

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Petition No. 91/TT/2012

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A. K. Singhal, Member

Shri A. S. Bakshi, Member

Dr. M. K. Iyer, Member

Date of Hearing : 08.03.2016

Date of Order : 21.07.2016

In the matter of:

Determination of transmission tariff for combined assets for transmission system associated with Parbati-III HEP in Northern Region for tariff block 2014-19 under Regulation 86 of Central Electricity Regulatory Commission (Conduct of Business) Regulation, 1999 and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014.

And in the matter of

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

.....Petitioner

Vs

1. Rajasthan Rajya Vidyut Prasaran Nigam Ltd.,
Vidyut Bhawan, Vidyut Marg,
Jaipur- 302 005.
2. Ajmer Vidyut Vitran Nigam Ltd.,
400 kV GSS Building (Ground Floor), Ajmer Road,
Heerapura, Jaipur.
3. Jaipur Vidyut Vitran Nigam Ltd.,
400 kV GSS Building (Ground Floor), Ajmer Road,
Heerapura, Jaipur.
4. Jodhpur Vidyut Vitran Nigam Ltd.,
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,
Thermal, Shed TIA,
Near 22 Phatak,
Patiala-147 001.
7. Haryana Power Purchase Centre,
Shakti Bhawan, Sector-6,
Panchkula (Haryana)-134 109.
8. Power Development Department,
Government of Jammu and Kashmir,
Mini Secretariat, Jammu.
9. UP Power Corporation Ltd.,
Shakti Bhawan, 14, Ashok Marg,
Lucknow-226 001.
10. Delhi Transco Ltd.,
Shakti Sadan, Kotla Road,
New Delhi-110 002.
11. BSES Yamuna Power Ltd.,
BSES Bhawan, Nehru Place,
New Delhi.
12. BSES Rajdhani Power Ltd.,
BSES Bhawan, Nehru Place,
New Delhi.
13. North Delhi Power Ltd.,
Power Trading & Load Dispatch Group,
Cennet Building, Adjacent to 66/11 kV Pitampura-3,
Grid Building, Near PP Jewellers
Pitampura, New Delhi-110 034.
14. Chandigarh Administration,
Sector-9, Chandigarh.
15. Uttarakhand Power Corporation Ltd.,
UrjaBhawan, Kanwali Road,
Dehradun.
16. North Central Railway,
Allahabad.



17. New Delhi Municipal Council,
Palika Kendra, Sansad Marg,
New Delhi-110 002.

18. NHPC Limited
N.H.P.C Office Complex
Faridabad, (Haryana)-121003

19. NTPC Limited
NTPC Bhawan
Core 7, Scope Complex, Institutional Area
Lodhi Road, New Delhi-110003

20. Parbati Koldam Transmission Company Limited
Building No. 10 B, 12th Floor
DLF Cibre City, Shankar Chauk
Haryana

.....**Respondents**

For Petitioner : Ms Ranjeetha Ramachandran, Advocate, PGCIL
Shri Rakesh Prasad, PGCIL
Shri S.S. Raju, PGCIL
Shri Jitendra Kumar Jha, PGCIL

For Respondents : Shri Rajiv Shankar Dvivedi, Advocate, NHPC
Shri Gaurav Gupta, Advocate, PSPCL

ORDER

Power Grid Corporation of India Limited (hereinafter referred to as “the petitioner”) filed Petition No.91/TT/2012 seeking transmission tariff for Asset I : LILO of 400 kV Parbati-II-Koldamckt I at parbati Poling Polling Point alongwith associated bays; Asset II: LILO of 400 kV parbati-II-Koldam line ckt II at Parbati III alongwith associated bays and LILO of 400 kV parbati-III-Koldam at Parbati Pooling Point alongwith associated bays; Asset III: 400 kV D/C Parbati Pooling Point – Amritsar line alongwith associates bays; and Asset IV: 80 MVAR bus reactor at Parbati Pooling alongwith associated bays for 2009-14 tariff block in terms of the Central Electricity



Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter "the 2009 Tariff Regulations").

2. Asset IV was commissioned during 2014-19 tariff period and accordingly PGCIL filed Petition No.411/TT/2014 seeking tariff under the 2014 Tariff Regulations. Asset I, II and III were considered in Petition No. 91/TT/2012. Asset I and III were granted tariff vide order dated 26.5.2015 and Asset II was not allowed tariff as it was not being utilized since the Koldam switchyard had not been commissioned and the part of LILO could not be put to trial operation. As regards the sharing of transmission charges, the Commission observed that since the assets covered in the petition were commissioned on 1.8.2013 on the request of NHPC even though the generation assets were commissioned on 24.3.2014, the transmission charges from 1.8.2013 to 23.3.2014 would be borne by NHPC. The relevant portion of the order is extracted hereunder:-

"23. 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 said order, NHPC filed a review petition i.e. Petition No. 25/RP/2015 wherein it contended besides other points that the liability of



transmission charges from 1.8.2013 to 23.3.2014 was imposed on NHPC without even impleading the NHPC as a respondent and accordingly sought review of the order dated 26.5.2015. The Commission vide order dated 29.12.2015 in 25/RP/2015 recalled the matter on the limited aspect of sharing of transmission charges. The relevant extract of order is as under:-

"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 from the date of commissioning till the date of commercial operation was directed to be paid by 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 petition 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."

4. Consequent to the issue of the review order, the main petition was heard on 28.1.2016 and the parties were directed to complete their pleadings. NHPC has filed reply vide affidavits dated 12.2.2016 and 22.2.2016. PGCIL filed the rejoinder to the replies of NHPC vide affidavit dated 25.2.2016.

5. Gist of submissions of NHPC are as follows:-

a) Prior to issuance of Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010, NHPC had signed Indemnification Agreement dated 22.7.2005 with PGCIL in case of ATS for Parbati III Power Station to protect mutual interest on NHPC and PGCIL. The highlights of bilateral agreement are as under:-



- 1) Commissioning schedule of Associated transmission System(ATS): January, 2010;
 - 2) Commissioning schedule of Power Project: November, 2010;
 - 3) Zero date for the purpose of indemnification: November, 2010;
 - 4) The progress of ATS and generating units was to be regularly monitored at the level of Directors of the Companies;
 - 5) In case of delay in commissioning of ATS/Power station, the indemnification liability is limited to six months from zero date;
 - 6) In case of Force majeure clause no party is liable for any claim; and
 - 7) The agreement is applicable till the settlement of claim.
- b) PGCIL did not honour its own Indemnification Agreement dated 22.7.2005 and it did not make NHPC a respondent. PGCIL vide letter dated 3.6.2015 has raised invoice of ₹7478 lakh for recovery of full AFC prior to commissioning of 1st unit of Parbati-III power station.
- c) NHPC vide its letter dated 12.6.2013 had requested PGCIL to make the transmission line available by June, 2013 which could not be achieved by the PGCIL. The units were spun in May/June but PGCIL did not make any communication with NHPC for connecting the ATS System with Power Station and their intention to do so by 1.8.2013. Only part system of Asset II was available for evacuation of Power from Parbati-III Power Station. The second evacuation of Ckt of Parbati-III is in operation from 3.11.2015, hence request of PGCIL to consider its tariff for Asset II may be considered as 3.11.2015. The complete scope under ATS has been completed with effect from 3.11.2015.
- d) As per 2014 Tariff Regulations, RLDC certificate is required for successful trial operation; however, no such certificate from concerned RLDC has been filed by the PGCIL. In Form, the column of communication system



has been left blank. The communication system is one of the most crucial and essential requirements for regular service of the transmission system. In the absence of the same, the transmission system cannot be said to have become fully operational.

- e) NHPC sent three letters on 8.8.2013, 24.9.2013 and 7.10.2013 requesting PGCIL to commission PLCC between Parbati III and Banala. No response was received from PGCIL. It shows that the communication system was not in place for complete ATS. As such, the claim of PGCIL that COD was 1.8.2013 is not correct.
- f) Without proper COD, PGCIL has back-charged its line. Further, back charging of the line was done without coordination with the NHPC. Consequently, NHPC sent a letter to PGCIL to shutdown its line and not to take back-charging.
- g) It was agreed between PGCIL and the NHPC that there will be difference of 10 months between the commissioning of the PGCIL's ATS and NHPC's Parbati III HEP project stage III. Generation plant cannot be started without the transmission line and usually there is a gap between the commissioning of transmission assets and generation and accordingly, gap of 10 months was agreed by the parties. This fact was concealed by PGCIL from the Commission.
- h) The tariff order in Petition No. 91/TT/2012 is for recovery of AFC for Assets I and III and these are the common assets to be used for evacuation of several hydro stations (Parbati-II, Sainj and Koldam). Therefore, recovering all the transmission charges from the date of charging of transmission line



upto commissioning of Parbati III units only from NHPC is not justified. Other generators also must be impleaded as respondents and the transmission charges have to be suitably apportioned among all the respondents.

- i) PGCIL has based its claim on NHPC's request to commission the transmission line in June, 2013. NHPC was all set to commission its generation in June, 2013. The first unit was spun in May, 2013, but PGCIL did not make any communication with NHPC for connecting the ATS with the generating station and its intention to do so by 1.8.2013. The transmission line was back-charged but it remained under shut down from 6.9.2013 to 22.10.2013 on the request of NHPC for making connections, testing, etc. which could otherwise have been done prior to 1.8.2013.
- j) The communication system was not in place when the transmission line was charged, which is required as per Regulation 4(3) of the 2014 Tariff Regulations. At such, it is not correct for PGCIL to claim that the ATS of Parbati-III, Parbati-II and pooling point service station at Banala was commissioned on 1.8.2013 on the request of NHPC.

6. The petitioner in its rejoinder has clarified as follows:-

- a) Scope of present proceeding is limited to the liability of NHPC to bear the transmission charges for Asset I and III and no extraneous issue is to be considered. The commercial operation of Assets I and III has already been approved and same is not an issue in the current proceedings.



- b) Issues related to Asset II are outside the scope of the present proceeding. Asset I is connected to Asset III and comprises of the 400 kV D/C Parbati-Amritsar transmission line with associated bays at both ends including the 400 kV bus reactor at Parbati Pooling Station along with associated bays. This is an independent element duly completed and put under commercial operation with all metering arrangements prior to the date of COD i.e. 1.8.2013. The metering arrangements in Parbati Pooling Station were in place on 30.6.2013 prior to the declaration of commercial operation. Parbati Hydro Power station of NHPC is beyond the Parbati Pooling Station and outside the scope of Asset I and Asset III (outside Banala Sub-station). Non-availability of any element in Asset II cannot in any manner affect the declaration of COD of Asset I and III.
- c) Asset I and III were completed in all aspects and available for regular service prior to 1.8.2013 and the declaration of COD is consistent with Regulation 3(12) of the 2009 Tariff Regulations.
- d) As regards NHPC's contention that its liability to pay transmission charges is limited to six months as per the Indemnification Agreement, Assets I and III were put under COD on 1.8.2013 and PGCIL is entitled to the transmission charges and it has to be borne by NHPC or included in the PoC charges. The assets were intended for evacuation of power generated by NHPC at its Parbati Hydro Power Station and NHPC specifically called for early commissioning of Assets I and III. Accordingly, assets were completed in July, 2013 and put under commercial operation on 1.8.2013.
- e) The trial operation has been defined for the first time in 2014 Tariff Regulations. The conditions provided in the definition of trial operation



including RLDC certification, etc. cannot be applied retrospectively for the assets commissioned on 1.8.2013

- f) Communication system of Asset I and III were part of the assets and hence they are not separately mentioned in Form 2 of the tariff petition filed. It is wrong on the part of NHPC to state that communication system was not available as on 1.8.2013.

7. Learned counsel for NHPC, during the hearing on 8.3.2016, while reiterating the submissions made in its replies, submitted that PKTCL and NTPC who are also using these lines and hence transmission charges should be distributed among them on pro-rata basis and NHPC alone is not liable to pay the charges. He submitted that NHPC was all set to commission the generating station in the month of June,2013 but PGCIL did not intimate about the commissioning of the ATS on 1.8.2013.

8. In response, learned counsel for the petitioner submitted that only para 23 of the order dated 25/RP/2015 pertaining to liability of transmission charges from 1.8.2013 to 23.3.2014 has been recalled. NHPC cannot be allowed to raise the issue of COD in these proceedings. She submitted that communication system is part of an asset and they are commissioned alongwith Assets I and III on 1.8.2013. Hence, they were not shown separately in the tariff forms filed along with the petition. She submitted that as provided under Regulation 8(6) of Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010, NHPC has to bear the transmission charges as its generation stations were not commissioned. As regards NHPC's contention that it was not taken into confidence by PGCIL about the commissioning of the assets, she submitted that



PGCIL informed, vide letter dated 18.7.2013, that its transmission lines are ready for commissioning. On the issue of non-submission of RLDC certificate regarding COD of the assets, she submitted that submission of RLDC certificate is a requirement of 2014 Tariff Regulations and the instant assets were commissioned on 1.8.2013 and the 2014 Tariff Regulations are not applicable in the present case. As regards the applicability of Indemnification Agreement, she submitted that the Indemnification Agreement was signed before the notification PoC regulations. She submitted that the Commission has to take a decision whether the Indemnification Agreement signed before the notification of the PoC regulations are applicable.

Analysis and decision

9. We have considered the submissions of petitioner and respondent NHPC. Asset I and III (transmission assets) was commissioned with effect from 1.8.2013. The generating station of NHPC was commissioned on 23.3.2014. Since the transmission assets were commissioned at the behest of NHPC, the Commission vide order dated 26.5.2015 had directed that the transmission charges for the transmission assets would be borne by NHPC from 1.8.2013 to 23.3.2014. NHPC filed a review petition which was allowed to the limited extent of sharing of transmission charges and this petition was set down for hearing on this aspect. NHPC in its reply, written submissions and hearing before the Commission has submitted that NHPC is not liable to bear the transmission charges of the transmission assets for the above period for the several reasons. PGCIL has contested the contentions of NHPC and has stated that NHPC is liable to pay the charges as directed by the Commission. The contentions of NHPC and PGCIL have been dealt with in the succeeding paragraphs.



10. NHPC requested PGCIL to commission the transmission assets in June 2013. However, the transmission assets were commissioned in 1.8.2013 without information and consultation with NHPC. PGCIL has submitted that NHPC vide its letter dated 12.6.2013 requested the petitioner to make available the transmission line and accordingly the petitioner completed the Assets I and III in all respects in July, 2014 and the assets were declared under commercial operation with effect from 1.8.2013. Further, the petitioner has placed on record a letter dated 18.7.2013 informing NHPC about the commissioning of the transmission system and its readiness for the evacuation of power for Parbati –III HEP. The letter is extracted as under:-

“It is to inform to your good self that POWERGRID has commissioned its 400 kV transmission system associated with Parbati-III HEP from Parbati-III to Amritsar including 400 kV Banala GIS on 13th of July, 2013. The system has already been back charged from Amritsar end to Parbati-III dead end tower.

The transmission system is ready for evacuation of power from your Parbati-III HEP. However from safety point of view, the jumpers at dead end tower No. 7/0 at Parbati end are kept open.

Kindly intimate your readiness to POWERGRID to facilitate the power evacuation from Parbati-III HEP.”

In view of the above, we are unable to accept the contention of NHPC that the petitioner did not inform about the commissioning of the transmission system. The petitioner has back charged the transmission system from Amritsar end to the Parbati-III dead end tower since the generating station of NHPC was not ready and the petitioner has specifically requested NHPC to convey its readiness to facilitate the power evacuation from Parbati-III HEP. Further NHPC has admitted that the transmission assets were back-charged but remained under shutdown from 6.9.2013 to 22.10.2013 at the request of NHPC for making connections/testing etc.



11. NHPC has submitted that as per the Indemnification Agreement between NHPC and PGCIL, there is a gap of 10 months between the commissioning of the transmission and the commissioning of the power project. PGCIL has concealed this fact from the Commission. The petitioner has submitted that even assuming but not admitting that NHPC was to take 10 months time for commissioning activities, the petitioner would be entitled to transmission charges for such period. We have considered the submission of the parties. The gap of 10 months between the commissioning of the transmission system and the generating station has been provided as the generating station would require the transmission line for drawal of start up power and evacuation of power during testing and commissioning prior to the commercial operation of the generating station. Since the transmission line was to be put into use during this period by the generating station, NHPC would be liable to pay the transmission charges from the date of commissioning of the transmission assets till the commissioning of the generating station.

12. NHPC has further submitted that only part of the ATS was available for evacuation of power from Parbati-III HEP power stations. The AFC cannot be charged till the commissioning of the full system. The complete scope of the ATS was completed on 3.11.2015 and the tariff should be considered with effect from that date. The petitioner has submitted that the assets were intended for evacuation of power generated by NHPC from Parbati-III HEP and more importantly NHPC vide letter dated 12.6.2013 has specifically called upon the petitioner to commission the asset at an early date. We have considered the submissions. According to the Tariff Regulations, tariff can be determined for the whole of the transmission system or transmission line or the sub-station. Therefore, there is no embargo for



commissioning of Asset I and III of the transmission system without commissioning the Asset II. Further, the commissioning Asset I and III has been done at the behest of NHPC and intimated to NHPC by the petitioner vide letter dated 18.7.2013. There is no document on record which shows that NHPC had insisted on commissioning of Asset II for evacuation of power from Parbati-III HEP.

13. NHPC has further submitted that the petitioner has commissioned Asset I and III with effect from 1.8.2013 without trial operation, without obtaining certificate from RLDC and without the communication system being in place on the date of the COD. The petitioner has submitted that there was no requirement for RLDC certificate under 2009 Tariff Regulations as Asset I and III were commissioned during the 2009-14 period. As regards the communication system, PGCIL has submitted that communication is intrinsic part of the transmission line and the communication system was commissioned along with Asset I and III. We agree with the petitioner's clarification that the communication system is commissioned alongwith Asset I and III.

14. NHPC has also submitted that there are common assets used for evacuation of power from other hydro stations/pooling stations such as Parbati-II, Sainj and Koldam etc. in the region apart from Parbati III of NHPC. Therefore, the cost has to be suitably apportioned between all the generating stations. These generating stations need to impleaded as party to the proceedings so that finality can be assigned to instant proceedings. The petitioner has submitted that the contention of NHPC is misconceived as the above assets were established for intended use for evacuation of power from NHPC which is evident from the Investment Approval



dated 9.8.2006. We have considered the submissions. The Commission vide order 29.12.2015 while disposing the review petition had directed as under:-

“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.”

In accordance with our direction, the petitioner has made NHPC, NTPC and PKTCL as parties to the petition and has served copies of the pleadings on them. However, NTPC and PKTCL have neither filed any reply nor participated in the proceedings. Therefore, there is no material on record which substantiates the claim of NHPC that the Asset I and III have been used by NTPC and PKTCL or any other generator during the period 1.8.2013 to 23.3.2014. The petitioner has submitted that the subject transmission asset were established for the intended use of evacuation of power from Parbati III HEP of NHPC and accordingly NHPC may be directed to pay the transmission charges w.e.f 1.8.2013 or in the alternative, such charges should be recovered as part of the PoC charges. Since, the transmission assets were developed exclusively for NHPC as ATS, it is the liability of NHPC to pay the transmission charges till the unit of generating stations are commissioned and start supplying to the beneficiaries. If the transmission asset were used by any other generator during the period, then the transmission charges paid by them should be utilised for reducing the liability of NHPC.

15. In our order dated 29.12.2015 in Petition No. 25/RP/2015, we have recalled para 23 of the order dated 26.5.2015 in Petition No. 91/TT/2012 and set down the hearing of the petition on the limited aspect of the transmission charges of the transmission line. In the light of the discussion in the preceding paragraphs, paragraph 23 of the order dated 26.5.2015 shall be read as under:-



"23. 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. 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 in terms of Regulation 8(6) of Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 as amended from time to time. The CTU is directed to examine whether these transmission assets were used by other generators during the period in question, and if so, the transmission charges paid by them shall be utilised to reduce the liability of NHPC."

16. Accordingly, Petition No. 91/TT/2012 is disposed of.

(Dr. M.K. Iyer)
Member

(A.S. Bakshi)
Member

(A.K. Singhal)
Member

(Gireesh B. Pradhan)
Chairperson

