

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

PETITION NO. 29/RP/2016

Coram:

**Shri A.S. Bakshi, Member
Dr. M. K. Iyer, Member**

**Date of Hearing: 10.08.2016
Date of Order : 24.11.2016**

In the matter of:

Review of Commission's order dated 29.4.2016 in under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations' 1999.

And in the Matter of:

Power Grid Corporation of India Ltd,
SAUDAMINI, Plot No. 2,
Sector-29, Gurgaon-122001 (Haryana)

.....Petitioner

Versus

1. Rajasthan Rajya Vidyut Prasan Nigam Limited
Vidyut Bhawan, Vidyut Marg, Jaipur - 302005
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-171004



6. Punjab State Power Corporation Limited
Thermal Shedtia, Near 22 Phatak
Patiala-147001
7. Haryana Power Purchase Centre
Shakti Bhawan, Sector~6
Panchkula (Haryana) 134 109
8. Power Development Department
Government of Jammu & Kashmir
Mini Secretariat, Jammu
9. Uttar Pradesh Power Corporation Ltd.
(Formerly Uttar Pradesh State Electricity Board)
Shakti Bhawan, 14, Ashok Marg
Lucknow - 226 001
10. Delhi Transco Ltd
Shakti Sadan, Kotla Road,
New Delhi-110002
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 Limited
Power Trading & Load Dispatch Group
CENNET Building, Adjacent to 66/11 kV
Pitampura-3 Grid Building Near PP Jewellers,
Pitampura New Delhi - 110034
14. Chandigarh Administration
Sector -9, Chandigarh.
15. Uttarakhand Power Corporation Ltd.
Urja Bhawan, Kanwali Road, Dehradun.
16. North Central Railway, Allahabad.
17. New Delhi Municipal Council
Palika Kendra, Sansad Marg,
New Delhi-110002

....Respondent(s)



The following were present:

For Petitioner: Shri Matrugupta Mishra, Advocate, PGCIL
Shri Piyush Singh, Advocate, PGCIL
Ms. Suparna Srivastava, Advocate, PGCIL
Shri M. M. Mondal, PGCIL
Shri S. S. Raju, PGCIL
Shri S. K. Venkatesan, PGCIL
Shri Rakesh Prasad, PGCIL
Shri Piyush Awasthi, PGCIL
Shri R. P. Padhi, PGCIL

For Respondents: None

ORDER

This review petition has been filed by Power Grid Corporation of India (PGCIL) seeking review of the order dated 29.4.2016 in Petition No. 100/TT/2014, wherein the tariff for Asset A: LILO of 400 kV S/C Bhiwadi-Bassi transmission line at Kotputli Sub-station and Asset B: 315 MVA 400/220 kV ICT-I & II with 6 no 220 kV Line Bays at Kotputli Sub-station (hereinafter referred to as “transmission assets”) was allowed for the tariff period 2014-19 under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014.

Brief facts of the case:-

2. PGCIL claimed tariff for Assets A and B initially in Petition No.100/TT/2014 and later vide affidavit dated 1.2.2016 splits Asset B into two parts namely B(i) and B(ii) and commissioned them on 1.4.2014 and 10.9.2014 respectively. The instant transmission assets were scheduled to be commissioned on 1.12.2011 as per the Investment Approval dated 20.2.2009. The assets A, B(i) and B(ii) were commissioned on 1.4.2014, 1.4.2014 and 10.9.2014 respectively after delay of 28 months to 33 months. The petitioner has sought approval of COD of the instant

assets under proviso (ii) of Regulation 4(3) of 2014 Tariff Regulations due to non-readiness of downstream assets of RVPNL. The Commission had allowed the transmission tariff for the instant asset by order dated 29.4.2016. The Commission had directed to levy the transmission charges on the beneficiary Discoms alone till the commissioning of the downstream system. The relevant extract of the order dated 29.4.2016 in Petition No. 100/TT/2014 is as under:-

"46. The transmission charges for the instant assets shall be borne by the beneficiary Discom till the commissioning of the downstream system. Once the downstream system is commissioned the billing, collection and disbursement of the transmission charges approved shall be governed by the provisions of Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010, as amended from time to time, as provided in Regulation 43 of the 2014 Tariff Regulations.

3. Aggrieved by the said order, PGCIL has filed the instant review petition seeking review of the order dated 29.4.2016 in Petition No. 100/T/2014. The review petitioner has submitted the following reasons for seeking the review of order dated 29.4.2016:-

- i. The review petitioner has been entrusted with the implementation of transmission system associated with Northern Region System Strengthening Scheme-XV (NRSS-XV) and thereafter filed a Petition bearing No. 100/TT/2014 for approval of COD and for determination of tariff for period from COD to 31.3.2019 for the Assets.
- ii. As regards the status of 220 kV downstream network at Kotputli Sub-station, the review petitioner vide affidavit dated 1.2.2016 in the main petition, has submitted that 2 nos. of 220 kV downstream transmission lines have been commissioned on 27.5.2015 out of total 06 no. 220 kV downstream

transmission lines of RVPNL. However, the review petitioner has already completed its work covered under the scope of work but the concerned STU has not completed their scope of work i.e. the implementation of associated 220 kV feeder connections.

- iii. The review petitioner has sought the approval of COD under Proviso (ii) of Regulations 4(3) of 2014 Tariff Regulations, as the transmission system is not being charged since the downstream system to be implemented by RVPNL was not commissioned. The review petitioner initiated formal communications with the state utilities and other concerned agencies as per the provisions of Section 38(2)(b) of the Electricity Act 2003, regarding the commissioning of the downstream assets, which was evident from the periodic communications made with the STU.
- iv. As per Regulation 43 of the Tariff Regulations, 2014, as set out herein below, the charges determined shall be borne by all the beneficiaries or long term transmission customers in accordance with the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 (“2010 Sharing Regulations”)

“Regulation 43...

"(1) The sharing of transmission charges shall be governed by the Sharing Regulations.

(2) The charges determined in this regulation in relation to the communication system forming part of the transmission system shall be shared by the beneficiaries or long term transmission customers in accordance with the Sharing Regulations:

Provided that charges determined in this regulation in relation to communication system other than central transmission system shall be shared by the beneficiaries in proportion to the capital cost belonging to respective beneficiaries.”

- v. The Commission in line with the proviso (ii) of the Regulation 4(3) of 2014 Tariff Regulations, which stipulates that wherein a transmission licensee has completed its scope of work associated with the transmission scheme or its element thereof, but the same is not successfully charged due to the reasons not attributable to the transmission licensee or its contractor or supplier, but on account of delay in commissioning of the downstream system, has considered the date of commissioning of the subject assets as 1.4.2014 and 10.9.2014 and accordingly determined tariff for the 2014-19 as the tariff period. Further, the review petitioner can charge the transmission tariff only after date of commercial operation (COD) as per Regulation 4(3) of the 2014 Tariff Regulations.
- vi. The linking of recovery of the transmission charges and postponing the recovery through the 2010 Sharing Regulations till the availability of the downstream is not envisaged either in the Tariff Regulations or Sharing Regulations and there exist no contractual liability of a state transmission utility or Discoms to pay the transmission charges till the commissioning of the downstream system. In view of this, such a mode of recovery has not been envisaged in the Regulations nor can be made a subject matter of contract at this stage when the transmission system is ready and had achieved COD.
- vii. On introduction of the 2010 Sharing Regulations, it was an obvious deviation from the earlier principle of recovery of costs from the beneficiaries of a

particular region who required a transmission project. There is only one pool through which all the transmission charges will be recovered, and there cannot be any sub-pools within this one pool. Even the transmission charges of different ISTS Licensees would be recovered through one pool.

- viii. Since POC is in itself a self-contained code for recovery of transmission charges, it cannot be that part of the cost of the transmission assets, which is recovered through non-POC mechanism and the other part through POC mechanism.
- ix. The Petition No.100/TT/2014 covers six (6) nos. 220 kV feeders to be implemented by RVPNL, who despite several correspondences to make the associated 220 kV feeder available have been able to commission only two (2) feeders, whereas the balance 4 nos. 220 kV feeders, downstream system, despite being in the scope of RVPNL are yet to be completed/commissioned. In the said order, it has been directed to bill to concerned STU i.e. RVPNL, which is not in line with the 2010 Sharing Regulations. Hence, it was requested to include it under PoC w.e.f 1.4.2014 itself i.e. from the date of completion of scope of work by POWERGRID.
- x. The review petitioner took all due measures within their scope to complete the subject transmission system and hence not at fault and acted in bonafide manner and the Commission has notified proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations which ensures that the transmission licensee is not penalized if such licensee or contractor or supplier is not at fault.

xi. As regards, any charge or levy of any nature by the stakeholder of the sector, shall have to be in compliance with the provisions of the Act and the relevant regulations. After the introduction of the PoC regime by virtue of the 2010 Sharing Regulations read with Billing Collection and Disbursement Procedure laid down under the 2010 Sharing Regulations, the Transmission Licensee is authorized to levy charges in the manner enumerated in the above regulatory fabric, hence, any aberration to the provisions of the statute or the regulations made there under is an error apparent on the face of the record, which may be cured or corrected at the instance of the Commission or the stakeholders, as the case may be.

xii. The observations of the Commission under Para 42 of the said order is violative of the provisions of the 2010 Sharing Regulations and statute and also against the very ethos on the basis of which the entire principle of PoC mechanism is based. It is settled principle of law that no levy or charge can stand the test of legality, unless and until the same is specifically and unequivocally prescribed under the statute or regulations as the case may be.

4. The matter was heard on 10.8.2016. Learned counsel for the review petitioner reiterated the submissions made in the review petition and submitted that there exist no contractual liability of a state transmission utility or Discoms to pay the transmission charges till the commissioning of the downstream system. Learned counsel further submitted that 2010 Sharing Regulations does not allow to recover charges in the manner directed by the Commission in the impugned order.

5. We have considered the submissions of the petitioner. It is observed that the review petitioner has completed his portion of the work and prayed for approval of COD under proviso (ii) of Regulation 4(3) 2014 Tariff Regulations in Petition No. 100/TT/2014. The Commission had approved the COD as claimed by the petitioner and directed the petitioner to recover the transmission charges from Discoms till the commissioning of the downstream system as to protect the beneficiaries from extra burden for which they are not responsible. However, the petitioner has preferred the review of the order merely on the basis of the principle of 2010 sharing Regulations without raising the bill from the developer of the downstream system. The defaulting party should bear the liability or consequences of their act. In this case, the developer of the downstream transmission system is responsible for not completing their part of work on timely manner in sync with the subject transmission asset.

6. Therefore, the review petitioner should raise the bill on the Discoms as held by the Commission in its order dated 29.4.2016 in Petition No. 100/TT/2014. It is observed that the review petitioner has not raised bills on the Discoms, we are of the view that the petitioner should have raised the bill on the Discoms. We do not find any error on the face of record in the impugned order and therefore the review petition is rejected.

7. This order disposes of Petition No. 29/RP/2016.

Sd/-
(Dr. M.K. Iyer)
Member

Sd/-
(A.S. Bakshi)
Member