

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

1. **Shri Ashok Basu, Chairman**
2. **Shri K.N. Sinha, Member**
3. **Shri Bhanu Bhushan, Member**

Petition No.51/2004

In the matter of

Request for certain clarification on the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 dated 26.3.2004

And in the matter of

Powerlinks Transmission Limited

...**Applicant**

The following were present.

1. Shri Utpal Dhar, Powerlinks Transmission Limited
2. Shri P.K. Jha, Powerlinks Transmission Limited
3. Shri S. Das, Powerlinks Transmission Limited
4. Shri P.P. Tripathi, Senior Advocate Powerlinks Transmission Limited
5. Shri S. Datta, Powerlinks Transmission Limited
6. Shri Sumit Gupta, Powerlinks Transmission Limited
7. Smt. Kamini Rai, Powerlinks Transmission Limited

**ORDER
(DATE OF HEARING : 24.6.2004)**

The petitioner in the present petition seeks a clarification on the allowance of Transmission Majoration Factor applicable to Tala Transmission System presently being executed by the petitioner.

2. The Commission was established under Section 3 of the Electricity Regulatory Commissions Act, 1998 (the 1998 Act) to discharge the functions under Section 13 thereof, which, *inter alia*, includes regulation of inter-state transmission of energy including tariff of the transmission utilities. Section 28 of the 1998 Act empowered the Commission to frame regulations to determine the terms and conditions for fixation of

tariff under Section 13. The Commission, in exercise of powers under Section 28 had notified these terms and conditions under the Central Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations, 2001 by notification dated 26.3.2001 (the notification dated 26.3.2001) effective for a period of three years from 1.4.2001. The notification dated 26.3.2001 was amended by the Central Electricity Regulatory Commission (Terms & Conditions of Tariff) (First Amendment) Regulations, 2001 incorporating, *inter alia*, Regulation 4.10A notified on 21.9.2001 which reads as under:

“4.10A Transmission Majoration Factor

In respect of the transmission projects executed through IPTC/JV routes, 10% (ten percent) mark up (pre-tax) on transmission charges shall be allowed as Transmission Majoration Factor.

Provided that Transmission Majoration Factor shall not be allowed on HVDC projects executed through IPTC/JV routes.

Provided further that the Transmission Majoration Factor shall be allowed during the entire life of the transmission project to the new investor entering the transmission sector through IPTC/JV routes and who has been granted a transmission licence under Section 27C of the Indian Electricity Act, 1910, up to 31-3-2004.”

3. The Commission has promulgated the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004, notified on 29.3.2004 (the 2004 Regulations) which govern the terms and conditions for determination of tariff for the period from 1.4.2004 to 31.3.2009. The 2004 Regulations do not contain any provision analogous to Regulation 4.10A in the notification dated 26.3.2001 for payment of Transmission Majoration Factor. Under these circumstances, the petitioner has sought clarification in regard to allowance of Transmission Majoration Factor.

4. The petitioner is a joint venture company promoted by Power Grid Corporation of India Limited and Tata Power Limited wherein Power Grid Corporation of India Limited holds 49% equity and Tata Power Limited holds 51% equity. The petitioner is executing the Tala Transmission System for evacuation of power from 1020 MW Tala Hydroelectric Project situated in Bhutan, and being developed by Government of India on bilateral basis. Based on an application made by the petitioner, it has been granted the transmission licence on 13.11.2003 for a period of 25 years. According to the petitioner, since it was granted the transmission licence before 31.3.2004, the allowance of the Transmission Majoration Factor should be available for the entire term of the licence issued to the petitioner. Accordingly, the petitioner seeks a confirmation or clarification to that effect.

5. We have heard Shri P.P. Tripathi, Senior Advocate for the petitioner.

6. The notification dated 26.3.2001 which provided for payment of Transmission Majoration Factor was valid up to 31.3.2004. Under these circumstances, the question arises as to whether with the expiry of the notification dated 26.3.2001, the provisions regarding the Transmission Majoration Factor as contained in Regulation 4.10A can still be enforced. The settled legal position is that the expiry of a temporary statute does not obliterate the rights or obligations under that statute. The nature of the right and obligations resulting from the provisions of the temporary statute and their character may have to be regarded in determining whether the said right or obligations endures beyond the life of the statute. The Hon'ble Supreme Court in State of Orissa Vs Bhupendra Kumar (AIR 1962 SC 945) has held that:

“.....in considering the effect of the expiration of a temporary statute, it would be unsafe to lay down any inflexible rule. If the right created by the

statute is of enduring character and has vested in the person, that right cannot be taken away because the statute by which it was created has expired.....”

7. For an answer to the question raised, we consider the background leading to incorporation of Regulation 4.10A in the notification dated 26.3.2001. The Regulation 4.10A notified on 21.9.2001 was preceded by the Commission’s order dated 29.5.2001 in Petition No.23/2001. The Commission recognised the fact that private investors in transmission had to incur additional liabilities in their efforts compared to long standing transmission utilities like Power Grid Corporation of India Limited. Accordingly, in respect of the projects executed by private investors, the Commission allowed 10% mark up (pre-tax) on transmission charges as Transmission Majoration Factor. The Commission directed that the Transmission Majoration Factor would be available to new entrepreneurs only for the period up to 31.3.2004, which implied that the benefit of Transmission Majoration Factor would continue to be available during the entire life of the project in respect of investors who entered the transmission sector up to the period 31.3.2004. The relevant extracts from the said order dated 29.5.2001 are reproduced below:

“22. In discussing the elements of “Insurance” and “Target Availability/incentive” for transmission lines, the Commission has mentioned a concept designated as “Transmission Majoration Factor”. Introduction of this factor is in due consideration of the fact that the Commission recognises the need for expediting new investments in the transmission sector. It has also recognised the fact that the private investors, in transmission, have to incur additional liabilities in their **pioneering efforts** compared to long standing central transmission utility like PGCIL. Accordingly, in respect of such lines executed by private investors, the Commission proposes to allow 10% mark up (pre-tax) on transmission charges as Transmission Majoration Factor. This would be available only to the new private investors who would like to enter the field. Accordingly, there would be no need to provide for TMF in respect of projects executed by PGCIL. This will not also apply to the HVDC projects to be executed by private investors involving heavy capital investments and do not, hence, justify a special treatment by way of Transmission Majoration Factor. In respect of PGCIL, the development surcharge of 10% provided to it takes care

of requirements of TMF allowed for private investors in respect of new investments.

23.....

24. Commission would like to make it clear that the TMF is a one-time measure to encourage private entrepreneurs to promote investments in transmission sector. We expect that the serious entrepreneurs would seize this opportunity and we also expect that the PGCIL would also expedite urgent action to cover all the critical lines within a limited period in meaningful and constructive cooperation with private investors. Accordingly, the TMF would be available to new entrepreneurs only for the period up to 31st March 2004. This would, thus, be co-terminus with the Commission's order dated 21-12-2000 on terms and conditions of tariff. However, the benefit of TMF would continue to be available during the entire life of the project in respect of the investors who enter the transmission sector up to the period ending 31-3-2004."

8. When seen in the light of above background, in our considered opinion, Regulation 4.10A ibid has conferred a substantive right on the petitioner to claim Transmission Majoration Factor. Therefore, despite the fact that no provision for payment of Transmission Majoration Factor is made in the 2004 Regulations, the petitioner shall be entitled to claim the Transmission Majoration Factor throughout the period of licence, which is 25 years from the date of issue.

9. With the above clarification, the petition stands disposed of.

Sd/-
(BHANU BHUSHAN)
MEMBER

Sd/-
(K. N. SINHA)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRMAN

New Delhi, dated the 1st July, 2004