

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 25/RP/2015
In Petition No. 91/TT/2012**

Coram

**Shri Gireesh B. Pradhan, Chairman
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member**

Date of Hearing : 10.12.2015

Date of order : 29.12.2015

In the matter of

Review of Commission's order dated 26.5.2015 in Petition No. 91/TT/2012 in the matter of approval of transmission tariff for Combined Assets for transmission system associated with Parbati-III-HEP in Northern Region for 2009-14 tariff period .

And in the matter of:

NHPC Limited,
NHPC Office Complex, Sector-33,
Faridabad-121 003.

.....**Petitioner**

Vs

Power Grid Corporation of India Limited,
"Saudamani", Plot No.2,
Sector-29, Gurgaon 122 001

....**Respondents**

For Petitioner : Shri Rajeev Shankar Divedi, Advocate, NHPC
Shri K. Nayak, NHPC
Shri A.K. Pandey, NHPC

For Respondents : Shri M.G. Ramachandran, Advocate, PGCIL
Ms. Ranjitha Ramachandran, Advocate, PGCIL
Shri Avinash M. Pavgi, PGCIL
Shri R. Prasad, PGCIL
Mrs. Sangeeta Edwards, PGCIL



ORDER

The review petition has been filed by NHPC seeking review of the Commission's order dated 26.5.2015 in Petition No. 91/TT/2012 wherein transmission tariff for Combined Assets for transmission system associated with Parbati-III-HEP in Northern Region for 2009-14 tariff period was allowed to PGCIL.

Background of the case

2. As per the investment approval (IA) dated 31.7.2006, the assets covered under Petition No. 91/TT/2012 were scheduled to be commissioned within 42 months from the date of IA i.e. by 1.2.2010. PGCIL claimed tariff for four assets associated with Parbati-III HEP. Transmission tariff for three assets, as per the details given below, commissioned during 2009-14 tariff period was granted.

Asset	Scheduled COD	Date of commercial operation	Delay
Asset-I 400 kV D/C Parbati- Amritsar T/L along with associated bays at both ends Associated bays for	1.2.2010	1.8.2013	42 moths
Asset-II LILO of 2nd Ckt of Parbati-II- Koldam T/L at Pooling Station along with associated bays and LILO at Parbati-III		1.8.2013	
Asset-III 400 kV 80 MVAR Bus Reactor at Parbati Pooling Station along with associated bays		1.8.2013	

2. In para 23 of the order, the Commission decided as under:-

"The Commission vide RoP dated 9.10.2014 directed the petitioner to submit on affidavit the status of actual usage of the asset. The petitioner vide affidavit dated 3.12.2014 has submitted that in view of the requirement of NHPC as conveyed by its letter dated 12.6.2013, the petitioner has commissioned the asset with effect from



1.8.2013. It is observed that unit # 1 and 2 of Parbati HEP-III of NHPC were commissioned on 24.3.2014. Since the transmission assets were commissioned with effect from 1.8.2013 at the request and behest of NHPC, we are of the view that the transmission charges from 1.8.2013 to 23.3.2014 shall be borne by NHPC. Our decision is in conformity with Regulation 8(6) of Central Electricity Regulatory Commission (Sharing of Inter-state Transmission Charges and Losses) Regulations, 2010 as amended from time to time which provides as under:-

“(6) For Long Term Customers availing supplies from inter-state generating stations, the charges payable by such generators for such Long Term supply shall be billed directly to the respective Long Term customers based on their share of capacity in such generating stations. Such mechanism shall be effective only after “commercial operation” of the generator. Till then, it shall be the responsibility of generator to pay these charges.”

3. Aggrieved by the above decision directing NHPC to bear the charges from 1.8.2013 to 23.3.2014, NHPC has sought review on the following grounds:-

- a) The Petition No. 91/TT/2012 was filed by the PGCIL, Parbati III HEP is one of the projects of the NHPC and the transmission tariff is sought to be determined for the purpose of evacuation of power from the project of NHPC. Accordingly, the NHPC is not only proper party but also necessary party, without whose presence, the proper adjudication/fixation of tariff was not possible. Hence, the bills raised on NHPC on the basis of impugned order, has no binding effect. The order under review suffers from the vice of being in violation of principle of natural justice;
- b) PGCIL has wrongly submitted that the Asset-I was commissioned on 1.8.2013. As per Regulation 3(12)(c) of 2009 Tariff Regulations read with Regulation 5(2) of 2014 Tariff Regulations, PGCIL was required to submit the concerned RLDC certificate covering all the requirements mentioned in the



- above mentioned regulations. The petitioner has not filed the RLDC certificate;
- c) There was no flow of power at all for 24 hours, no communication system, no metering system and therefore, simply charging of the line cannot be considered as an asset under commercial operation. The commissioning of ATS was not done in coordinated manner;
 - d) An indemnification agreement was executed between the review petitioner and PGCIL on 22.7.2005. As per the agreement the commissioning schedule for ATS was January 2010. The commissioning schedule for power project was November, 2010. For the purpose of indemnification, the zero date was fixed to be November, 2010.
 - e) Both the parties had agreed to indemnify each other's terms of the agreement thereof and they have further agreed to limit the payment. It was agreed between NHPC and the PGCIL that there would be a time gap of 10 months between the COD of the PGCIL's ATS and petitioner's Parbati III HEP. The generation plant cannot be tested and commissioned without the availability of transmission line; and
 - f) Apart from NHPC, there are other generating stations which would be benefited by this instant ATS. In such a situation, AFC should have been apportioned between all the generating stations to be benefited by it;



- g) PGCIL has filed a review petition on 28.7.2015 i.e. Petition No. 19/RP/2015 seeking review of the order dated 26.5.2015 in Petition No. 91/TT/2012, wherein the Commission has not allowed the transmission tariff for Asset-II of the transmission system associated with Parbati-III-HEP on the ground that a portion of the LILO circuits of Asset II is not utilized as Koldam Switchyard is not commissioned. PGCIL made NHPC as a respondent in the review petition;
- h) The Commission vide order dated 27.8.2015 in Petition No. 19/RP/2015 gave the direction that NHPC is at liberty to take appropriate action with regard to the said decision in accordance with law. Accordingly, NHPC has file the present review petition.

6. The matter was heard on 10.12.2015 on "admission". During the hearing, the learned counsel of the review petitioner reiterated the submissions made in the review petition.

7. The learned counsel for PGCIL submitted that the instant review petition is time barred. The order was issued on 26.5.2015 and posted on website on 27.5.2015. The petitioner has filed the review petition on 17.11.2015. As per Regulation 103 (1) of the Conduct of Business Regulations, 1999 an application of review shall be filed within the 45 days of making such decision, directions or order. Hence, review petition has been filed beyond the limitation period and there is inordinate delay. The learned counsel further submitted that PGCIL in the letter dated 3.6.2015 (received by NHPC on 9.6.2015) informed that review petitioner that the impugned order has been



passed by the Commission and the liability had been cast upon NHPC to make the payment of transmission charges from 1.8.2013 to 23.3.2014.

8. We have considered the reply of PGCIL and the submissions of the review petitioner and have perused the material on record.

9. As regards, the limitation period, Regulation 103 Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 provides as under:-

“Review of Decisions, Directions and orders 103.

(1) The Commission may, on an application of any of the persons or parties concerned made within 45 days of making such decision, directions or order, review such decision, directions or orders and pass such appropriate orders as the Commission deems fit.

(2) An application for such review shall be filed in the same manner as a Petition under Chapter II of these Regulations.

(3) An application for review shall be listed before the Commission within a period of 15 days from the date of filing such application.

(4) The Review applications shall be disposed of within 15 days from the date of hearing if the review is not admitted and within a period of two months from the date of admission if the application is admitted. Provided that where the review applications cannot be disposed of within the period as stipulated, the Commission shall record the reasons for the additional time taken for disposal of the review applications.”

10. Therefore, the review petition has to be filed within 45 days of the making of such order. It is pertinent to mention that the order of the Commission was issued on 26.5.2015 and uploaded on the website 27.5.2015. Learned counsel for PGCIL submitted that a letter dated 3.6.2015 enclosing the impugned order was sent to NHPC which was received by NHPC on 9.6.2015. This fact has not been denied by NHPC. NHPC decided not to file any review petition within 45 days of the receipt of the letter on 9.6.2015. Therefore, in the normal course, this application is time barred. However,



certain further developments may be noted. PGCIL has filed Review Petition No. 19/RP/2015 seeking review of the impugned order for an altogether different reason in which NHPC has been made a party. NHPC has filed reply in the said Review Petition in which NHPC also raised the issue of sharing of transmission charges. Consequent to the objection of learned counsel for PGCIL that NHPC cannot raise a fresh issue in the reply to the review petition of PGCIL. NHPC has filed the present review petition. In our view, though NHPC has not followed the correct procedure for approaching the Commission in time, nevertheless it is beyond doubt that NHPC has pursued the matter with bonafides. Considering, this aspect, we condone the delay in filing the review petition. However, it is observed that NHPC has been made liable to pay the transmission charges till commissioning of its generation without hearing NHPC. We are of the view that NHPC is a necessary party and it should have been made a party to the proceedings and NHPC should have been heard before issuing the impugned order. We are of the view that there is an apparent error in the impugned order and it needs to be corrected. Accordingly, the delay in filing the instant review petition is condoned and the review petition is admitted.

11. Coming to the merit of review, we find that NHPC in its letter dated 12.6.2013 had requested PGCIL to commission the transmission line by 1.8.2013. Since PGCIL has acted on the request of NHPC, the transmission charges for the date of commission till the date of commercial operation was directed to be paid to NHPC. NHPC has submitted in the review petition that they have an indemnification agreement with PGCIL to take care of the delay and further that there are other generators which are linked to the transmission line. These facts were not brought by PGCIL to the notice of



the Commission. Moreover, NHPC was also not made a party to the petitioner by PGCIL as a result of which NHPC did not have the opportunity to present its case. Keeping in view this factor, we are of the view that there is sufficient reason to allow the review petition. Accordingly, we recall para 23 of the impugned order and direct that the original petition shall be set down for hearing on the limited aspect of sharing of the transmission charges of the transmission line. PGCIL is directed to serve the necessary material in this respect on NHPC and any other generator which is affected by this transmission line. The parties shall complete their pleading within a period of 15 days from the date of issue of this order. The petition shall be listed for hearing on 19.1.2016.

12. Review Petition No. 25/RP/2015 is disposed of in terms of the above.

-Sd/-
(A.S. Bakshi)
Member

-Sd/-
(A.K. Singhal)
Member

-Sd/-
(Gireesh B. Pradhan)
Chairperson

