

**BEFORE THE UTTAR PRADESH ELECTRICITY REGULATORY
COMMISSION, LUCKNOW**

Quorum

1. Hon'ble Shri Desh DeepakVerma, Chairman
2. Hon'ble Shri InduBhushan Pandey, Member
3. Hon'ble Shri S. K. Agarwal, Member

In the matter of:

In the matter of Petition No. 987 of 2014 for denial / delay by Uttar Pradesh Power Transmission Corporation Ltd. (UPPTCL) in handing over the physical possession of the 220 kV R. C. Green Substation at Greater Noida to Noida Power Company Ltd. (NPCL)

And

In the matter of:

Noida Power Company Ltd., Commercial Complex, 'H' Block, Alpha II Sector,
Greater Noida (UP)

Petitioner

Versus

1. Uttar Pradesh Power Transmission Company Ltd., 14, Ashok Marg, Shakti Bhawan, Lucknow (UP)
2. Uttar Pradesh State Load Dispatch Centre, Uttar Pradesh Power Transmission Company Ltd., 14, Ashok Marg, Shakti Bhawan, Lucknow (UP)

3. Uttar Pradesh Power Corporation Ltd., 14, Ashok Marg, Shakti Bhawan,
Lucknow (UP) Respondents

Present in the Hearing:

Petitioner

1. Shri M. G. Ramachandran, Advocate, NPCL
2. Shri Vishal Gupta, Advocate, NPCL
3. Shri R. C. Agarwala, MD & CEO, NPCL
4. Shri Rajiv Goyal, G.M. Power Procurement & Projects, NPCL
5. Shri Alok Sharma, Sr. Manager, Legal, NPCL
6. Shri A. K. Arora, Resident Manager, NPCL.

Respondents

1. Shri Raghvendra Singh, Sr. Advocate, UPPTCL
2. Md. Altaf Mansoor, Advocate, UPPTCL
3. Shri Puneet Chandra, Advocate, UPPTCL
4. Shri A. P. Singh, UPPTCL
5. Shri Pankaj Saxena, UPPTCL
6. Shri R. V. Pandey, UPPTCL

ORDER

(Hearing on 01.06.2016 and 06.06.2016)

The Noida Power Company Ltd., the Petitioner herein filed this Petition No. 987 of 2014 on 5th December, 2014 praying the Hon'ble Commission to declare that the Petitioner is entitled to own, operate and maintain the 220kV Substation at R.C. Green, Greater Noida being a distribution licensee and UPPTCL, Respondent No.1 be directed to hand over the physical possession of the 220kV Line from 400kV Greater Noida (Pali) Substation to R.C. Green

Substation and 220kV R.C. Green Substation and associated facilities to the Petitioner. The reliefs claimed by the Petitioner are mentioned herein below:

- (a) Declare the Petitioner to be the lawful owner of the 220kV Substation at R.C. Green, Greater Noida and declare that the Petitioner is entitled to own, operate and maintain the 220kV Substation at R.C. Green, Greater Noida being a distribution licensee.
- (b) Direct Respondents to hand over the physical possession of the 220kV Substation at R.C. Green, Greater Noida to the Petitioner it being its lawful owner, for its operation and maintenance.
- (c) Pass any other further order(s) as this Hon'ble Commission may deem fit in the facts and circumstances of the case.

Facts of the case for claiming above reliefs by the Petitioner:

1. The Petitioner, Noida Power Company Limited, is a Company incorporated under the provisions of the Companies Act, 1956 with registered Office at Commercial Complex, 'H' Block, Alpha-II Sector, Greater Noida (UP). The Petitioner is a joint venture Company of Greater Noida Industrial Development Authority (hereinafter referred to as "GNIDA"), which is a public authority of the Government of Uttar Pradesh holding 27% equity in the Petitioner's Company. The Chairman of the GNIDA at all times is the *ex-officio* Chairman of the Petitioner. The Petitioner is a distribution licensee under the Electricity Act, 2003 for distribution and retail supply of electricity in the Greater Noida area of the State of Uttar Pradesh. The Petitioner was granted licence for such supply

of electricity under the Indian Electricity Act, 1910 effective 15.12.1993. After coming into force of the Electricity Act, 2003, the Petitioner is a deemed distribution licensee in terms of Section 14 – first proviso of the Electricity Act, 2003. The licensed area of the Petitioner is as defined by the Government of Uttar Pradesh in the licence granted on 30.8.1993 as amended on 18.7.1996.

2. The Respondent No. 1 Uttar Pradesh Power Transmission Corporation Limited, is the State Transmission Utility under Section 39 of the Electricity Act, 2003, notified by the State Government vide Notification No. 122/U.N.N.P/24-07 dated 18/07/2007 and subsequently, licensed by this Hon'ble State Commission vide License No. 02 of 2011 dated 3rd August, 2011. It is pertinent to mention here that prior to the Notification dated 18/07/2007 and till the incorporation of the Respondent No.1, the Respondent No. 3 was looking after all the works related to Transmission in the State.
3. The Respondent No. 2, the State Load Despatch Centre is a part of Respondent No.1 and discharges functions as specified in Section 32 of the Electricity Act, 2003. The Respondent No.3 undertakes the bulk purchase and bulk sale of electricity for its subsidiary Discoms in the State.
4. In discharge of its functions as the distribution licensee and more particularly provided in Sections 42 and 43 of the Electricity Act, 2003 as well as the Regulations notified by the Commission and the License Conditions specified under Section 16 of the Electricity Act, the Petitioner over the years has established requisite infrastructure for distribution of power in its licensed area. The existing network of the Petitioner consists of 220 kV line emanating from 220kV Bays at 400kV Greater Noida (Pali)

Substation and 33 kV & below lines and Substations of 220kV & below voltage levels in its licensed area. The distribution system of the Petitioner is connected with the transmission system of the Uttar Pradesh Power Transmission Corporation Limited, Respondent No. 1 at two places, namely, the 400kV Greater Noida (Pali) Substation and 132kV Substation at Surajpur. The Petitioner has shown interconnection of its distribution system at the 400kV Greater Noida (Pali) Substation and 132kV Surajpur Substation of Respondent No. 1 by a schematic diagram.

5. The Petitioner has incurred the entire capital expenditure on the above mentioned distribution network i.e. 220kV lines including 220kV R.C. Green Substation & 220kV Gharbara Substation and 33kV & below lines and Substations in its licensed area.
6. In addition to the above, the Petitioner has also contributed the entire capital expenditure in regard to two numbers of 220kV Bays at 400kV Greater Noida (Pali) Substation besides also contributed the capital expenditure of one 315 MVA Interconnecting Transformer (ICT) at 400kV Greater Noida (Pali) Substation. The above capital expenditure has been incurred by the Petitioner to ensure supply of adequate electricity in its licensed area. The capital expenditure have been duly accounted for in the annual revenue requirements of the Petitioner and approved by the Commission. Thus, the above capital assets have been created for the exclusive benefit of the consumers of the Petitioner in the Greater Noida area.
7. The 400kV Greater Noida (Pali) Substation of Respondent No. 1 is interconnected with the transmission line of Central Transmission Utility (Power Grid Corporation of India Limited - CTU). Accordingly, the power procured by the Petitioner from outside the State of Uttar Pradesh is to be

conveyed through the transmission network of Power Grid reaching to the 400kV Greater Noida (Pali) Substation and thereafter conveyed to the distribution network of Petitioner as per the Schematic Diagram filed by the Petitioner along with Petition.

8. The Petitioner considering the rapidly growing demand and requirement of power in the Greater Noida area, approached the Respondent No.3, acting as the STU at that point of time, requesting them to augment their network in line with their duty under Section 39(1) of the Electricity Act, 2003 and to provide open access to the said network to the Petitioner so that the Petitioner is able to procure and distribute power according to the requirement of the consumers of its licensed area.
9. The Petitioner further, submitted that despite vigorous follow-up it did not receive any response from the Respondent No. 3 and therefore, the Petitioner and GNIDA had themselves decided to construct and up-grade their own distribution system in the Greater Noida area initially upto 132kV level, further upgradable to 220kV level in accordance with the provisions of Electricity Act, 2003 to enable the Petitioner to service the rapidly growing demand of its consumers.
10. The Petitioner stated that the G.M. (Project) of the GNIDA vide its letter dated 24.02.2006, informed Petitioner, that 2 Nos.132/33kV Substations and their associated lines are being constructed at the cost of Greater Noida Authority. Further, it was also informed that the said substations will be handed over to the Petitioner for operation and maintenance and supply of power to its consumers. The relevant extract of the letter is as mentioned below:

“2. Two numbers 132/33kV substations and their associated lines are being constructed at the cost of Greater Noida Authority, these substations will be handed over to NPCL for maintenance and for release of new power connection. In this addition to this these sub stations will be utilised by NPCL for supply of power to NPCL’s consumers.”

11. Further, the GNIDA vide its letter dated 15.02.2007, accepted the advice of the Petitioner, to construct/upgrade the 132kV Substation to 220kV and also informed that, as agreed upon, the Petitioner shall bear the cost arising out of the enhancement of the capacity of the Substation from 132kV to 220kV.
12. The Petitioner in view of the above circumstances submitted an application before the GNIDA for allotment of land for establishment of 220/132kV Substation in Recreational Green (R.C. Green) Sector, Greater Noida. After considering the application of the Petitioner, GNIDA earmarked a piece of land for the aforesaid purpose and processed the application of the Petitioner for allotment of the land in its name. Accordingly, GNIDA vide its “Letter of Allotment” dated 25.03.2008 had allotted a piece of land in Sector Recreational Green (“R.C. Green”) for establishment of 220kV Electric Substation for servicing its consumers.
13. In light of the construction of the 220kV R.C. Green Substation, Respondent No. 3, (acting as STU at that point of time) made a representation to GNIDA, stating that if the contract for construction of R.C. Green Substation, Greater Noida is given to them, they would be able to complete the construction of said Substation at 132kV voltage

within 8-9 months which will help the Petitioner to meet the immediate demand of their consumers and to meet the future demand the Substation can be later upgraded to 220kV voltage level. Accordingly, GNIDA and the Petitioner agreed and awarded the contract for construction of above substation to the Respondents and handed over the site to Respondent No. 3 to commence the construction of 132/33kV Substation and the same was commissioned on 31.03.2009.

14. On 09.09.2009 a Memorandum of Understanding was entered between the Respondent No. 1 and GNIDA, wherein it was mentioned that the construction of 132kV Substation at R.C. Green, Greater Noida and 220kV single circuit line on double circuit towers was to be carried out by Respondent No. 1 under "Full Deposit Scheme of the GNIDA". Moreover, it was also mentioned that after the construction of the Substation, the same would be handed over to GNIDA or its representative. The relevant Clause 'A' of the aforesaid MOU is reproduced as below:

Whereas:

A. The construction of 132 KV S/S R.C. Green Greater Noda and 220 KV Single circuit line on Double Circuit towers was carried out by UPPTCL under full deposit scheme as desired by the Authority. After construction the system constructed was to be handed over to the Authority or its representative.

15. After completion of construction of the R.C. Green Substation at 132kV level, on 17.02.2011 another Memorandum of Understanding was entered between Respondent No. 1 and GNIDA, wherein GNIDA asked Respondent No. 1 to carry-out the work of up-gradation of the R.C. Green Substation from 132kV to 220kV voltage level. In the said MoU, it was

again reiterated in Clause 2 and Clause 9 that work was to be done by UPPTCL “under full deposit scheme of the GNIDA” and after the completion of the up-gradation work, the substation would be handed over to GNIDA or its representative. The said MOU, *inter-alia*, provides as under:

2. An estimate amounting Rs. 3431.00 Lacs had been framed by UPPTCL and submitted to authority for up gradation work to be done by UPPTCL UNDER FULL DEPOSIT SCHEME OF GREATER NOIDA INDUSTRIAL DEVELOPMENT AUTHORITY.

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9. The GNIDA will pay to UPPTCL, the operation and maintenance Cost of 220 KV portion extra in addition of O&M charges of existing 132KV Substation portion along with connected lines as per M.O.U. made on dated 09.09.2009 in between UPPTCL and GNIDA @ 5 Lacs per month, till handing over of 220 KV portion to the authority or its representative.

16. Accordingly, the Respondent No. 1 vide its letter dated 27.07.2012 informed GNIDA that the process of up-gradation of 220kV substation at R.C. Green, Greater Noida had been completed and the same was energized on 25.07.2012.

17. Subsequently, the lease deed for the land for above 220kV R.C. Green Substation with reference to Allotment No. Prop/Inst/2008/4057 dated 25.03.2008 at R.C. Green, Greater Noida was executed on 03.12.2012 between the Petitioner and the GNIDA.

18. GNIDA vide its letter dated 18.01.2013, informed the Petitioner about approval of the handing over and transfer of the 220kV R.C. Green Substation and its assets to them in the 94th meeting of the Board members of GNIDA, held on 11.01.2013. Further, GNIDA advised the Petitioner to make payment of the cost incurred in constructing the Substation i.e. Rs. 67.50 crore, and after receipt of the said amount, the ownership and physical possession of the above 220kV R.C. Green Substation would be handed over and transferred to the Petitioner.
19. The Petitioner in pursuance to the above letter deposited Rs. 67.50 crore towards full payment of the cost of the assets at 220kV Substation and associated facilities including 220kV lines emanating from 400kV Greater Noida (Pali) Substation of Respondent No.1 up to 220kV R.C. Green Substation, Greater Noida, vide its letter dated 29.01.2013 and also requested the GNIDA to hand over the ownership and the physical possession of the said Substation to it, as agreed upon.
20. GNIDA vide its letters dated 08.02.2013, 10.06.2013, 13.08.2013 and 09.12.2013 requested Respondent No.1 to hand over the physical possession of 220kV R.C. Green Substation to the Petitioner more particularly as per the terms of the MoU dated 09.09.2009 and 17.02.2011.
21. The Petitioner submitted that the following facts are beyond any doubt or dispute and are incontrovertible:
- the land on which 220kV R.C. Green Substation has been constructed is owned by the Petitioner;

the Petitioner and GNIDA decided to construct R.C. Green Substation at their own cost for the exclusive for consumers of Greater Noida area;

The construction of the 220kV R C Green Substation both initially as 132kv substation and its up-gradation thereafter to 220kv Substation along with Associated Lines were with the purpose of maintaining the electricity supply in the Greater Noida area for which the distribution license has been granted to the Petitioner and the Petitioner is the joint-venture company of GNIDA and CESC Limited. This 220kV R C Green Substation and Associated Lines was with reference to the distribution network in the Greater Noida area and not as a part of the general intra-state transmission network as alleged by Respondent No. 1;

based on the representation made by Respondent No. 3, acting as STU at that point of time, GNIDA awarded construction work of R.C. Green Substation to them under “Full Deposit Scheme of GNIDA”;

as per MoU date 09.09.2009 and 17.02.2011 the Respondent No. 1 had agreed to handover physical possession of 220kV R.C. Green Substation to GNIDA or its Representative;

the GNIDA in its 94th Board meeting decided to hand over the physical possession and ownership of the 220kV R.C. Green Substation to the Petitioner upon payment of Rs. 67.50 crores;

the Petitioner accordingly paid Rs. 67.50 crores to GNIDA and informed the same to the Respondent No. 1 with a request to hand over the physical possession of the 220kV R.C. Green Substation and associated facilities including 220kV Line from 400kV Greater Noida (Pali) Substation to the Petitioner;

GNIDA also informed the Respondent No. 1 to hand over the physical possession of 220kV R.C. Green Substation and associated facilities

including 220kV Line from 400kV Greater Noida (Pali) Substation to the Petitioner;

the ownership of 220kV R.C. Green Substation and associated facilities including lines rest with the Petitioner; and

the full cost of two numbers of 220 kV Bays and one 315MVA ICT at 400 kV Greater Noida (Pali) Transmission Substation of Respondent No.1 was paid by the Petitioner for the exclusive benefit of the consumers of Greater Noida area.

22. On persistent efforts of the Petitioner for handing over and connectivity of the 220kV R.C. Green Substation at 220kV Voltage level, the Principal Secretary (Energy) & CMD of Respondent No. 3 conducted a meeting on 19.02.2014 in which it was insisted that the Respondent No. 1 would not grant connectivity to the Petitioner at 220kV level and therefore, it must apply for the same at 33 kV voltage level only. The Petitioner in the interest of the consumers was forced to apply connectivity at 33kV voltage level.

23. The Petitioner to protect its legal rights while applying for 33kV level connectivity informed/clarified the Respondent No. 1 vide its letter dated 11.03.2014 as follows:

“We write with reference to our letter no. NPCL/OA/UPPTCL/081 dated 21st August 2012 regarding the application for grant of connectivity of 220 kV RC Green Substation to Intra-State Transmission System at 220 kV Voltage Level at 400 kV Greater Noida (Pali) Sub-station. Since then, the Company had several correspondences with your office in this regard. Lastly, this matter was discussed with you / your team in the meeting held on 19.02.2014 chaired by Sh. Sanjay Agarwal, Principal Secretary (Energy), Govt. of U.P. & Chairman UPPCL,

wherein Shri Rama Raman, Chairman & CEO, Greater Noida Industrial Development Authority was also present.

In the above meeting, UPPTCL had categorically mentioned that connectivity at 220kV voltage cannot be granted to NPCL being a distribution licensee; hence the same would be granted at 33kV voltage level only. In this regard, we would like to mention that Section 2 (72) of The Electricity Act, 2003 dealing with "Transmission Line" specifically excludes the essential part of the distribution system from being a transmission line, notwithstanding it is at a voltage level higher than 33kV. Accordingly, a distribution licensee can install, own, operate, maintain and get connected to voltage level higher than 33kV also.

However, considering the immediate need to serve larger interests of consumers of our licensed area and also the desire & willingness of the State Government in appealing / fetching new industrial investments in the Greater Noida area you may kindly grant connectivity at 33 kV voltage level of 220/132/33 kV RC Green Sub-station in terms of the Uttar Pradesh Electricity Regulatory Commission (Grant of Connectivity to intra-State Transmission System) Regulations, 2010 and the Procedure for Grant of Connectivity to Intra-STS along-with long term open access for 240MW power since already applied."

24. Thereafter, on the insistence of Respondents, being in dominant position, the Connectivity Agreement was signed on 22.03.2014 whereby, the R.C. Green Substation was connected at 33 kV Voltage level instead it being connected at 220 kV Voltage level and subsequently, on 27.03.2014 the Bulk Power Transmission Agreement (BPTA) was also signed.

25. Meanwhile, in a meeting dated 08.10.2014, undertaken by ShriDevendra Chaudhary, Additional Secretary, Ministry of Power (MoP) held on the

issue of construction of the 400 KV Greater Noida (New) Substation (ISTS), the Director (Operation) of the Respondent No.1 (UPPTCL) raised the issue of ownership of the R.C. Green Substation. In the said meeting the Member (GO&D), Central Electricity Authority (CEA) and AGM (CTU) also confirmed that as per Section 2(17) and 2(19) of the Electricity Act, 2003 there is no ceiling in terms of voltage level for distribution system and further observed that the distribution licensees such as HPSEB, CESC and DPCL etc. are also owning, operating and maintaining 220kV Voltage level systems.

26. The Petitioner in light of the aforesaid facts submitted that it is established that the Respondent No.1 is in the wrongful possession of the 220kV R.C. Green Substation and therefore, it should handover the physical possession of the said Substation to the Petitioner, being its legitimate owner. The Petitioner further submitted that as per the provisions of Electricity Act, 2003 and Rules framed there under as well as provisions contained in U.P. Electricity Supply Code, 2005 a distribution licensee is authorized to own, operate and maintain a substation for the purpose of distributing power to its licensed area, irrespective of the voltage level.

Applications on the issue of Maintainability of the Petition and Jurisdiction of the Commission by Respondent No. 1:

27. The Respondent No. 1 filed an application on 23.03.2015 raising preliminary objections as to the jurisdiction of this Commission under Section 86(1)(f) of the Electricity Act, 2003 to adjudicate the dispute between the Petitioner and the Respondents. The Respondent contended that since Petitioner is a distribution licensee and the Respondent No.1 is a State Transmission Utility and none of them being a generating

company, this Commission has no powers to adjudicate the disputes between the Petitioner and the Respondents.

28. The Respondent No. 1 submitted the following contentions:

- a) That the provision of section 86 (1) (f) of the Electricity Act 2003 is ex parte and not applicable at all to the present dispute.
- b) That provision of section 86 (1) (f) of the Electricity Act 2003 empowers the Commission to adjudicate upon dispute between licensees and generating companies and to refer to any dispute to arbitration.
- c) That the petitioner is admittedly a distribution licensee as defined under Section 2 (17) of the Electricity Act 2003 and according to its own admission in para 2 of the present petition is a deemed distribution licensee in the terms of the first proviso appended to section 14 of the Electricity Act 2003.
- d) That none of the respondents are Generating Companies, the Respondent No. 1 is a State Transmission Utility and functioning under the provisions of section 39 of the Electricity Act 2003. On the basis of own admission of the Petitioner (para 2 of the petition), the Respondent 2 is a part of the Respondent 1 and it is discharging its functions as per section 32 of the Electricity Act 2003.
- e) That further as per Petitioner's own admission, (Para 2 of the petition) the respondent no. 3, the U.P. Power Corporation Ltd. was looking after the work related to transmission in the state prior to the incorporation of the U.P. Power Transmission Corporation on 18.7.2007. Further the Petitioner had itself stated that the

Respondent No. 3 undertakes bulk purchase and bulk sale of electricity for its Subsidiary Discoms in the State.

- f) That from the perusal of the aforesaid facts, it is clear that the dispute which has been raised by the petitioner by means of the present petition is not covered under section 86 (1) (f) of the Electricity Act 2003, the same is not maintainable therefore the present petition is liable to be rejected.

29. The Respondent No. 1 to substantiate its argument on to adjudicate and decide the question of maintainability of the Petition and jurisdiction of the Commission before proceeding on the merits of the case had relied upon the judgments namely (2008) 7 SCC 166 (K. Sagar, Managing Director, Kiran Chit Fund, Musheerabad vs. A. Bal Reddy and another), (1999) 6 SCC 632 (T.K Lathika vs. Seth Karsandas Jamnadas) and (2012) 12 SCC 573 (Cantonment Board and another vs. Church of North India).

Petitioner's Response to the Application dated 23.03.2015 of Respondent No.1:

30. The Petitioner contended that the argument of the Respondent No.1 is ex-facie erroneous as it is an admitted fact that the Petitioner is a distribution licensee under the Electricity Act, 2003. Further, the Respondent No.1 is a State Transmission Utility and a Transmission Licensee of this Commission vide License No. 02 of 2011 dated 3rd August, 2011.

31. The Petitioner submitted that a bare perusal of Section 86 (1)(f) of the Electricity Act, 2003 clearly shows that this Commission is empowered to adjudicate disputes between licensees as well as generating companies and licensees. In other words this Commission can clearly adjudicate disputes between two licensees. This position is unambiguous and clear.

This has been clarified and up held by the Hon'ble Supreme Court and the Appellate Tribunal for Electricity in various cases.

32. The Petitioner relied upon the following judgments of the Hon'ble Supreme Court and the Appellate Tribunal for Electricity in this regard :-

Hon'ble Supreme Court of India:

(i) Gujarat UrjaVikash Nigam Ltd Versus Essar Power Ltd
(Civil Appeal No. 1940 of 2008, Decided on 13.08.2008)

59.....However, since the Electricity Act, 2003 has come into force w.e.f. 10.6.2003, after this date all adjudication of disputes between licensees and generating companies can only be done by the State Commission or the arbitrator (or arbitrators) appointed by it. After 10.6.2003 there can be no adjudication of dispute between licensees and generating companies by anyone other than the State Commission or the arbitrator (or arbitrators) nominated by it. We further clarify that all disputes, and not merely those pertaining to matters referred to in clauses (a) to (e) and (g) to (k) in Section 86(1), between the licensee and generating companies can only be resolved by the Commission or an arbitrator appointed by it. This is because there is no restriction in Section 86(1)(f) about the nature of the dispute.

Hon'ble Appellate Tribunal for Electricity:

a) PTC India Limited Versus Gujarat Electricity Regulatory Commission (Appeal No. 31 of 2012, Decided on 01.10.2012):

b) Pune Power Development Private Limited vs Karnataka Electricity Regulatory Commission. (Appeal No. 200 of 2009, Decided on 23.02.2011)

c) Lanco Power Limited Vs Haryana Electricity Regulatory Commission, (Appeal No.15 and 52 of 2011, Decided on 04.11.2011.)

33. The Petitioner on the issue of disposal of preliminary objections on maintainability of the Petition and jurisdiction of the Commission before proceeding on the merits of the case relied upon the judgment of Hon'ble Supreme Court in the matter of PTC India Ltd. vs Gujrat Electricity Regulatory Commission and Another in Civil Appeal No. 7524 of 2012 wherein it had observed that *"the State Commission and the Tribunal should, while deciding the main matter consider all objections including the one relating to their jurisdiction to entertain the matter. Any attempt by the parties to delay adjudication of the dispute deserves to be deprecated and the State Commission and the Tribunal are not expected to waste their time in dealing with objections of different hues."*

34. According to the Counsel of the Petitioner a bare perusal of the above judgments of the Hon'ble Supreme Court and Hon'ble Appellate Tribunal for Electricity clearly shows that the contention raised by the Respondent No.1 on the jurisdiction of the Hon'ble Commission is patently erroneous and cannot be sustained in law.

35. On the preliminary objection filed by the Respondent No. 1 the Commission vide its order dated 11.05.2015 decided that the issue of

maintainability of the Petition and jurisdiction of the Commission and merits of the case shall be decided simultaneously.

Objections on the merit of the case by the Respondent No. 1 through its Counter Affidavit and Written Submissions filed:

36. The Respondent No. 1 filed its Counter Affidavit dated 14.05.2015 to the Petition, wherein, it has raised various contentions for non-handing over of the 220kV R.C. Green Substation to the Petitioner.

37. According to the Respondent No. 1 the Petitioner being a distribution licensee cannot establish, own, operate and maintain a Substation above 33kV voltage level. For the sake of brevity other objections of the Respondent No. 1 have been summarized herein below:

- a) The Respondent No.1 raised the preliminary issues by way of separate application as well as through its main counter affidavit in response to the Petition filed by the Petitioner as there is No locus to maintain the Petition by the Petitioner, Misjoinder and non-joinder of the necessary parties and the Commission lacks the Jurisdiction to adjudicate the disputes between two licensees.
- b) Agreement signed by the Petitioner with Uttar Pradesh State Electricity Board (UPSEB) dated 15.11.1993. According to the said Agreement the Petitioner is liable to pay cost for the construction of the Transmission assets in Greater Noida area. It was also agreed that the Petitioner shall pay in advance an estimated amount to be intimated by the UPSEB to cover the cost of providing and installing the line, connecting mains and apparatus excluding transformers and the O.C.B. payable by the UPSEB but

such lines, mains and apparatus shall remain the property of the UPSEB, even if the cost is borne by the Petitioner. The relevant para of the Agreement dated 15.11.1993 is reproduced:

“the Company shall have to bear the proportionate cost of the capacity addition at 220kV and 132kV substations feeding to the Company in proportion to the additional demand required above 30 MVA and upto 45 MVA. In addition, the cost of works required to be carried out at 33kV level for meeting the above additional demand shall be borne by the Company in full. The Capacity addition amount shall be realized from the Company as soon as the demand increases beyond 30 MVA”.

- c) The Respondent No.1 further relied upon the termination of the Agreement dated 15.11.1993 by the UPPCL i.e. Respondent No.3 herein and its challenge before the Hon’ble High Court of Allahabad. The Hon’ble High Court vide its judgment dated 1st July, 2013 had upheld the termination notice dated 22.08.2008 and issued various directions to the parties of the matter failing which the license of the Petitioner was liable for revocation.
- d) No legal and vested rights exist on the basis of illegal and void lease deed/Agreements. In this regard, it was submitted that the said land on which the sub-station is constructed was registered much later date. In fact, the registration was done after the construction of 132kV R.C. Green Sub-station by UPPTCL.
- e) The Senior Counsel of the Respondent No. 1 further, contended that the Petitioner is claiming handing over of the 220kV R.C. Green Substation on the basis of lease deed executed after the construction said Substation. He further, contended that the lease

deed on which the Petitioner is claim the handing over of the said Substation is a void document for following reasons:

(i) In view of the Section 23 of the Contract Act. 1872

23. What consideration and objects are lawful, and what not.—

The consideration or object of an agreement is lawful, unless—

it is forbidden by law; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or

is fraudulent; or involves or implies, injury to the person or property of another; or

the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

- Is forbidden by law under Section 17 of the Act, 2003, according to that it is mandatory to take prior permission of the State Commission;
- I fraudulent as the lease deed gives an impression of transfer of open and vacant land for construction of sub-station despite the fact that the sub-station already existed;
- Is opposed to public policy – as the land was transferred or leased out to a private body without inviting open offers.

- The lease deed as per its cancellation clause itself provided for construction within the time provided under the lease, which not having been achieved has itself rendered the lease deed redundant and void. Therefore no rights accrue as per the lease deed in favour of the Petitioner.
- (ii) It was submitted by the Respondent No.1 that if the above averments made by the Petitioner are true then such an action of the Petitioner is in contravention to the provisions of Agreement dated 15.11.1993 signed between the then UPSEB and the Petitioner, conditions of the license laid down in Government Notification dated 30.08.1993 and provisions of the Electricity Act, 2003.
- (iii) It was further submitted by the Respondent No. 1 that the MoU's dated 09.09.2009 and 17.02.2012 were signed between to Government agencies only of operation and maintenance of the 220kV R.C. Green Substation. The reference of handing over of the said substation to a "representative" is for officials of both the Government entities not for the Petitioner. A transmission substation cannot be handed over to a non-licensee. The incorporation of clause "after construction the system constructed was to be handed over to the authority of its representative" in both the MoU's are void ab-initio.
- (iv) The Respondent No. 1 further contended that as per Section 17 r/w Section 49 of the Registration Act, 1908 an asset created over the land cannot be transferred by mere writing a letter to the Petitioner by the GNIDA.

- f) Disputes interse relate to GNIDA and UPPTCL (Respondent No. 1) being Government Agencies performing public functions, therefore, the same is beyond the scope of the Commission. Further, the Respondent No.1 submitted that the Petitioner is neither a transmission licensee to state claim on the said transmission sub-station nor a nominee of GNIDA, which is an Authority created by GoUP under the Uttar Pradesh Industrial Area Development Act, 1976 for the development of specified area in Greater Noida. Further, the Respondent No.1 submitted that legally, the Petitioner which is a distribution company operated by a private enterprise, cannot pose as a nominee of the said sub-station. In fact, it is the Respondent No. 1 which is a State Government Undertaking and therefore, qualifies to be a nominee of GNIDA which is also a State Authority.
- g) The Respondent No.1 further submitted that the records/documents establish R.C. Green Substation as an integral part of Transmission System. In fact, R.C. Green sub-station was a part of transmission system that is why GNIDA proposed to get it constructed, operated and maintained by Respondent No.1. Also, if R.C. Green sub-station would have been a distribution system then GNIDA would have asked the Petitioner to take up the above works. To substantiate its arguments the Respondent No. 1 has relied upon the letter dated 11.11.2005 of Chairman UPPCL addressed to Chairman GNIDA wherein it was mentioned that for meeting out the requirement of the Petitioner additional transmission works have to be carried out and the cost of these additional works will have to borne by Greater Noida/NPCL. The Respondent No. 1 also relied upon a letter dated 28.05.2007 of the Managing Director, UPPCL (the then transmission

licensee of the State) whereby it had provided the estimated cost of the 220kV Substation etc.

- h) The Respondents No.1 submitted that there is legal bar on transfer of Transmission System to Distribution Licensee in terms of abovementioned regulations. The GoUP notified the Respondent No.1 as the State Transmission Utility and is also engaged in the business of transmission of electricity in the State and therefore the Respondent No.1 is obliged to perform its functions under the provisions of Section 39 of the Electricity Act, 2003.
- i) As per the Respondent No.1, Clause (b) of Section 73 of the Act specifies the functions and duties of the Central Electricity Authority (CEA) and according to which it shall discharge all functions and duties among others, to specify the technical standards for construction of electrical plants and electrical lines. Accordingly, CEA made CEA (Technical Standards for Construction of Electrical Plants and Electric Lines) Regulations, 2010. The Respondent No.1 also relied upon provisions of Section 17 of the Electricity Act, 2003.
- j) The Respondent No.1 is also entitled to recover its all the investments and expenditure from Long Term Open Access (LTOA) Customers by way of transmission charges as determined by the State Commission in term of the Regulations framed by it for determination of tariff for transmission licensee under Section 62 of the Act, 2003.

38. The Respondent No.1 in the course of hearing also contended that under the Act, 2003 it is not required to own a Sub-Station or transmission system. The Respondent No.1 is only required to build, maintain and operate the Intra-State Transmission System. Accordingly, GNIDA, an authority owned by the Government of Uttar Pradesh, asked to construct

220 kV R.C. Green Sub-Station by it which is also owned by Government of Uttar Pradesh.

39. The Senior Counsel of the Respondent No.1 strongly argued that the documents submitted by the Petitioner seem to be a collusive work of the Petitioner with the officials of GNIDA. According to him the documents and circumstantial evidence proves and clarified that the 220kV R.C. Green Substation is owned by GNIDA and operated & maintained by the Respondent No.1. Since, both are owned by Government of Uttar Pradesh and services so rendered are in public interest. Therefore, its beyond any doubt that the 220kV R.C. Green Substation is a transmission Substation for the purpose of Intra-State transmission of electricity. The ownership claimed by the Petitioner cannot be sustained as per the legal provisions and hence the present Petition should be dismissed with cost.

Petitioner's Response to the Counter Affidavit and Written Submission and arguments placed by the Respondent No. 1 through its Rejoinder Affidavit, Written Submissions and during the course of various hearings placed before the Commission:

40. The Petitioner submitted that the Respondent No. 1 has raised the issue of non-handing over of the 220kV Substation being a distribution licensee either due to poor understanding/misunderstanding of the latest laws relating to the electricity sector or its intention is to grab the Substation. The Petitioner submitted that the entire capital expenditure on the distribution network namely 220kV lines including 220kV R C Green Substation and 33kV and below lines and Substations have been incurred by the Petitioner and have formed part of the capital cost to be serviced through tariff to the consumers in the licensed area of the Petitioner.

41. The Petitioner in response to the Agreement signed by it with Uttar Pradesh State Electricity Board (UPSEB) dated 15.11.1993 submitted that the same had been terminated by the Uttar Pradesh Power Corporation Ltd. (UPPCL – the Respondent No. 3 herein), successor of the then UPSEB vide its letter/notice dated 22.08.2008 and therefore, have no relevance in the present proceeding for handing over of the 220kV R.C. Green Substation, associated facilities and 220kV line from 400kV Greater Noida (Pali) Substation of Respondent No.1 to 220kV R.C. Green Substation of the Petitioner by the Respondent No. 1. As far as the directions of the Hon'ble High Court vide its judgment dated 1st July, 2013 is concerned the same has been challenged by the Petitioner before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court vide its orders dated 25.11.2013 and 28.03.2014 was pleased to stay the order of the Hon'ble High Court to the extent it relates to the revocation of license of the Petitioner.

42. The Counsel of the Petitioner has filed Letter of Allotment dated 25.03.2008, Lease Deed dated 03.12.2012 between the Petitioner and the GNIDA and transfer of all the assets created over the said land by the GNIDA after due approval in its 94th Board meeting on receipt of full payment by the Petitioner in support of its ownership over the 220kV R.C. Green Substation and associated facilities including 220kV lines etc. It was also contended by the Petitioner that the Respondent No. 1 have nothing in its favour to show their ownership of the 220kV R.C. Green Substation and also the ownership proofs of the Petitioner are not challenged before any court of law, therefore, the Section 23 of the Contract Act has no applicability in the matter. The Counsel of the Petitioner has, therefore, submitted that the issue raised by the Respondent No. 1 that there is no legal and vested rights exist on the

basis of illegal and void lease deed/Agreements are frivolous and are totally irrelevant to the issue pending adjudication before the Commission. The Respondent No. 1 has failed to substantiate its argument by any documentary evidences.

43. According to the Counsel of the Petitioner that the pleas of the Respondent No.1 that the Petitioner is barred by Section 17 of the Electricity Act, 2003 to acquire or purchase or takeover of any assets of any licensee without prior permission of the Commission is having absolutely no application in the present dispute pending before the Commission as the Petitioner is not acquiring or purchasing or taking over of any assets of the any licensee. The dispute is only related to handing over of the 220kV R.C. Green Substation and associated facilities including 220kV line which were constructed over Petitioner's land and it had reimbursed the entire cost to the GNIDA. The question of acquiring or purchasing or taking over of the assets of other licensee is nowhere relevant in the present proceedings pending adjudication before the Commission.

44. The Counsel of the Petitioner argued and submitted in regard to the contention of the Respondent No. 1 that the dispute related to ownership of 220kV R.C. Green Substation is interse relates to GNIDA and UPPTCL (Respondent No.1) being Government Agencies performing public functions are misconceived by the Respondent No. 1 and not applicable in the present proceedings pending before the Commission. The Counsel of the Petitioner has submitted that the Petitioner had conceptualized and initiated the establishment of 2 nos. of 220kV Substation in its licensed area with developing authority of Greater Noida i.e. GNIDA way back in the year of 2005 for smooth and continuous electricity supply to its

consumers. The Petitioner got the land allotted, the lease deed done in its favour and paid all the payments claimed by the GNIDA for transfer of 220kV lines, 220kV R.C. Green Substation and associated facilities. The dispute contended by the Respondent No. 1 between GNIDA and UPPTCL is totally misapprehended, the present dispute is only related to illegal occupancy of the 220kV R.C. Green Substation by the Transmission licensee of the Commission and handing over of the same to its legitimate owner i.e. Distribution licensee of the Commission. Therefore, the dispute is clearly between two licensees of the Commission and hence, it is very well within the scope and jurisdiction of the Commission.

45. On the contention of the Respondent No. 1 that the records/documents establishing R.C. Green Substation is an integral part of Transmission System the Counsel of the Petitioner on the basis of facts, documentary evidences and legal provision argued that the 220kV line emanating from 400kV Greater Noida (Pali) Substation of Respondent No.1, 220kV R.C. Green Substation and associated facilities are integral part of the Distribution System and not the Transmission system. The 220kV R.C. Green Substation and associated facilities have been created by the Petitioner and GNIDA for the exclusive use of the consumers of Greater Noida area i.e. licensed area of the Petitioner. The entire cost for the establishment of 220kV R.C. Green Substation and associated facilities including 220kV Lines has been met by the Petitioner including the cost that was initially incurred by GNIDA. All such costs have been reimbursed to GNIDA by the Petitioner.

46. The Petitioner on the issue of legal bar on transfer of Transmission System to Distribution Licensee submitted that the Petitioner is not

claiming the physical possession of 220kV R.C. Green Substation and Associated Facilities including 220kV Line emanating from 400kV Greater Noida (Pali) Substation as a Transmission system. The Petitioner has established the said infrastructure as an integral and essential part of its Distribution System and not as a Transmission System. As far as the applicability of the CEA (Technical Standards for Construction of Electrical Plants and Electric Lines) Regulations, 2010 ("CEA Technical Standard Regulations, 2010") is concerned it was submitted by the Counsel of the Petitioner that the same has been promulgated by the Central Electricity Authority only to provide technical standards/specifications for setting up of the electric substations by the concerned owner/person. In fact CEA Technical Standard Regulations, 2010 providing technical standards for construction of Sub-stations and Switchyards divided the same into three parts namely:

Part A: Sub-stations and Switchyards (66kV and above)

Part B: Sub-stations (33/11kV, 33/22kV and 22/11kV)

Part C: Distribution Sub-stations (DSS)

47. On bare perusal of the reading of the above provisions of the CEA Technical Standard Regulations, 2010, it can be clearly inferred that the Respondent No. 1 has only argued and referred Part C and intentionally omitted first two parts of the Regulations, 2010 to completely misguide and mislead the Commission. In fact Part A and Part B of the CEA Technical Standard Regulations, 2010 do not anywhere provide which types of Substations to be established by Transmission Licensees or Distribution Licensees. It simply provides technical specifications for Sub-stations and switchyards.

48. The Counsel of the Petitioner further submitted that it is wrong on the part of the Respondent No. 1 to claim that 220kV R.C. Green Substation is a

part of transmission network and therefore cannot be a subject matter of assets owned by the distribution company. Rather, the R.C. Green Substation is integral and essential part of the distribution network as provided in the exclusion to the definition of the transmission line under Section 2(72) of the Electricity Act, 2003 and the same has been recognized by the authorities when the R.C. Green was established by Respondent No. 1 on behalf of GNIDA and its representatives.

49. On the issue and contention raised by the Respondent No. 1 for non-handing over of the R.C. Green Substation to the Petitioner that a distribution licensee cannot establish, own, operate and maintain a Substation above 33kV voltage level the Petitioner submitted that a Distribution Licensee can own, operate and maintain Substations irrespective of voltage level as the Electricity Act, 2003 nowhere restricts or bound Distribution licensees to establish, own and operate an electric substation with respect to their voltage level. The Petitioner inter-alia submitted the following provisions in support of its arguments:

Section 2(17), 2(19) and 2(72) of the Electricity Act, 2003

2(17) "distribution licensee" means a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;

2(19) "distribution system" means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers;

2(72) "transmission lines" means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a substation, together with any step-up and step-down

transformers, switch-gear and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works;

Rule 4 of the Electricity Rule, 2005

4. *Distribution System.-* *The distribution system of a distribution licensee in terms of sub-section (19) of section 2 of the Act shall also include electric line, sub-station and electrical plant that are primarily maintained for the purpose of distributing electricity in the area of supply of such distribution licensee notwithstanding that such line, sub-station or electrical plant are high pressure cables or overhead lines or associated with such high pressure cables or overhead lines; or used incidentally for the purposes of transmitting electricity for others.*

50. It was further submitted by the Counsel of the Petitioner that the conjunction reading of the above provisions clearly establishes that there is no bar and restriction in the Electricity Act, 2003 on distribution licensees to establish, own, operate and maintain an electric substation having voltage level above 33kV. If the intention of the Electricity Act, 2003 was to bar/restrict distribution licensees for setting up and/or own and operate electric substations above 33kV voltage level or of any voltage level then the same would have been incorporated by the legislature in the Act itself. In fact, the intention of the legislature was to bring competition and eradicate the monopolies practiced by the erstwhile Boards in the electricity sector. The Electricity Act, 2003 casts universal service obligation on the distribution licensee to supply electricity to the consumers under Section 42 of the Act, 2003 irrespective of voltage level.

51. The Electricity Act, 2003 nowhere provides any ceiling and restriction on Distribution licensee to establish, own, operate and maintain electric Substations over and above 33kV voltage level for development of distribution system for supply of power to their consumers. On the contrary many distribution licensees in India are having electric Substations of 220/132kV namely CESC in Kolkata, Torrent Power in Ahemdabad & Surat, DPCL in West Bengal and HPSEB in Himachal Pradesh. This fact has also been acknowledged in the meeting dated 08.10.2014, undertaken by Ministry of Power (MoP). In the said meeting the Member (GO&D), Central Electricity Authority (CEA) and AGM (CTU) confirmed that as per Section 2(17) and 2(19) of the Electricity Act, 2003 there is no ceiling in terms of voltage level for distribution system and further observed that the distribution licensees are owning, operating and maintaining 220kV Voltage level systems.

52. It was also submitted that there are other provisions regarding permissibility to establish, own, operate and maintain 220kV Substation by the Petitioner being a distribution licensee, which are contained in Uttar Pradesh Electricity Regulatory Commission (Grant of Connectivity to intra-State Transmission System) Regulations, 2010, Central Electricity Authority (Technical Standards for connectivity to the Grid) Regulations, 2007, U.P. Electricity Supply Code 2005, CERC (Rates, Charges and Terms and Conditions for use of Intervening Transmission Facilities) Regulations, 2010 and Infrastructure and Industrial Investment Policy of U.P., 2012. The relevant provisions quoted in this regard by the Ld. Counsel for the Petitioner are as follows:

Uttar Pradesh Electricity Regulatory Commission (Grant of Connectivity to intra-State Transmission System) Regulations, 2010:

2(b) "applicant" means

.....

or

a distribution licensee, seeking connectivity for new/modified/augmented substation or generating station and / or electric line at voltage 33 kV and above; or

.....

Central Electricity Authority (Technical Standards for connectivity to the Grid) Regulations – 2007:

2(25) Requester:

“Requester” means a person such as Generating Company including captive generating plant or Transmission Licensee (excluding CTU & STU) or Distribution Licensee or Bulk Consumer, who is seeking connection of his new or expanded electrical plant to the Grid at Voltage level 33 kV and above.”

The UP Electricity Supply Code 2005:

Clause 2.2(w) of the UP Electricity Supply Code, 2005:

“Distribution System” means the system of wires and associated facilities between the delivery point on the transmission lines or the generating station connection and the point of connection to the installation of the consumers. It shall also include electric line, sub-station and electrical plant that are primarily maintained for the purpose of distributing electricity in the area of supply of such distribution licensee notwithstanding that such line, sub-station or electrical plant are high pressure cables or overhead lines or associated with such high pressure cables or overhead lines, or used incidentally for the purposes of transmitting electricity for others.

Clause 3.1 of the UP Electricity Supply Code, 2005:

“3.1 System of Supply

(a) The Licensee shall as far as possible supply maintain uninterrupted power supply at a frequency of 49.02-50.5 Hz, the frequency band for operation of the grid ordered by the Central Electricity Regulatory Commission.

(b) The declared voltage of the AC supply shall be as follows:

(1) Low Tension (LT) - Single Phase: 230 volts between phases and neutral. - Three Phase: 400 volts between phases.

(2) High Tension (HT) - Three Phases: 6.6 KV/11KV/33 KV. For existing Railway Traction supply shall be single phase at 25 KV.

(3) Extra High Tension (EHT) - Three Phase: 66 KV/ 132 KV/ 220 KV. Two Phase at 132 KV/220KV for existing Railway Traction.

Provided that the actual voltage/frequency may vary within the tolerance limits permissible under IER 1956 until regulations under Section 53 of the Electricity Act 2003 are framed.”

Provided also that the quality and reliability of supply to railway traction shall strictly be monitored by licensees to be within the permissible tolerance limits for which essential protective and corrective equipments shall be installed.

Clause-3.2 of the UP Electricity Supply Code, 2005:

“3.2 Classification of Supply

The Licensee, unless the technical conditions of the distribution system otherwise permit, shall give supply at a voltage and phase indicated as below:

(i) Low Tension

(a) All installations including irrigation and pumping, with a contracted load less than 5 KW - Single phase at 230 V

(b) Irrigation pumping and agricultural services and all installations with a contracted load of 5KW or more and up to 50 KW / 63 KVA - 3 Phase, 4 wire at 400 V

(ii) High Tension

*(a) Contracted load exceeding 56 KVA and up to 3000 KVA
- 3 Phase at 6.6 / 11 KV*

*(b) Contracted load exceeding 3000 KVA and up to 20000 KVA
- 3 Phase at 33 KV*

(iii) Extra High Tension

*Contracted load exceeding 20000 KVA - 3Phase at 132 /
220 KV*

Clause 4.6(d) of the UP Electricity Supply Code, 2005:

“4.6 Estimate

.....
*(d) The above estimate shall be based on Rs/KW (or Rs /
KVA) of the sanctioned / contracted load, or on Rs per
service installation for specific bands of contractual load
applied for OR sanctioned load at each voltage level up to
33 KV voltage on which supply is to be given. Beyond 33
KV voltage level, the charges for laying shall be based on
actual estimates of the licensees.”*

Clause 4.9(c)(i) of the UP Electricity Supply Code, 2005:

*“4.9 Electricity Connection in the Multistorey Buildings /
Multiplex/ Marriage Halls/Colonies to be developed by
Development Authorities and /or Private
Builders/Promoters/Colonizer / Institutions/ Individual
applicants. (Approved by Licensed Electrical Inspectors).*

.....
*(c) The applicant/ developer / development authority shall
be responsible to:*

*(i) Develop, construct the entire infrastructure required for
distribution network from the licensee’s substation
(220/132/33 KV or 33/11KV or 11/0.4 KV), upto the
connection outlets in individual owner’s premises, at his*

own cost, or by depositing fixed amount as per Cost Data Book, with the Licensee.

CERC (Rates, Charges and Terms and Conditions for use of Intervening Transmission Facilities) Regulations, 2010

2(f) “Intervening transmission facilities” means the electric lines owned or operated by a transmission licensee or distribution licensee where such electric lines can be utilised for transmitting electricity, to the extent of surplus capacity available therein, for and on behalf of a transmission licensee or trading licensee or a distribution licensee at their request and on payment of a tariff or charge;

Para 2.6.3 of Infrastructure and Industrial Investment Policy of U.P. – 2012.

“Efforts will be made for ensuring 24 hours uninterrupted power supply to the industries situated in all industrial areas of the State government. All the industries getting electricity supply from 132/220 KVA feeders, will be exempted from power cuts, until it is necessary for safety of the grid. For this purpose, generation and distribution systems will be adequately upgraded”.

53. On the issue of objection raised by the Respondents for not making Greater Noida Industrial Development Authority (“GNIDA”) a party to the Petition (the issue of Misjoinder and non-joinder of the necessary parties), the Petitioner submitted that this Commission itself decided to seek reply of GNIDA over the dispute between Noida Power Company Ltd. & Uttar Pradesh Power Transmission Corporation Ltd. and others under section 94 of the Electricity Act, 2003 to submit its reply on affidavit on the issue of whether M/s NPCL should be handed over the physical possession of 220 KV RC Green substation by UPPTCL or not?

54. In compliance of the Order of the Commission, GNIDA vide its affidavit dated 9th November, 2015 filed its reply confirming that the Petitioner is legitimate owner of the 220kV R.C. Green Substation and hence the physical possession thereof need to be given to them.

Response filed by Greater Noida Industrial Development Authority (“GNIDA”) dated 9th November, 2015

55. GNIDA clarified in its reply affidavit that in its 94th Board meeting held on 11th January 2013, under item 24 approved and decided to transfer the ownership of 220/132/33 kV R.C. Green Substation in favour of the Petitioner and informed the Managing Director of Respondent No. 1 vide its letter dated 11.02.2013 that pursuant to the decision of the Board of GNIDA, the Petitioner has paid Rs. 67.50 Crore (Rupees Sixty seven crore and fifty lacs only) to GNIDA in respect of the full cost of construction of 220/132/33kV R.C. Green Substation constructed on the land purchased and owned by the Petitioner and associated lines and therefore, ownership rights of the above vests in Petitioner. Further, GNIDA requested the Managing Director of Respondent No. 1 to handover the physical possession of the above Substation and associated lines to the Petitioner.

56. GNIDA from time to time vide its letters dated 10.06.2013, 13.08.2013 and 09.12.2013 reminded MD, Respondent No. 1 to handover the physical possession of the above Substation and Associated Lines to the Petitioner.

57. GNIDA, further, confirmed that way back in January 2013 the amount of Rs. 67.50 Crore (Rupees Sixty seven crore and fifty lacs only) received

from NPCL towards of full cost of construction of 220/132/33kV R C Green Substation and Associated Lines was appropriated in its books of accounts. The Statement of receipt and expenditure of GNIDA for Financial Year 2012-13 had been duly finalised on the basis of the aforesaid receipt of Rs. 67.50 Crore and transferring the ownership in favour of NPCL.

58. Accordingly, GNIDA in its affidavit dated 09.11.2015 submitted as under:

the land on which the 220kV R.C. Green Substation has been constructed is owned by the Petitioner,

the GNIDA in its 94th Board Meeting held on 11.01.2013 approved and decided to transfer the ownership of the 220kV R.C. Green Substation and associated lines to the Petitioner upon payment of Rs. 67.50 Crores to GNIDA,

the Petitioner accordingly paid Rs. 67.50 Crores to GNIDA on 29th January 2013 thus, the ownership rights on R.C. Green Substation and Associated Lines have vested in the Petitioner.

GNIDA thereafter, from time to time requested MD, UPPTCL to handover the physical possession of 220kV R.C. Green Substation and associated lines to the Petitioner, lastly with a copy to Secretary, UPERC for directing UPPTCL accordingly.

the Petitioner is a distribution licensee under the provisions of the Electricity Act, 2003 and the above 220 kV R.C. Green Substation is for exclusive use for the distribution of power to the consumers of Greater Noida area.

59. On the basis of the above GNIDA vide its affidavit dated 9th November, 2015 has confirmed that the Petitioner is a legitimate owner of the 220 kV

R.C. Green Substation and Associated Lines and being a distribution licensee of the Greater Noida, physical possession of 220 kV R.C. Green Substation and Associated Lines needs to be handed over to the Petitioner.

60. The Respondent No. 1 has also filed its Reply dated 4th January, 2016 to the Affidavit filed by the Greater Noida Industrial Development Authority (GNIDA) dated 9th November, 2015 contending more or less the same issues and reasons as cited in its main reply dated 14th May, 2015.

61. All the issues raised and cited by the Respondent No. 1 through its various applications, main reply, reply to the response of the GNIDA and/or arguments placed before the Commission from time to time and written submissions have been duly replied by the Petitioner and the same has been done by the Respondents in case of Petitioner's claim.

62. The Respondent No. 2 and 3 i.e. Uttar Pradesh State Load Dispatch Centre and Uttar Pradesh Power Corporation Ltd., respectively, have also filed their counter affidavits. All the contentions raised by the Respondents were duly replied by the Petitioner through its rejoinder affidavits, written submissions and arguments placed before the Hon'ble Commission in the course of various hearings and the same has been done by the Respondents in respect to the claim of the Petitioner.

Commission's observations:

Before going into several vexed issues pertinent for this case, the Commission observes that the dispute of ownership of 220 KV R. C. Green Substation is between Greater Noida Industrial Development Authority (GNIDA) and UP Power Transmission Corporation Ltd.

(UPPTCL)/UPPCL which are both entities owned by the State Government, administered by Industrial Development and Energy Department respectively. It is very important to know the stand of the State Government on the issue of ownership. It would be prudent, therefore, to refer the matter to Chief Secretary, U.P. to convey the views of the State Government in this regard, preferably within one month.

The next date of hearing shall be informed separately.

(S. K. Agarwal)
Member

(I. B. Pandey)
Member

(Desh Deepak Verma)
Chairman

Dated: 29.06.2016