

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
BANGALORE**

Dated : 8th August, 2013

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| 1. Sri M.R. Sreenivasa Murthy | Chairman |
| 2. Sri Vishvanath Hiremath | Member |
| 3. Sri K. Srinivasa Rao | Member |

OP No.42/2011

BETWEEN :

Sathavahana Ispat Limited
No.314, Ramakrishna Towers
Nagarjuna Nagar
HYDERABAD – 500 0073
[Represented by M/s.Shridhar Prabhu Associates, Advocates]

.. **PETITIONER**

AND

Karnataka Power Transmission Corporation Limited
Cauvery Bhavan
BANGALORE – 560 009
[Represented by M/s. Justlaw, Advocates]

.. **RESPONDENT**

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- 1) This Petition has been filed by M/s.Sathavahana Ispat Limited, praying for:
- (a) a direction to the Respondent-Karnataka Power Transmission Corporation Limited (KPTCL) to grant permanent evacuation approval for evacuation of 45 MW of power from its 45 MW cogeneration-based captive power plant at Kudathini Village, Bellary District, on the existing transmission lines and

arrangements; (b) a direction to the Respondent-KPTCL to grant permanent interconnection approval on the existing transmission lines and arrangements; and (c) setting aside the order or direction in the communication bearing No.CEE(TA&QC)/SEE/(Plg)/EE(PSS)/KCO-93/36995/F-279/4852-56, dated 17.8.2011 (ANNEXURE-P1), issued by the Respondent-KPTCL. The Petitioner has also made an Interim Prayer for a direction to the Respondent to maintain *status quo*, pending adjudication of the case.

2) The Petitioner has filed: (a) a Memo dated 8.9.2012 giving the Synopsis and Chronology of Events; (b) a Memo dated 22.11.2012 enclosing the Technical Report on Evacuation of 45 MW power from the Project of the Petitioner to the Grid of the Respondent; (c) a Memo dated 7.2.2013, seeking a direction from the Commission to the Respondent for production of certain documents. The Petitioner also filed an Interlocutory Application (IA) No1/2013 dated 14.2.2013 in the case, along with a supporting Affidavit, praying for summoning of the relevant documents of the case by the Commission from the Respondent. Further, the Petitioner has filed its Rejoinder dated 2.5.2013 to the Respondent's Statement of Objections dated 23.02.2012. 17.1.2013 and 4.4.2013, and a Memo dated 25.6.2013 enclosing a Statement of open access chargers and transmission losses paid by it to the Respondent-KPTCL during the period June, 2012 to March, 2013.

3) On Notice, the Respondent-KPTCL has appeared through its counsel and has filed its Statement of Objections on 23.02.2012. It has also filed on 17.1.2013

its response to the Technical Report filed by the Petitioner on 22.11.2012, Statement of Objections dated 4.4.2013 to the I.A.No.1/2013 filed by the Petitioner, and a Memo dated 25.4.2013 enclosing a copy of the Proceedings of the Meeting on "IPP Evacuation Procedure" pertaining to discontinuation of Line-in-Line-Out (LILLO) arrangement.

4) The Petitioner's case, in brief, is as follows :

5) The Petitioner has a Metallurgical Coke Manufacturing Plant near Kudathini Village, Bellary District, with a co-generation power plant operating at 45 MW capacity. The said project has been commissioned in two phases. The evacuation approval for the first Phase of the project of 21 MW capacity was given by the Respondent on 15.2.2006 (ANNEXURE-P2). With the approval of the Respondent, the project was synchronized on 3.6.2009, with evacuation being provided by the Respondent on a Line-In-Line-Out (LILLO) connection linked to the 110 kV Allipur-Torangal line of the Respondent. The Respondent issued an Official Memorandum on 21.7.2005 (ANNEXURE-P3) for evacuation of 21 MW of power of the Petitioner plant by the above LILLO facility.

6) The Petitioner commissioned the second Phase of this project and asked for provisional evacuation approval from the Respondent for evacuating additional 24 MW of power. The provisional evacuation approval for the second Phase was given by the Respondent on 14.5.2010 (ANNEXURE-P4). Annexure-P4 shows that the provisional evacuation approval for a total 45 MW was given for a

period of only one year, subject to the condition that the Petitioner shall take up and complete the construction of an independent 110 kV SC Line with Lynx conductor to link its generating unit to the Allipur Sub-station if the evacuation of only the additional 24 MW (plus 21 MW of Phase-I) was to be considered. The Respondent's letter (Annexre-P4) further laid down that if the Petitioner proposes evacuation of a total 100 MW (existing and proposed capacity), then it should construct a dedicated 220 kV SC Line with Drake conductor, linking its generating unit with the 220 / 110 / 11 kV Allipur Sub-station. The then existing facility of LILO will be continued for 24 MW capacity of the second Phase of the project for one year, subject to the above conditions.

7) The Petitioner subsequently on 29.3.2011 (ANNEXURE-P5) intimated that erection of boiler and other equipment got delayed due to unavoidable circumstances. It had to concentrate only on erection activities, it could not attend to the works related to the construction of 110 KV SC line from its project work to 220/110 kv Allipur sub-station and on 6.5.2011 (ANNEXURE-P6) requested the Respondent to continue the provisional evacuation approval for evacuation of 45 MW power on the LILO line for one more year from 14.5.2011, as there was delay in commissioning the II Phase of the plant, which could be done only from 1.4.2011. It also confirmed on 6.5.2011 its taking up Scheme (a), i.e., construction of a 110 kV line to Allipur Sub-station for evacuation of 45 MW from its Power Station. However, the Respondent, by its letter dated 18.7.2011 (ANNEXURE-P8), informed the Petitioner that a provisional evacuation scheme would be considered only after the Petitioner makes payment of Network Augmentation

Charges (NAC) of Rs.2.25 Crores at the rate of Rs.5,00,000/- per MW, for its 45 MW capacity plant. Accordingly, the Petitioner made payment of the above-said amount to the Respondent, and by its letter dated 23.7.2011 (ANNEXURE-P9), the Petitioner requested the Respondent to grant permanent evacuation scheme approval to it in place of extension of temporary evacuation scheme approval, on the same LILO arrangement. The Respondent, however, instead of granting evacuation approval, required that the Petitioner should give an undertaking on the dates for taking up the work along with the probable date of completion of construction of the 110 kV SC Line.

8) The Petitioner contends that it has laid down the line from its Sub-station to the LILO Line of the Respondent by incurring substantial cost and expenditure as per the specifications and directions of the Respondent and has paid the NAC as demanded, and that as per the Technical Load Study Report (ANNEXURE-P10), there are no impediments or hindrances in permitting evacuation through the existing LILO arrangement. Further, the imposition of the condition by the Respondent for construction of a 110 kV SC Line from its project to Allipur 220/110/11 kV Sib-station is contrary to Sections 39 and 40 of the Electricity Act, 2003 (hereinafter referred to as the 'Act') and also it is against the Respondent's policy regarding granting access to LILO Lines by collecting NAC.

9) The Respondent, in its Statement of Objections dated 23.12.2013, besides denying the Petition averments, has contended as follows :

10) The Petitioner, vide its letter dated 6.5.2011, acquiesced to take up the work of construction of 110 kV SC Line with Lynx conductor on DC towers from the Petitioner's project site to 220/110/11 kV Allipur Receiving Station within 14.5.2011, prior to applying for a regular interconnection approval. The Petitioner, instead of taking action for completion of the said work, has sought extension of time to execute the works. The Respondent has further contended that inspite of granting multiple extensions of time to the Petitioner and requesting the Petitioner to indicate a time-frame within which the Petitioner would complete the work, the Petitioner has failed to act in pursuance of its commitments. The Respondent has also contended that completion of the said works by the Petitioner is very much essential to the Respondent in order to manage the load in the Grid.

11) The Respondent has further stated that it is agreeable to grant the evacuation approval to the Petitioner, subject to its reasonable request that the Petitioner should indicate the time-frame for completing the relating to the dedicated Line connecting the Respondent's generating station with the Allipur Sub-Station. The Respondent was acting in pursuance of the Government Order dated 16.8.2011 and was within the ambit of its policy to collect NAC from the Petitioner for augmenting the existing 110 kV LILO Line. The Respondent has further stated that since no prayer has been made by the Petitioner with regard to the illegality of the Respondent's action in collecting the NAC, the contentions of the Petitioner in this regard ought to be ignored, and that in any event since

the said issue has been decided by this Commission, the Petitioner cannot re-open the same issue again.

12) By its Memo dated 17.1.2013, in response to the Technical Report filed by the Petitioner on 22.11.2012, the Respondent has stated that the said Technical Report is misconceived, untenable and ought not to be taken into reckoning while considering the present Petition. The Respondent, by its Memo dated 25.4.2013, has also furnished the Proceedings of the Meeting on "IPP Evacuation Procedure" pertaining to discontinuation of LILO. Further, by Memo dated 17.7.2013, the Respondent has given the details of the cost implications of construction of a dedicated Tie-line between the generating station and the sub-station situated at Allipur.

13) In its Rejoinder dated 2.5.2013 to the Statements of Objections filed by the Respondent, the Petitioner has denied the averments made by the Respondent therein and has once again prayed that its Petition be allowed.

14) It is vehemently submitted by the counsel for the Petitioner that insistence of the Respondent to construct a 110 kV SC Line from its plant to Allipur Sub-station runs counter to Sections 39 and 40 of the Electricity Act, 2003, as it is the duty of the transmission utility to build, maintain and operate an intra-State transmission system and provide the same to the generator for open access for transmitting the electricity generated to its destination. Further, it is submitted by the Petitioner's counsel that once it has constructed a LILO transmission line and

connected it to the Respondent-KPTCL's network and has paid the NAC, its duty to be fulfilled under Section 10(1) of the Act gets completed and the transmission utility thereafter is under an obligation to provide the connectivity to its system either under the existing arrangement or a new arrangement to be made by it.

15) Per contra, it is submitted by the counsel for the Respondent-KPTCL that under Section 10(1) of the Act, it is the duty of the generating company to construct a dedicated transmission line connected with its generating station in order to seek evacuation of power. Further, it is submitted by the counsel that the construction of the LILO line and payment of the NAC by the Petitioner, will not end the duty of a generating company. The new line suggested by the Respondent for construction by the Petitioner is absolutely necessary to evacuate the power generated by the additional 24 MW generation capacity and the same has to be constructed by the Petitioner in discharge of its duties under section 10(1) of the Act, It is also submitted that the Petitioner was well aware of its duty under the Act and it had earlier agreed for the construction of the line. It had also sought extension of time for construction of the same. Now, the Petitioner cannot turn around and say that the existing LILO arrangement is adequate and should continue to evacuate 45 MW power and it is under no obligation to construct a new line as sought to be constructed by it by the Respondent.

16) We have considered the averments made by the Petitioner and the Respondent, the correspondence that has taken place between the parties and the oral submissions made by the counsel for both the parties.

17) The dispute on which a decision of this Commission is invited is on the question:

“Whether the construction of a LILO line by the Petitioner fulfils the obligation under Section 10(1) of the Act, or it has also to construct a dedicated transmission line of 110 kV SC line from its generating plant to the Allipur Sub-station under Section 10(1) of the Electricity Act, 2003, or whether the Respondent-KPTCL has to construct the new line under Section 40 of the Electricity Act,2003 ?”

18) In order to answer the above question, at the outset, we need to notice the provisions of Sections 10 and 40 of the Electricity Act, 2003 which are as follows :

“10. Duties of generating companies.- (1) *Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder.*

(2) *A generating company may supply electricity to any licensee in accordance with this Act and the rules and regulations*

made thereunder and may, subject to the regulations made under sub-section (2) of Section 42, supply electricity to any consumer.

(3) Every generating company shall.-

- (a) submit technical details regarding its generating stations to the Appropriate Commission and the Authority;*
- (b) co-ordinate with the Central Transmission Utility or the State Transmission Utility, as the case may be, for transmission of the electricity generated by it."*

"40. Duties of transmission licensees.- *It shall be the duty of a transmission licensee.-*

- (a) to build, maintain and operate an efficient, coordinated and economical inter-State transmission system or intra-State transmission system, as the case may be;*
- (b) to comply with the directions of the Regional Load Despatch Centre and the State Load Despatch Centre as the case may be;*
- (c) to provide non-discriminatory open access to its transmission system for use by.-*
 - (i) any licensee or generating company on payment of the transmission charges; or*

(ii) *any consumer as and when such open access is provided by the State Commission under sub-section (2) of Section 42, on payment of transmission charges and a surcharge thereon;*

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19) In the above provisions, if read carefully in the light of the scheme of the Act, the duties of the generating company and transmission utility are well-defined and distinct. Under Section 40 of the Act, the duty of the Transmission Company does not encompass construction of a dedicated transmission line from the generating station to its transmission line / system. As per Section 10(1) of the Act, it is entirely for the generating company to construct the dedicated transmission line of appropriate capacity and to connect the same to the transmission utility's system. That is why the words, "connected therewith" have been used in Section 10(1) of the Act. If the intention of the Act was to impose an obligation of constructing every transmission line on the Transmission Utility, Section 10(1) would not have the wordings referred to above.

20) In the present case, as the Petitioner has built the LILO line to connect it with the transmission system of the Respondent when the generating capacity was 21 MW, the same cannot be considered as full compliance of its obligations under Section 10(1) of the Act, as this was meant only to evacuate first phase of 21 MW generation, and not for 45 MW and above. In the said communication, the Petitioner had also been informed that, "...for any additional generation

above 21 MW, the firm is requested to obtain modified evacuation approval from KPTCL.” After obtaining the said evacuation facility for 21 MW, the Petitioner in his application dated 28.11.2009 sought evacuation approval for an “additional 29 MW captive power in addition to existing 21 MW” (totalling to 50 MW), as seen from ANNEXURE-R3. At that point, the Respondent offered two evacuation alternatives, seeking the Petitioner’s “consent and acceptance of any of the above two options”, i.e., construction of a 110 kV SC dedicated line, or 220 kV SC dedicated line between the Petitioner’s plant and the Respondent’s Sub-Station at Allipur. Further, in the same communication dated 13.4.2010 (ANNEXURE-R4), the Respondent also explained the implications of the two options as follows :

“...Of the above two options available, if you desire to go with evacuation of power proposed present 29 MW but also the future load up to 100 MW coming up as per the sanctioned G.O. then the option (b) available is the best option whereas option(a) is only for restricted evacuation of additional 29 MW only and there is no further possibility for taking up evacuation of power at 110 kV, on also the future additional load evacuation desired by you.

Further, the evacuation schemes are subject to following conditions.

Conditions:

- 1) In event of loss of generation due to line outages then the IPPs shall execute an undertaking stating that they will not hold KPTCL responsible for any delay and for line outages.*

- 2) *The Specifications and drawings shall be got approved by Technical Section o/o CEE(P&C), KPTCL prior to placing the orders for purchase.*
- 3) *All materials and equipments being used for evacuation scheme shall be got tested from KPTCL, TA&QC wing prior to construction / erection.*
- 4) *The firm is required to carryout all the necessary modification works, control room re-alignment, land acquisition if any, construction of bays etc., in the station at their cost.*
- 5) *The Metering should at the 220/110/11 kV Alipur Sub-Station end and should be SCADA Operational.*
- 6) *Procedure for line clear, authorized persons etc., has to be discussed and finalized between Executive Engineer El. TL&SS, EE O&M Division and firms representative before interconnection.*
- 7) *Paper notification required for charging the line should be issued.*
- 8) *Equipments installed shall be SCADA Operational and shall be able to integrate with KPTCL system.*
- 9) *Bay(s) constructed by IPP shall be made SCADA operational and shall be able to integrate with KPTCL grid and sub-station automation.*
- 10) *The validity of approval for evacuation is for a period of 18 months only from the date of communication or till the validity of G.O., whichever is earlier.*

11) Independent SCADA connectivity shall be provided to KPTCL network. ..."

21) The Petitioner then revised his request for evacuation of additional power to 24 MW in its letter dated 8.4.2010 (ANNEXRE-R5), undertook to restrict its total export on the existing LILO line to 45 MW and sought approval for evacuation of only 45 MW through the existing LILO facility. Thereafter, the Respondent communicated provisional approval in its letter of 14.5.2010 (ANNEXURE-P4) for a period of one year subject to the Petitioner taking up and completing either of the two "regular Schemes" mentioned above for construction of a dedicated transmission line. It is also intimated that the approval was based on the Petitioner's intimation that the evacuation of power will not exceed 45 MW and the interconnection was liable to be disconnected from KPTCL grid in case the construction of the new line is not completed before applying for regular interconnection approval for 45 MW. The Petitioner, vide its letter dated 6.5.2011 (ANNEXURE-P6), accepted the above offer and opted to build a 110 kV dedicated line as per Scheme (a) to Allipur Sub-Station. The Petitioner also sought extension of the provisional approval for evacuation of 45 MW power through the existing LILO facility by another year from 14.5.2011 (ANNEXURES - P5 and R8). This is agreed to in the Respondent's letter dated 18.7.2011 (ANNEXURE-P8), subject to Petitioner paying NAC. The Petitioner after paying NAC, vide its letter dated 23.7.2011 (ANNEXURE-P9), has sought permanent evacuation through the existing LILO line, which is not accepted by the Respondent.

22) The Petitioner has contended that the existing LILO arrangement can continue as the same is technically feasible and it is in service for the last two years and therefore the Respondent's stand that the LILO arrangement cannot be continued permanently is untenable. In support of this contention, the Petitioner has produced a Technical Report issued by a Project Consultant by name, 'Design Group'.

23) The Respondent has filed a detailed reply to the above Technical Report, its correspondence with the Petitioner and has contended that the Technical Report is misconceived and ought not to be taken into reckoning while considering the present Petition.

24) We have looked into the Technical Report produced by the Petitioner as well as the counter-statement made by the Respondent. The sum and substance of the Technical Report is that the LILO arrangement put into service, initially for evacuating 21 MW of power and thereafter 24 MW of additional generation of power, for the last two years and the same has operated quite satisfactorily without any problems and has also not affected the system or the consumers adversely. The Technical Report further states that any disruption that takes place is a rarity. Therefore, the LILO arrangement can continue for evacuation of additional generation of power also.

25) The Technical Report also contends that the existing line with LILO facility has adequate current carrying capacity and has even carried a maximum recorded load of 83 MW at 321 Amps, including the load from the Kurugodu section of the Allipur-Torangal line. The Technical Report discounts the probability of any cases of tripping of a breaker which will cause maintenance problems. "It is only in the rare case of a bus fault or failure of a breaker to trip on fault (LBB protection) at Sathavahana Plant bus both sections will get isolated. Such bus faults are extremely rare and can occur in any of the sub-stations." The Petitioner has admitted the risk to LILO operation at Paragraph-6 of Page-4 of the Technical Report of the Design Group produced with the memo dated 22.11.2012 of the Petitioner. It is mentioned therein that:

"...only in the rare case of a bus fault or failure of breaker to trip on fault (LBB protection) at Sathavahana Plant bus both sections will get isolated. Such bus faults are extremely rare and can occur in any of the Sub-stations. In the event of such failure in line breakers at Sathavahana Switching Station, the bypass isolator provided will be closed after discussions with KPTCL authorities in Allipur 220 KV Sub-station. So that, the Allipur-Torangal line will bypass 110 KV Sathavahana bus. For the operation of the bypass isolator Sathavahana is maintaining round the clock shift operators, to operate bypass isolator immediately after the failure of line breaker without loss of time. In view of the above, KPTCL will not face any maintenance problem even on the even of failure of line breaker at Sathavahana Plant."

As has been admitted by the Petitioner in the Technical Report, a bus fault at the bus bar of the generator shall render both the Sections of Allipur-Sathavana and Sathavana-Torangal line and associated loads totally disrupted from service. It is contended by the Petitioner that the bypass isolator at Sathavahana bus could be closed to facilitate the generator to energize the Alipur-Toranagal 110 KV line. In our view, this is not a sound practice because the STU becomes dependent on a third party, namely, the generator in the secured operation of its line, which is not a welcome feature in the interest of operation of intra-State Transmission System. Though the Petitioner claims that the bus fault at the Sathavahana bus is a rarity, such an eventuality, in our view, cannot be left as a possibility to occur, with the control in the hands of a third party.

26) In response, the Respondent-KPTCL has contended that with 83 MW load at a power factor of 0.85, the current in the line would amount to 514 Amps, and not 321 Amps. The line in question, which is built in 1980, has a restricted capacity of 280 Amps corresponding to 45 MW load in order to maintain the required ground clearance. The Respondent has further stated that the load of the Kurugodu-Allipur Section combined with the load of the Sathavahana-Allipur Section can add up to about 78 MW. It is also pointed out that as per the SCADA pictures taken on 14th/15th December, 2012, the load was actually operating at 53 MW at the Allipur Receiving Station, whereas the present capacity of the line should be only about 45 MW.

27) Opposing the Technical Report, it is further submitted by the Respondent that the Petitioner has been informed from the beginning, i.e., from the year 2008 itself, a general decision has been taken not to allow the LILO arrangement to its transmission system and to allow only radial connections of generating plants to the Respondent's Sub-stations, in order to provide system stability and reliability in evacuating the generation. This decision, it is submitted, was taken after having experienced operational problems associated with such existing LILO arrangements. In support of this, the Respondent has cited the CEA's suggestion made for an amendment to the definition, 'Dedicated Transmission Line' in the Electricity Act, 2003, which reads as follows :

"Dedicated transmission line means any radial electric supply line for point to point transmission which is required for the purpose of connecting a captive generating plant referred to Section (9) or Generating station referred to Section (10) to any transmission line or sub-station or generating station, or the load centre, as the case may be, subject to condition that such line shall not form a loop with the Grid and shall not be shared except with prior approval of the appropriate Commission to any of the IPP's"

28) At this point, it is necessary to note the fact that the carrying capacity of a 110 kV line with Lynx conductor with reference to the Surge Impedance Loading (SIL) is 50 MW according to the State Grid Code, 2005. Also, we have noted that the carrying capacity can be extended up to about 62 MW, taking 385 amps current at 6.18 amps per MW, which is the norm for the Lynx conductor for a 30°C rise above the ambient temperature. Considering the existing loads, on the 110

kV line, including the Petitioner's 45 MW of power, and the loads already connected on this line, the Respondent has consciously decided that the normal operation of the line will not permit the Petitioner's 45 MW of power to be evacuated through the existing LLO line. In support of this conclusion, the Respondent has filed, as part of its Statement of Objections dated 4.4.2013, documents at Annexure-R16, which show that the line will be overloaded at about 66 MW, taking into account 5.1 MW coming from Torangal site, 50 MW being added by the Petitioner's Plant and assuming only 10.3 MW from the Kurugodu section of the existing line. Another document, which was requisitioned from the Respondent by the Petitioner, is a letter forming part of the internal correspondence of the Respondent, written by the Executive Engineer of the Sub-station Maintenance Division, Allipur to the Superintending Engineer of KPTCL, Munirabad, dated 9.11.2012 (ANNEXRE-P15). This document clearly shows that the line is overloaded and there is need for diverting some of the loads. The Respondent has also produced the Petitioner's letters complaining about the frequent tripping of the existing line. The Petitioner's letters dated 29.8.2011, 20.10.2011, 28.12.2011 and 24.5.2012 (ANNEXURES – R9 TO R13), all complain of the frequent tripping of the 110 kV line, which has also resulted in tripping of the Petitioner's own generating unit. All this material goes to show that there is adequate justification for the Respondent insisting on a separate radial line of suitable capacity to evacuate the additional power being generated and proposed to be generated by the Petitioner.

29) It is further submitted by the Respondent that the Petitioner, vide its letter dated 28.11.2009 (ANNEXURE-R3), while seeking evacuation approval for enhanced generation of 50 MW including the existing one, had agreed to build the new direct line and therefore had submitted documents, such as Topo Sheet indicating nearby sub-station, connectivities, capacities, lines, type of conductors, distance, Turbo Generator name plate details, Light load absorption details, etc. Based on these documents, the Respondent had sent its communication dated 13.4.2010 (ANNEXURE-R4) stating that additional evacuation requires either of the two schemes mentioned therein, viz., the first Scheme being construction of a 110 kV Single Circuit Line with Lynx Conductors to Allipur Sub-station if the generation is limited to 50 MW, and the second Scheme, if the additional generation goes beyond 50 MW. This according to the Respondent was accepted by the Petitioner, as could be noticed from ANNEXURES – R5, R6, R7 and R8. It is therefore contended by the Respondent that the existing LILO arrangement is not reliable and stable and only a new line is the solution.

30) Considering the above correspondence between the parties, we are of the opinion that the stand now taken by the Petitioner that the existing LILO arrangement will suffice the purpose, is only an afterthought and has to be rejected.

31) The contention of the Petitioner's counsel that since it has built a LILO line and paid the NAC demanded by the Respondent, its duty to be performed

under Section 10(1) of the Act gets fulfilled, does not merit acceptance. The LILO arrangement, as observed from the correspondence referred to above, was allowed to be continued only pending construction of a new 110 kV SC transmission line and not as a permanent arrangement for evacuation of the additional power to be generated. In our view, the Respondent should not have demanded the NAC, as the additional power to be generated had to be evacuated on the new line and not on the existing line. However, the Petitioner cannot take advantage of this wrong demand of the Respondent of collecting the NAC and insist on continuing the LILO arrangement.

32) The Hon'ble Appellate Tribunal for Electricity (ATE), in its Order dated 23.5.2012 in Appeal No.145/2011 – *The Chairman TNEB –Vs- M/s. Ind Bharath Thermal Power Ltd. and another*, while examining the scope of Section 10 of the Act, has held that it is the duty of the generating company to construct a transmission line for evacuation of power from the generator up to the Sub-station of the transmission utility. Further, the Hon'ble ATE has held that the dedicated transmission line is neither a transmission line nor a distribution line, and construction of the same cannot be the duty of a transmission utility, even though it is one of the functions of the Transmission Licensee under Section 40 of the Act to build, maintain and operate an efficient, coordinated and economical inter-State transmission system or intra-State transmission system.

33) As observed at paragraph-21 above, the duties of a generating company are distinct and independent from the duties of a transmission utility. The

Petitioner, by relying on Section 40 of the Act, cannot contend that it is the duty of the transmission utility to build the transmission line, which is required to evacuate the power generated by it. Admittedly, evacuation of the additional generation on the LILO arrangement was temporary and not a permanent arrangement, and it will not give a right to the Petitioner to contend that the same is the dedicated transmission line contemplated to be constructed under Section 10(1) of the Act. Further, as noticed at Paragraph-28 above, the Petitioner was well aware of the limitation of the LILO line, had accepted the condition of construction of a new 110 kV SC dedicated transmission line, and after having accepted the said condition, the Petitioner cannot thereafter turn around and contend otherwise. Therefore, the demand by the Respondent for construction of a new 110 kV SC dedicated transmission line from the generating plant to Allipur Sub-station is in order and legal.

34) It is contended by the Petitioner that the existing line to which LILO is connected has been allowed to be made use of by other generating companies by the Respondent, and denial of the same to it, amounts to discrimination. The Petitioner has also produced, in support of its argument, the snapshots of SCADA pictures (ANNEXURE-13), along with an application (I.A.No.1)) dated 14.2.2013. The Respondent has filed its objections to this I.A.No.1 on 4.4.2013 along with documents, ANNEXURES – R16, R17, R18 and R19, and has contended that the Petitioner has not been discriminated. After considering the rival contentions on this point, we are of the view that the case of M/s.Suzlon Infrastructure Ltd., referred to by the Petitioner, cannot be taken

support of by the Petitioner, as the said Company is not evacuating power directly on the 110 kV dedicated line on which the Petitioner is evacuating its power, and it has constructed its own dedicated 110 kV line from their wind farm to Kurugodu Sub-station. As regards the case of M/s.Agarwal Sponge and Energy Pvt.Ltd., also referred to by the Petitioner, it is observed that the said generating plant is connected on the same line to which the Petitioner is evacuating power, only as a temporary arrangement, that too, subject to the condition that the said company constructs a 110 kV SC dedicated transmission line to the Allipur Sub-station. It is also observed that the other IPP's, which are around the Petitioner's plant, are also evacuating their power through their own 110 kV dedicated transmission lines. The Petitioner has produced an Order dated 9,9.2009 passed by this Commission in OP No.15/2007 in the case of *M/s. International Power Corporation Ltd. -Vs- KPTCL and others*, wherein it has been held that KPTCL is entitled to tap the dedicated transmission line even though the same is built at the cost of the generator. In our view, this Order in no way advances the case of the Petitioner. Thus, the contention of the Petitioner on the basis of discrimination does not hold water.

35) In the facts of the present case, Sections 10(1) and 40 of the Act, Regulation 11(vi) of the KERC (Terms and Conditions for Open Access) Regulations, 2004, and the Judgment of the Hon'ble ATE referred to above, we hold that it is the duty of the Petitioner to construct the additional 110 kV SC line from its generating plant to the Allipur Sub-station, if it desires evacuation of

power by the Respondent further. Consequently, the Petition is liable to be dismissed and is accordingly dismissed.

36) However, if the Petitioner desires to seek any additional time for construction of the dedicated 110 kV SC transmission line agreed by it earlier, it may make the necessary application to the Respondent and the Respondent shall consider the same within one month from the date of communication of this Order, considering the dispute pending till now.

Sd/-

(M.R. SREENIVASA MURTHY)
CHAIRMAN

Sd/-

(VISHVANATH HIREMATH)
MEMBER

Sd/-

(K.SRINIVASA RAO)
MEMBER