WBSETCL shall submit their reply to the written arguments of IPCL to the Commission positively within 7 days from the date of receipt of the argument from IPCL, with a copy to IPCL;
- iii) IPCL shall submit rejoinder, if any, at the time of next hearing





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2.1 Based on the above directions, both IPCL and WBSETCL have submitted their written arguments as well as rejoinder within the date of hearing fixed on 06.11.2020 at 14.30 hours at the office of the Commission. The hearing was held as scheduled.

2.2 Sri Arijit Maitra, advocate along with Sri Sanjeev Seth, Chief Executive Officer was present on behalf of IPCL and Sri Asit Karmakar, Chief Engineer (CPD) along Sri Amitava Nag, ACE (RAC) was present on behalf of the WBSETCL during the e-hearing.

SUBMISSION DURING HEARING

2.3 Sri Asit Karmakar, on behalf of WBSETCL, submitted that –

- i) The 220 KV LILO line of J K. Nagar sub-station of IPCL, constructed for connectivity exclusively for IPCL, has been handed over to WBSETCL (STU) on 12.02.2018 at zero cost with the approval of the Commission.
- ii) The above line was constructed for getting supply of 130 MVA (124 MW) power approved by the Commission vide its order dated 05.12.2012 in case no. WBERC/PPA-58/12-13. Therefore, IPCL shall have to obtain LTOA of State Transmission System (STS) at least for 124 MW.
- iii) WBSETCL has no objection to consider the above LILO as intra-state transmission system as a part of coordinated planning as per the direction of CERC by its order dated 28.09.2016 in petition no 30/MP/2014 and to reimburse the capital cost of the transmission asset, as approved by the Commission, if IPCL goes for at least 124 MW LTOA. The reimbursement of the capital cost of transmission asset will be made in 120 monthly equal instalments without any carrying cost effective from the date of operationalization of LTOA of IPCL, subject to approval of the Commission.





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- iv) WBSETCL has no issue if the LTOA on West Bengal STS is operational immediately and till such time power from long term PPA is not flowing, the Short Term Open Access (STOA) power may be accommodated under the LTOA capacity, without having to pay any separate STOA charges for West Bengal STS, subject to approval of the Commission for this mode of adjustment.
- v) The cost of the transmission line shall be firm and limited to the amount as already approved by the Commission vide order dated 11.11.2018 in case no. WBERC/OA-57/09-10 without any carrying cost. IPCL, has neither claimed carrying cost in their principal petition nor it has claimed in their submissions in the earlier hearings.
- vi) WBSETCL shall recover the transmission charges for this transmission system from its long term open access customers as per direction of the Commission.
- vii) In addition to opening of Letter of Credit (LC) for 105% of estimated average monthly billing for LTOA charges, IPCL shall provide security in the form of irrevocable Bank Guarantee equivalent to the amount determined by the Commission, three months prior to the scheduled date of operationalization of LTOA of IPCL on STS. The BG for security shall be valid for a minimum period of 15 (fifteen) years.
- viii) IPCL may relinquish the long-term access rights fully or partly before expiry of the full term of long term access for 15 (fifteen) years, by making payment of compensation for standard capacity, subject to direction of the Commission.

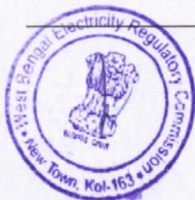
2.4 Sri Arijit Maitra, Advocate, submitted his argument on behalf of IPCL, which inter-alia states that –





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- a) The issue that arises in the present proceedings concerns (i) review of mode of recovery of expenses towards cost of construction of the 220 kV transmission asset, in view of the change in the circumstances; (ii) review of final project cost of 220 kV transmission asset at Rs.6656.08 lakhs.
- b) WBSETCL has agreed that 220 kV LILO line of J.K. Nagar at the 220 kV sub-station constructed by the Petitioner is part of the intra-state transmission system of the Respondent, as part of the coordinated planning.
- c) WBSETCL has also agreed that the pay-back will be made in 120 equal monthly instalments.
- d) WBSETCL has further agreed to reimburse the capital cost of the aforesaid transmission asset as approved by the Commission without carrying cost.
- e) The Parties had agreed in the minutes of meeting dated 10.12.2019 that in case of any incidence of STOA charge, being levied in addition to Long-Term Open Access (LTOA) charges within granted LTOA quantum, the same shall be adjusted against annual LTOA charges, subject to approval of the Commission.
- f) In line with the above stand, the Respondent has now agreed that if the Long-Term Open Access (LTOA) on West Bengal STS is operational immediately and till such time power from long term PPA is not flowing, then in that event any Short Term Open Access (STOA) power may be accommodated under the LTOA capacity, without having to pay any separate STOA charges for West Bengal STS, subject to approval of the Commission for this mode of adjustment.
- g) The Petitioner has recently been granted NOC for LTOA of 100 MW based on recently concluded 100 MW Long Term PPA with Solar Energy Corporation of India Limited (SECI), in pursuance of the earlier minute of meeting dated 10-12-2019 between the Parties and in case it is insisted for





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obtaining LTOA for 124 MW, it is essential that offsetting of untied LTOA capacity with STOA is allowed as a pre-condition.

- h) Supply of power i.e., 100 MW under the LTOA will commence only by August, 2021 (based on PPA dated 15-1-2020 with SECI). But it has been availing STOA power by paying Open Access charges since 11.12.2015 and till date no pay-back has been made by the Respondent to the Petitioner.
- i) All the carrying cost between the date of COD and the date of commencement of pay out of first EMI, as may be decided by the Commission, should be adequately compensated. Further the date from which EMI starts, EMI should have inbuilt interest / carrying cost. There should not be any denial with respect to carrying cost both in terms of base cost and then EMI component to compensate for the compensation for time value of money or the monies denied at the appropriate time and paid after a lapse of time as it is entitled to carrying cost on its claim of legitimate expenditure if the expenditure is accepted but recovery is deferred e.g. for construction of the aforesaid transmission line, denial of carrying cost will be without any justification and contrary to law laid down by the Hon'ble Appellate Tribunal for Electricity. The principles governing "Carrying Cost" are well settled in Tata Power Co. v. MERC, Appeal 173/09 decided by this tribunal, by judgment dated 15.02.2011 that –

"Carrying cost is a legitimate expense. Therefore, recovery of such carrying cost is legitimate expenditure of the distribution companies. The carrying cost is allowed based on the financial principle that whenever the recovery of cost is deferred, the financing of the gap in cash flow arranged by the Distribution Company from lenders/promoters/accruals is to be paid by way of carrying cost".

In this case, the Appellant now prays for allowing the legitimate expenditure including carrying cost. He has also referred to other judgements viz. SLS





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Power Limited V. APERC, 2012 sec Online APTEL 209, by judgment dated 20.12.2012; Torrent Power Limited v. GERC, Appeal Nos. 190/2011 and 162-63/2012, by judgment dated 28.11.2013; Torrent Power Limited v. GERC, Appeal No 246-47/2017 by judgement dated 4.10.2019; Judgment dated 05.10.2019 in Appeal No. 247 of 2017 and Judgment dated 09.10.2015 in Appeal No 308 of 2013, which substantiate the claim of carrying cost as prayed above.

- j) The revision of capital cost is now pending adjudication by the Commission and this will have impact on the final project cost to be reimbursed. He also stated that Respondent's plea that the cost is firm is ex facie legally untenable and is not acceptable to the Petitioner. Furthermore, the acceptance of the amount provided vide order dated 22.11.2018 without any carrying cost would tantamount to unjust enrichment of the Respondent.
- k) Without prejudice to the foregoing the reimbursement of the capital cost of the transmission asset cannot be subjected to or conditioned upon operationalization of the LTOA of the Petitioner for supply of 124 MW power. On the one hand the transmission asset is admittedly treated as intra-state transmission system, as a part of the coordinated planning, and on the other hand the Respondent states that the transmission asset is exclusively for the Petitioner and any reimbursement of capital cost is subjected to the Petitioner taking LTOA. This stand taken on the part of the Respondent would be contrary to the provisions of section 2(47) read with section 39(2)(d), where transmission charges are payable only when open access is obtained by the licensee. Once it is established that the said transmission line is a part of intra state transmission system, the reimbursement should not be contingent upon the condition of grant of LTOA of a particular quantum. Electricity requirement being dynamic in nature, surely the Petitioner cannot guarantee that it will obtain open access to the transmission system of the Respondent in full. In law, the Petitioner cannot





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be compelled to use the transmission system of the Respondent in full. If need arises, the Petitioner will go through the procedure and apply for long-term open access for further quantum. The provision of open access is entirely optional. Accordingly, open access cannot be thrust upon or compelled. Hence, the condition of LTOA for 124 MW is legally unsustainable for effecting repayment of capital cost.

- I) There cannot be any incidence of levy of relinquishment charges or compensation in the meshed network, as there would be no unutilized or stranded capacity. Any relinquishment compensation would be extraneous to section 38(2)(d)(i) of the 2003 Act. Without prejudice to the foregoing, it is submitted that the relinquishment and compensation would be dealt under applicable regulations, in vogue during the time of such event.
- m) in view of the above, the following issues are required to be resolved by the Commission barring the issues already agreed by the parties:
 - i) The amount of capital cost of the transmission assets;
 - ii) The equal monthly instalments will commence from operationalization of long-term open access. The Petitioner has submitted that operationalization will only commence from August, 2021 based on the power flow from the generator through SECI. Hence, the refund by EMI cannot wait until the operationalization of the LTOA, in view of the afforested reasons in earlier paragraphs. Further, the carrying cost must be applicable from the date of COD of the transmission line, or from the date of take-over of transmission line by WBSETCL, as may be determined by the Commission;
 - iii) The transmission asset was implemented in the year 2015 and till date for a period of beyond 5 years, the respondent has not refunded/reimbursed the capital cost to the Petitioner. As per law laid





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down in a catena of judgments of the Hon'ble Appellate Tribunal for Electricity, the Respondent must pay carrying cost on the amount of capital cost;

- iv) The Respondent has subjected the refund of the capital cost to LTOA of 124 MW. However, the LTOA applied by the Petitioner is for 100 MW. Since the tariff for STOA and LTOA are generally same, the STOA may be converted into LTOA for immediate operationalization of the refund in instalments as aforesaid. In such an event, the Petitioner is agreeable to LTOA of 124 MW even though currently the LTOA applied for is of 100 MW as per the PPA entered, subject to approval of the Commission;
- v) The payment security mechanism as indicated by the Respondent is in deviation from the mechanism specified in the regulation 19.1 of WBERC (Open Access) Regulations, 2007 & amendments thereof.

Observation of the Commission

3.1 Upon hearing the parties, Sri Durgadas Goswami, Member of the Commission pointed out the following issues:

- a) As per regulation 10.3 of the Open Access Regulations, 2007, only after becoming LTOA customer, giving permission of connectivity by the STU for flow of a particular quantity of power arises and the question of reimbursement of capital cost of transmission asset to the appellant arises. In the year 2012, permission of this LILO connection was given for load flow of 130 MVA or 124 MW by IPCL and a PPA was entered into by and between IPCL and WBSEDCL. But, afterwards, the said PPA was terminated unilaterally by IPCL, as a result of which such dispute arises. In view of this exit of IPCL from the PPA, the issue is now subjected to regulation 10.3 of the Open Access Regulations, 2007, the point from where the process started.





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Therefore, the applicant has to become LTOA customer first and only after that the reimbursement of capital cost of transmission asset is supposed to take place. It is also to be noted that, as per the provisions of regulations, there is hardly any scope to give retrospective effect to the LTOA agreement between the utility and the STU. In fact, for STOA customer, there is no scope for system strengthening and repayment of the cost of transmission asset does not arise.

- b) If there is any premature termination of LTOA, there should be a provision covering the outcome of the same as per the provisions of the extant Regulations of the Commission in the LTOA agreement to be entered into by and between the utility and the STU.

3.2 Sri Pulak Kumar Tewari, Member of the Commission commented that –

- a) WBSETCL has rightly pointed out that the carrying cost has not been claimed by IPCL in their principal petition. IPCL cannot traverse from its principal petition.
- b) It is doubtful as to whether the petition submitted by IPCL for review of the capital cost of the project is at all maintainable. In fact, under order 47, review petition can be filed only on the following three grounds.
 - i) Any matter or evidences were unknown to the petitioner in spite of exercise of due diligence;
 - ii) There are apparent mistake or error on the face of the order against which the review petition is filed; or
 - iii) Any other sufficient reason.

3.3 It is not clear as to the ground on which the review petition is filed. It is also not clear on which of the above grounds, IPCL has relied upon while submitting the





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review petition. IPCL has to satisfy the Commission as to the maintainability of the review petition. Sri P. K. Tewari, Member of the Commission viewed that it is an appeal in disguise of review petition. In fact, the review petition apparently is not maintainable.

3.4 On being asked by Sri Sutirtha Bhattacharya, Chairperson of the Commission, to clarify the points / observations raised by both the members, Sri Arijit Maitra clarified that –

- a) As per the Electricity Act, 2003, the long term open access is a part of open access and the open access is not a compellable term but is an option for the utility.
- b) The regulation 10.3 (f) inter-alia specified that the cost for such strengthening shall initially be paid by the applicant to the concerned licensee(s) as an advance, if it is for exclusive use of the applicant. It is an agreed fact that the subject LILO line as an intra-state transmission system and not for the exclusive use of IPCL. Since it is an intra-state transmission system, the existing STOA agreement between IPCL and STU may be deemed to be a LTOA agreement and the reimbursement of the capital cost may be started forthwith instead of waiting for LTOA agreement till August, 2021 when the PPA between IPCL and SECI will take place and load flow through the said intra-state transmission system will begin.
- c) As far as the carrying cost is concerned, STU has already agreed to pay back the capital cost in equal monthly instalments and any equal monthly instalments has in-built interest which required to be paid by the payer. In this case, the carrying cost is same as that of the in-built interest of EMI.
- d) Regarding maintainability of the review petition, it may be noted that as per the Supreme Court judgement, in case of tariff order, the review petition can be made for review of the tariff. The order 47 is not strictly applicable for the





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review of tariff petition. The review petition, in question, is treated to be a petition for review of tariff, since the capital cost of the intra-state transmission line, for which the revision is sought for, will have impact on the tariff of the utility as well as the STU. Moreover, there are sufficient reasons for review of the capital cost of the transmission system for which several documents in regard to delay in project, Right of issue, change of alignment, etc., have been produced. Therefore, the question as to the maintainability of the review petition does not arise.

3.5 Sri Sutirtha Bhattacharya, Chairperson of the Commission concluded that –

- a) The STU has rightly fixed the load flow of 124 MW (130 MVA) as the utility has not fixed any load flow through PPA nor they have fixed the source of power. There has been and is ample opportunity for the utility to find the source of power and go for LTOA agreement immediately with STU.
- b) It is good that STU has agreed to adjust the STOA cost with the LTOA cost till the LTOA agreement is entered into.
- c) The capital cost of the transmission system was approved by the Commission after prudence check of the expenses incurred. In case of any mistake apparent in prudence check of the Commission, request for revision lies to the Commission, but such circumstances are not brought out in the petition. The arrangements as well as the conduct of the utility and the STU shall be guided by the provisions laid down in the WBERC Open Access Regulations, 2007.

3.6 The Commission further observes that the regulation 10.3 (f) inter-alia specified that the cost for such strengthening shall initially be paid by the applicant to the concerned licensee(s) as an advance, if it is for exclusive use of the applicant which shall be refunded by the licensee(s) concerned to the open access customer





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in 72 (seventy two) equal monthly instalments and such extension or augmentation of the network will become the property of the licensee(s) concerned. There is no provision for reimbursing carrying cost for such advancement in the said Regulations. However, in this case, IPCL proposes for repayment of the cost of the transmission asset handed over to STU in 120 equal monthly instalments which has been agreed to by STU.

- 3.7 The Commission further noted that by their own admission WBSETCL had taken over the asset on 12.02.2018 when the applicable order(s) of the Commission were of 13th February, 2013 read with letter of 5th January, 2016.

ORDER

- 4.1 Upon hearing the parties and the observations made hereinabove, the Commission directs that –

- a) LTOA agreement between the IPCL (utility) and the WBSETCL (STU) has to be entered into first as per the provision of the WBERC Open Access Regulations, 2007;
- b) After completion of LTOA agreement, the reimbursement of the capital cost of transmission assets, as approved by the Commission in its order dated 22.11.2018, in 120 equal monthly instalments as well as the adjustment of STOA charges with the LTOA charges will take place;
- c) The request for review of the capital cost of the transmission system is not admitted by the Commission as the petitioner has neither placed any new matter or evidences which were unknown to them nor pointed out any apparent mistake or error on the face of the order.





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d) Carrying cost as prayed for is not admissible as the same was neither claimed in their petition nor raised during the hearings before the concluding hearing on 06.11.2020. Moreover, there is no provision of reimbursing carrying cost in the Regulation 10.3 (f) of West Bengal Electricity Regulatory Commission (Open Access) Regulations, 2007 as referred to by IPCL regarding reimbursement of cost of transmission asset.

5.1 The petition of IPCL is accordingly disposed off.

6.1 Let a copy of this order be served upon IPCL (Utility) and WBSETCL (STU)

sd/-
(PULAK KUMAR TEWARI)
MEMBER

sd/-
(DURGADAS GOSWAMI)
MEMBER

sd/-
(SUTIRTHA BHATTACHARYA)
CHAIRPERSON

DATE: 23.12.2020



Certified true Copy

(T.K. Mukherjee)
Secretary