

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:
Dr. Pramod Deo, Chairperson
Shri V.S.Verma, Member
Shri M.Deena Dayalan, Member

Date of Hearing: 28.6.2011
Date of Order: 7.6.2013

Petition No. 7/RP/2011

In the matter of

Petition under Section 94 of the Electricity Act, 2003 for review of the order dated 29.4.2011 in Petition No. L/44/2010-CERC.

**And
In the matter of**

NTPC Limited, New Delhi	...	Petitioner
Vs		
Power Grid Corporation of India Limited	...	Respondent

Petition No. 144/MP/2011

In the matter of

Transmission Service Agreement (TSA), Revenue Sharing Agreement (RSA) Billing, Collection and Disbursement (BCD) procedure under Central Electricity Regulatory Commission (Sharing of Transmission Charges and Losses) Regulation, 2010.

**And
In the matter of**

Neyveli Lignite Corporation Limited, Chennai	...	Petitioner
Vs		
Power Grid Corporation of India Limited	...	Respondent

Following were present:

1. Shri V.K.V Rama Rao, NTPC
2. Shri V.K.Padha, NTPC



3. Shri S.K. Sharma, NTPC
4. Shri G.K.Dua, NTPC
5. Shri V. Suresh, NLC

ORDER

The Petitioner, NTPC Limited has filed Petition No. 7/2004, seeking review of the order No. L-1/44/2010-CERC dated 29.4.2011, approving the Transmission Service Agreement, Revenue Sharing Agreement, Billing, Collection and Disbursement Procedure under Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 (hereinafter referred to as 'the Sharing Regulations') with following prayers:

- (i) Review the order No. L-1/44/2010-CERC dated 29.4.2011 to delete provision of extension of liability of paying charges to inter-State Generating Stations in case of partial payment/payment default by Long-Term Demand in BCD procedure;
- (ii) Review the order dated 29.4.2011 and delete the last sentence of Clause 16.4.4 of Transmission Service Agreement referring to cessation of DIC being party to the Agreement unless lenders of the concerned ISTS licensee have exercised their right of substitution; and
- (iii) Review the order dated 29.4.2011 to include new RPC certified transmission systems of non-ISTS licensees to be party to this agreement

2. Briefly, the facts of the case are that in accordance with the provisions of Chapters 5 and 6 of the Sharing Regulations, Power Grid Corporation of India Ltd. in its capacity as the Central Transmission Utility (CTU) had submitted the draft

Transmission Service Agreement (TSA), Revenue Sharing Agreement (RSA) and Billing, Collection and Disbursement (BCD) Procedure after taking into consideration the comments received from the stakeholders up to 3.12.2010 vide its letter No. C/01/Tr.Sh dated 31.12.2010. The Commission, vide its order dated 29.4.2011, had accordingly granted approval to these documents. Regulation 21 (2) of the sharing of transmission charges and losses regulations provides as under:

"(2) The Implementing Agency, NLDC, CTU, RLDC, RPC, ISTS Licensees and Designated ISTS Customers may make an application to the Commission and seek suitable order to remove any difficulties that may arise in implementation of these regulations."

3. NTPC has submitted as under:

- (i) Clause 2.2.1.3 of the Billing, Collection and Disbursement Procedure (BCD Procedure) provides that in case of partial payment/payment default by distribution utilities, payment liability shall be extended to original Designated ISTS Customers (DIC). However, clause 2.2.1.3 is not in consonance with the Sharing Regulations, under which the BCD Procedure has been framed;
- (ii) Chapter 6 of the Sharing Regulations provides that the commercial provisions relating to sharing of ISTS charges and losses shall be based on principles derived from Sharing Regulations. However, clause 2.2.1.3 is not in consonance with the Sharing Regulations;
- (iii) Regulation 33 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as 'the tariff regulations') and other tariff regulations issued by the

Commission from time to time make provisions for the regional transmission charges to be shared by regional beneficiaries, in proportion to the sum of their respective entitlements during the month in the inter-State generating stations in that region. Even when the tariff was being determined by Government of India, transmission charges were being paid directly by the long-term beneficiaries of ISGS. It has never been the practice to pay such charges by ISTS and thereafter, recover from the long-term beneficiaries as it will lead to unnecessary delay in recovery from long-term beneficiaries.

- (iv) Since the Regulation 8 (6) of the Sharing Regulations is consistent with tariff regulations, the responsibility of making payment on account of transmission charges should be only with long-term beneficiaries of ISGS;
- (v) Clause 2.2.1.3 of BCD Procedure will put substantial liabilities on ISGS and is not consistent with the Sharing Regulations and tariff regulations. By virtue of extending liability to ISGS in the event of default by Discoms, will only encourage Discoms to default in making payment towards transmission charges. Therefore, clause 2.2.1.3 of the BCD Procedure needs to be deleted;
- (vi) There is an apparent inconsistency in clause 16.4.4 on the issue of substitution right of ISTS licensee. It has been explained that

there seems to be an inadvertent error in following para of 16.4.4 which is not relevant, needs to be deleted :

"Unless the lenders of the concerned ISTS Licensee have exercised their rights of substitution as per the provisions of Article 17.3 of this Agreement and the Commission has agreed to such substitution right of the Lenders or otherwise directed by the Commission, the concerned DIC shall cease to be a Party to the Agreement on the date of expiry of Termination Notice".

- (vii) The existing ISTS to be covered under the Sharing Regulations shall include ISTS owned by CTU, ISTS licensees, non-ISTS licensees with RPC certified ISTS assets and deemed ISTS. Any new system shall become a part of this pool on signing supplementary Agreement or deemed signatory as owner of deemed ISTS. The clause B of supplementary Agreement at Annexure-A of TSA provides that new ISTS Licensee who has been awarded license to provide inter-State transmission service by CERC are envisaged as party to the Agreement only. There is no provision for any new system of non-ISTS Licensee whose assets have been certified by RPC as being used for inter-State transmission to become a party to the Agreement, as in the case of existing system. Suitable provisions to be included at clause 2.2 of the TSA and Supplementary Agreement to include non-ISTS Licensee building ISTS as party to the TSA;
- (viii) Clause 2.3 provides for owner of deemed ISTS as deemed signatory. In clause 2.3, owner of deemed ISTS should also be a signatory to the Agreement to bind them to various obligations and rights.

4. Neyveli Lignite Corporation Limited (NLC) has filed Petition No. 144/2011 seeking removal of difficulty under Regulation 21 (2) of the Sharing Regulations. Issues raised by the NLC are similar to NTPC issues. NLC *inter-alia* has submitted as under:

- (i) In the approved BCD Procedure, safeguards are available for the Central Transmission Utility against any default payment whereas there is no protective mechanism for the generators against non-payment by their long-term customers;
- (ii) There are already provisions in BCD procedure to recover the dues through Letter of Credit mechanism or through Central Electricity Regulatory Commission (Regulation of Power Supply) Regulations, 2010, whereas there are no such provisions available for the generators to recover its defaulted Point of Connection (PoC) charges from the long-term customers;
- (iii) Clause 2.2.1.3 of the approved BCD procedure which fixes the generators as liable for the default of their long term customers is detrimental to NLC. Instead of making the generators liable for the non-payment of their PoC charges by their long term customers, Power Grid can enforce the safeguards and protections available in the BCD procedure for recovering the dues. It has been explained that there is an apparent inconsistency on the issue of default payment of the PoC charges of the generator by the respective

long-term customers and the following clause 2.2.1.3 of BCD procedures needs to be deleted:

"Notwithstanding the Clause 2.2.1.1 and 2.2.1.2 above, in the event of partial payment/payment default by the DICs above, the liability of paying the charges shall be extended to the original DIC for whom the charges have been computed...."

5. Having heard the representatives of the parties and perused the material on record, we proceed to dispose of these petitions.

6. Section 94 (1) (f) of the Electricity Act, 2003 provides that the Commission shall have the same power as are vested in a civil court under the Code of Civil Procedure, 1908 for reviewing its decisions, directions and orders . Order XLVII Rule 1 of the Code of Civil Procedure provides that any person considering himself aggrieved by an order may apply for its review to the court, which passed the order under the following circumstances:

- (a) On discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced at the time when the decree was passed or order made, or*
- (b) on account of some mistake or error apparent on the face of the record, or*
- (c) for any other sufficient reasons.*

7. The review petitioner's plea for review is to be considered in the light of the above noted legal position.

8. It is clarified that the Commission, vide order No. L/1/44/2010-CERC dated 29.6.2011, has already considered the submission made by the petitioners, NTPC and NLC. Para 3 and 6 of the said order dated 29.6.2011 provides for non-payment of transmission charges by the beneficiaries of the long term PPAs

and non-ISTS licensee to be considered as deemed signatories to the Agreement. Relevant paras of the said orders are reproduced below:

"3. We notice that the PPAs between the central generating companies and the beneficiaries indicate that the sale of power would be at the generator bus bar and the transmission charges and losses are to be borne by the beneficiaries. Therefore, we find merit in the argument of the central generating companies that this would be an additional financial liability on such generating companies, in case of non-payment of transmission charges by the beneficiaries of the long-term PPAs, since the off-take of power is at the generator bus bar. This provision did not exist earlier. Therefore, we approve the deletion of the above quoted provision in the BCD Procedure for the generators who have a long-term PPA and where sale of power is at the generator bus bar.

6. In line with Clause 2.3 of the TSA for the Deemed ISTS Licensees, we observe that there should be a provision for the non ISTS Licensees also to be considered as deemed signatories to this Agreement. We therefore direct that the transmission assets certified by RPCs for carrying inter-State power shall also be included in the above clause."

9. With regard to deletion of last sentence of Clause 16.4.4 of Transmission Service Agreement, this issue has already been settled in our order dated 15.6.2011. Relevant portion is reproduced below:

'4. CTU has further intimated that there is an apparent inconsistency between clause No. 16.4.4 and clause 17.3 on the issue of substitution right of lenders of DICs. It has been explained that para 17.3 is for substitution rights of lenders of ISTS licensees only, and not for DICs and the following portion of 16.4.4 which is not relevant need to be deleted:

"Unless the Lenders of the concerned ISTS Licensee have exercised their rights of substitution as per the provisions of Article 17.3 of this Agreement and the Commission has agreed to such substitution rights of the Lenders or otherwise directed by the Commission."

10. It is also clarified that by the said orders, CTU was directed to carry out the modifications in the TSA and BCD procedure. CTU was further directed to take necessary action for getting the Transmission Service Agreement and Revenue Sharing Agreement signed by the concerned parties at the earliest.

11. The Petition Nos. 7/RP/2011 and 144/2011 are disposed of with the above clarification.

Sd/-

(M.Deena Dayalan)
Member

sd/-

(V.S.Verma)
Member

sd/-

(Dr. Pramod Deo)
Chairperson