

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 42/TT/2013

Coram:

**Shri Gireesh B. Pradhan, Chairperson
Shri A. K. Singhal, Member**

Date of Hearing : 22.04.2014

Date of Order : 10.06.2015

In the matter of:

Determination of transmission tariff of 2 nos. 400 kV line bays along with 2 nos. 80 MVAR switchable line reactors at 400 kV Siliguri Sub-station and 2 nos. 400 kV line bays at Bongaigaon Sub-station (Anticipated DOCO: 1.2.2013) under Transmission Schemes for enabling import of NER/ER surplus power by NR in Eastern Region for tariff block 2009-14 under Regulation-86 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009.

And in the matter of:

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

.....**Petitioner**

Vs

1. Rajasthan Rajya Vidyut Prasaran Nigam Limited,
Vidyut Bhawan, Vidyut Marg,
Jaipur- 302 005
2. Ajmer Vidyut Vitran Nigam Limited,
400 kV GSS Building (Ground Floor), Ajmer Road,
Heerapura, Jaipur
3. Jaipur Vidyut Vitran Nigam Limited,
400 kV GSS Building (Ground Floor), Ajmer Road,
Heerapura, Jaipur
4. Jodhpur Vidyut Vitran Nigam Limited,
400 kV GSS Building (Ground Floor), Ajmer Road,
Heerapura, Jaipur
5. Himachal Pradesh State Electricity Board,
Vidyut Bhawan, Kumar House Complex Building II,
Shimla-171 004



6. Punjab State Electricity Board,
The Mall, Patiala-147 001
7. Haryana Power Purchase Centre,
Shakti Bhawan, Sector-6,
Panchkula (Haryana)-134 109
8. Power Development Department,
Govt. of Jammu and Kashmir,
Mini Secretariat, Jammu
9. Uttar Pradesh Power Corporation Limited,
(Formerly Uttar Pradesh State Electricity Board)
Shakti Bhawan, 14, Ashok Marg,
Lucknow-226 001
10. Delhi Transco Limited,
Shakti Sadan, Kotla Road,
New Delhi-110 002
11. BSES Yamuna Power Limited,
Shakti Kiran Building, Karkardooma,
Delhi-110 092
12. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place, New Delhi
13. North Delhi Power Limited,
Power Trading & Load Dispatch Group,
Cennet Building, Adjacent to 66/11kV Pitampura-3,
Grid Building, Near PP Jewellers,
Pitampura, New Delhi-110 034
14. Chandigarh Administration,
Sector-9, Chandigarh
15. Uttarakhand Power Corporation Limited,
Urja Bhawan, Kanwali Road,
Dehradun
16. North Central Railway,
Allahabad
17. New Delhi Municipal Council,
Palika Kendra, Sansad Marg,
New Delhi-110 002
18. Sterlite Industries (I) Limited,
SIPCOT Industrial Complex,
Madurai Bypass Road, TV Puram P.O,
Tuticorin-628 002, Tamil Nadu

.....Respondents



For petitioner : Shri S.K. Venkatesan, PGCIL
Ms Seema Gupta, PGCIL
Shri S.S. Raju, PGCIL
Ms Sangeeta Edwards, PGCIL

For respondents : Shri Padamjit Singh, PSPCL
Shri T.P.S. Bawa, PSPCL
Shri R.B. Sharma, Advocate, BRPL

ORDER

The petition has been filed by Power Grid Corporation of India Limited (PGCIL) seeking approval of the transmission charges for Asset-1: 2 nos. 400 kV line bays along with 2 nos. 80 MVAR switchable line reactors at 400 kV Siliguri Sub-station and Asset-2: 2 nos. 400 kV line bays at Bongaigaon Sub-station (hereinafter referred to as "transmission asset") under Transmission Schemes for enabling import of NER/ER surplus power by NR in Eastern Region, for the period from 1.2.2013 to 31.3.2014, based on the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as "the 2009 Tariff Regulations"). The petitioner had prayed for approval of provisional tariff as per clause (4) of Regulation 5 of the 2009 Tariff Regulations.

2. The Investment Approval (IA) for the project was accorded by the Board of Directors of the petitioner vide Memorandum No. C/CP/Import of NER/ER surplus power by NR dated 19.9.2011 at an estimated cost of for ₹8042 lakh, including IDC of ₹317 lakh (based on 2nd Quarter, 2011 price level). The transmission project was scheduled to be commissioned within 18 months from the date of IA and accordingly the scheduled commissioning of the project works out to 18.3.2013 i.e. 1.4.2013. The petitioner vide affidavit dated 2.9.2013 has submitted that Asset-1 and Asset-2 were commissioned on 1.4.2013 and 1.6.2013 respectively.



3. The petitioner vide affidavit dated 12.2.2014 has submitted that the transmission assets were made ready for its intended use but due to delay in commissioning of the Siliguri-Bongaigaon 400 kV D/C transmission line, the petitioner is not able to provide the transmission service for the reasons not attributable to petitioner, its suppliers or contractors. The petitioner has submitted that these transmission assets qualify for approval of the date of commercial operation prior to the elements coming into regular service under Regulation 3(12)(c) of the 2009 Tariff Regulations. The petitioner has requested to invoke the provisions of Regulation 3(12)(c) of the 2009 Tariff Regulations and provision of Regulation 24 of Conduct of Business Regulations, 1999 for approval of the date of commercial operation of the instant assets as 1.4.2013 and 1.6.2013.

4. During the hearings on 25.2.2014, the representative of the petitioner submitted that the bays at Siliguri and Bongaigaon ends, under the scope of the petitioner, were commissioned without the line, as the line falls under the scope of M/s Sterlite Limited (M/s Sterlite). The representative of BRPL submitted that the petitioner has not prayed for approval of the date of commercial operation in the petition and the petitioner being the CTU should have coordinated with M/s. Sterlite as provided under the Electricity Act, 2003 for simultaneous commissioning of both the bays and the lines. The representative of petitioner submitted that the Commission has approved the date of commercial operation without corresponding generation in few other cases like Kudankulam in line with the provisions under the 2009 Tariff Regulations.

5. The petitioner was directed to implead M/s. Sterlite as one of the respondents and directed M/s. Sterlite to file reply and the petitioner to file its rejoinder, if any. The petitioner, in response, vide affidavit dated 18.3.2014 submitted that M/s Sterlite was made one of the respondent but no reply has been received from it.



6. PSPCL during the hearing on 22.4.2014 and vide affidavit dated 21.5.2014, and UPPCL vide affidavit dated 26.5.2014 have made similar submissions on the issue of approval of date of commercial operation. Both have submitted that the line is being constructed by M/s. Sterlite, the sub-station bays and equipment are being provided by the petitioner and the Bongaigaon-Siliguri transmission line is expected to be commissioned in June, 2014, thus the petitioner is claiming the tariff for the idle and unused bays as standalone assets without the transmission system being completed. As such the Regulation 3(12)(c) of the 2009 Tariff Regulations is not applicable. It was the responsibility of the petitioner to coordinate with the private ISTS licensee, under section 38 of the Electricity Act, 2003, so as to match the bays with the line. The petitioner is silent on the coordination efforts made by the petitioner in this regard. Further, when the transmission line was awarded to M/s. Sterlite, the transmission charges were to be loaded to the Northern Region beneficiaries only till this interim arrangement was replaced by PoC sharing mechanism and as such the instant petition should not be allowed till the line becomes operational. In view of this, there is no justification for the petitioner to claim transmission charges for idle and unused line bays for a period of about 16 months. PSPCL and UPPCL have submitted that the issue of date of commercial operation of the instant transmission assets has to be dealt as per the law laid down by Hon'ble Appellate Tribunal for Electricity (hereinafter "the Tribunal") in the judgement dated 2.7.2012 in Appeal No. 123 of 2011.

7. In response, the petitioner has submitted that the contention of PSPCL that the provisions of Regulation 3(12)(c) of the 2009 Tariff Regulations is not applicable to the present case is not correct, as the Commission in its order dated 9.5.2013 in



Petition No. 57/2011 had approved the date of commercial operation. Further, the instant assets have been commissioned during the 2009-14 period and hence the assets should be allowed tariff under the 2009 Tariff Regulations. The petitioner has also submitted that the matter of coordination and review of Bongaigaon-Siliguri Transmission Line was taken up with the CEA and Ministry of Power. The petitioner has also submitted that the issue of Barh-Balia, transmission line in Appeal No 123 of 2011 is sub-judice before the Hon'ble Supreme Court, the judgment of which is awaited and it is not applicable in the case of instant transmission assets.

8. While reiterating the submissions made earlier, the representative of the BRPL submitted that the petitioner commissioned the bays at Siliguri and Bongaigaon ends without the line, which falls under the scope of M/s Sterlite. As the petitioner did not invoke Regulation 3(12)(c) of the 2009 Tariff Regulations at the time of filing the petition, the Commission should not allow tariff till the line becomes operational. The representative of the petitioner clarified that at the time of filing the petition in January, 2013, the asset was anticipated to be commissioned in April, 2013 and M/s Sterlite had stated that the lines would come by March, 2013 in the CEA Coordination meeting of July, 2012 and as such it invoked Regulation 3 (12) (c) of the 2009 Tariff Regulations for approval of date of commercial operation, as the line, which is not within its scope, got delayed and is beyond the control of the petitioner. He further submitted that the instant project has been conceived as a standalone project for construction of bays.

9. We have considered the submissions made by the petitioner and the respondents. The second proviso to Regulation 3(12)(c) of the 2009 Tariff Regulations provides as under:-



“3. (12) ‘**Date of commercial operation**’ or ‘**COD**’ means

(c) in relation to the transmission system, the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service after successful charging and trial operation:

Provided that the date shall be the first day of a calendar month and transmission charge for the element shall be payable and its availability shall be accounted for, from that date:

Provided further that in case an element of the transmission system is ready for regular service but is prevented from providing such service for reasons not attributable to the transmission licensee, its suppliers or contractors, the Commission may approve the date of commercial operation prior to the element coming into regular service.”

10. A perusal of second proviso reveals that this proviso can be invoked only when a transmission element is in regular service but is prevented for providing such service for the reasons not attributable to the transmission licensee. As per Regulation 3(12)(c), a transmission element is in regular service only after successful charging and trial operation. The Tribunal in its judgement dated 2.7.2012 in Appeal No. 123 of 2011 has examined the provisions of Regulation 3(12)(c) and has come to the conclusion that three conditions are required to be met for declaration of COD under the said regulation. Relevant paragraph of the judgement is extracted as under:-

“10. A transmission system may comprise of one or more transmission lines and sub-station, inter-connecting transformer, etc. According to above definition an element of the transmission system which includes a transmission line, could be declared as attained COD if the following conditions are met:

- i) It has been charged successfully,
- ii) its trial operation has been successfully carried out, and
- iii) it is in regular service.”

11. As per the Tribunal’s judgement, an element of transmission system can be declared as having attained commercial operation only if it has been charged successfully after successful trial operation and is in regular service. In the instant



case, Bays and Line Reactors covered in the petition were ready, but the successful trial operation and charging could not be carried out without the Bongaigaon-Siliguri Transmission Line getting commissioned. As per the information available in the website of CEA, Bongaigaon-Siliguri Transmission Line was got completed in November, 2014. As the Bays and Line Reactors could not have been charged for trial operation without the availability of the transmission line, the case is not covered under the second proviso of Regulation 3(12)(c) of the 2009 Tariff Regulations. Accordingly, the date of commercial operation of Asset-1 and Asset-2 cannot be approved as 1.4.2013 and 1.6.2013 respectively as claimed by the petitioner.

12. We are of the view that the instant transmission assets could be charged and trial operation could be successfully carried out only on commissioning of the Bongaigaon-Siliguri Transmission Line, which is stated to have been commissioned in November, 2014. Accordingly, the date of commercial operation of the transmission assets could be only during the 2014-19 tariff period. However, the petitioner has claimed tariff for the transmission assets as per the 2009 Tariff Regulations. As such, the petitioner is directed to file a fresh petition claiming tariff for the transmission assets as per the 2014 Tariff Regulations within 30 days of issue of this order.

13. This order disposes of Petition No. 42/TT/2013.

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson

