

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 298/TT/2013

Coram:

**Shri Gireesh B. Pradhan, Chairperson
Shri A. K. Singhal, Member
Shri A. S. Bakshi, Member
Dr. M. K. Iyer, Member**

Date of Hearing : 06.10.2015

Date of Order : 14.03.2016

In the matter of:

Determination of transmission tariff of 2 Nos 400 kV line bays at 400 kV Ranchi Sub-station for Raghunathpur TPS- Ranchi transmission line (COD: 1.4.2013) under Common Scheme for 765 kV Pooling Stations and Network for NR, Import by NR from ER and from NER/SR/WR via ER and Common Scheme for network for WR and import by WR and import by WR from ER and from NER/SR/WR via ER in Eastern Region for tariff block 2009-14 period under Regulation-86 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2009

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,
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 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.,
Shakti Kiran Building, Karkardooma,
Delhi-110 092.
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.,
Urja Bhawan, Kanwali Road,
Dehradun.
16. North Central Railway,
Allahabad.
17. New Delhi Municipal Council,
Palika Kendra, Sansad Marg,
New Delhi-110 002.

.....**Respondents**

For Petitioner : Shri Jasbir Singh, PGCIL
Shri M.M. Mondal, PGCIL
Shri S.K. Venkatesan, PGCIL

For Respondents : None

ORDER

The instant petition has been filed by Power Grid Corporation of India Ltd. (PGCIL) for determination of transmission tariff of 2 Nos. of 400 kV line bays at 400 kV Ranchi Sub-station for Raghunathpur TPS-Ranchi transmission line (COD: 1.4.2013) under Common Scheme for 765 kV Pooling Stations and Network for NR, Import by NR from ER and from NER/SR/WR via ER and Common Scheme for network for WR and import by WR and import by WR from ER and from NER/SR/WR via ER in Eastern Region in terms of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter "the 2009 Tariff Regulations"). The Raghunathpur TPS-Ranchi transmission line is executed by DVC.



2. The investment approval for the transmission project was accorded by the Board of Directors of the petitioner company vide letter dated 29.8.2008 at an estimated cost of ₹707533 lakh including IDC of ₹71360 lakh (based on 1st Quarter, 2008 price level). The instant asset is part of common scheme for 765 kV Pooling Stations and Network for NR, Import by NR from ER and from NER/SR/WR via ER and Common scheme for network for WR and Import by WR from ER and from NER/SR/WR via ER) in Eastern Regions.
3. The instant petition covers 2 nos. of 400 kV line bays at 400 kV Ranchi Sub-station for Raghunathpur TPS-Ranchi Transmission Line.
4. This order has been issued after considering the petitioner's affidavit dated 28.3.2014, 20.4.2014, 31.10.2014, 19.8.2015 and 19.2.2016.
5. As per Investment Approval (IA), the instant assets were scheduled to be commissioned within 48 months from the date of investment approval i.e. by 1.9.2012 against this the asset has been commissioned on 1.4.2013. Accordingly, there is a time over-run of 7 months. The petitioner has submitted that the time over-run in commissioning of the instant asset was mainly on account of disturbance due to Maoist activities, finalization of sub-conductor by M/s Siemens and poor mobilization and co-ordination by the sub-contractor.
6. The petitioner vide affidavit dated 28.3.2014 has submitted that the Raghunathpur TPS-Ranchi 400 kV D/C Transmission line I is to be executed by DVC. The corresponding line bays at Ranchi Sub-station of the above mentioned



line are within the scope of petitioner. The petitioner has further submitted that the commissioning schedule of Raghunathpur TPS-Ranchi 400 kV D/C line being executed by DVC is not certain and is beyond the control of the petitioner. The subject assets are ready for its intended use (COD 1.4.2013). However, 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 it. The instant asset qualifies for approval of COD under Regulation 3(12)(c) of the 2009 Tariff Regulations.

7. DVC has been impleaded as respondent in the subject petition. The petitioner has filed the revised memo of parties vide affidavit dated 28.3.2014.

8. During the hearing on 6.10.2015, the Commission observed the line bays have been put under commercial operation by the petitioner on 1.4.2013. However, the transmission line under the scope of DVC has not been commissioned. The Commission directed the DVC to submit the status of the commissioning of the transmission line under its scope but no reply has been received from it.

9. We have considered the submissions made by the petitioner and documents available on record. 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. Earlier, the Commission in its order dated 10.6.2015 in Petition No. 42/TT/2013, wherein the petitioner claimed the 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 under transmission schemes for enabling import of NER/ER surplus power by NR in Eastern Region, the Commission has not approved the date of commercial operation as claimed by the petitioner. The relevant extract of vide order dated 10.6.2015 in Petition No. 42/TT/13 is as below:-

"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 substation, 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 judgment, 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."

11. Appellate Tribunal in its judgment dated 11.12.2015, in IA No. 336 of 2015 in Appeal No. 198 of 2015 against Order dated 10.06.2015 in Petition No. 42/TT/2013 has observed as under:-

"13. In our opinion, the present case is clearly covered by the Punjab State Power Corporation Limited. In that case, 400 KV Barh Balia double circuit transmission line was planned by the Appellant who was Respondent No.1 therein for evacuation of power output from Barh STPS to NTPC. The construction of transmission line and switchgear at the Balia end was in the scope of the works of the Appellant. The switchgear and sub-station at Barh end was to be constructed by NTPC as per Government of India guidelines. The commissioning of Barh STPS was delayed by NTPC. Works of Barh Balia line in the scope of the Appellant was completed in June 2010. On 30.6.2010, the line was idle charged from Balia end by the Appellant. The Appellant declared commercial operation of the line w.e.f. 1.7.2010 even though the transmission line at Barh end was not ready on that day and was completed only in August, 2011. The Appellant filed petition before the Central Commission for determination of tariff. The Appellant placed reliance on second proviso to Regulation 3(12)(c) of the Tariff Regulations."

.....

"14.We prima facie see no reason to take a different view. The Appellant is, therefore, not entitled to stay of the impugned order. The interim application is rejected. We, however, make it clear that all observations made by us which touch the merits of the case are prima facie observations made for the purpose of deciding the interim application."



12. Aggrieved by the above said judgment of the Tribunal, the petitioner filed Civil Appeal Nos. 9193 of 2012 and 9302 of 2012 before the Hon'ble Supreme Court. The Hon'ble Supreme Court upheld the decision of the Tribunal vide judgment dated 3.3.2016. The relevant extract of Judgment dated 3.3.2016 in Civil Appeal Nos. 9193 and 9302 of 2012 is given below:-

"11. From the above definition, it is clear that switchgear and other works are part of transmission lines. In our opinion, Regulation 3 (12) of the Regulations, 2009 cannot be interpreted against the spirit of the definition "transmission lines" given in the statute. It is evident from record that it is not a disputed fact that switchgear at Barh end of Barh-Balia line for protection and metering were to be installed by NTPC and the same was not done by it when transmission line was completed by the appellant. As such the appellant might have suffered due to delay on the part of NTPC in completing the transmission lines for some period. But beneficiaries, including respondent No. 1, cannot be made liable to pay for this delay w.e.f. 01.07.2010 as the energy supply line had not started on said date.

12. We are apprised at the bar that meanwhile during the pendency of these appeals, in compliance of the interim order, after hearing all the concerned parties, C.E.R.C. has decided the matter on 30-06-2015, and transmission line has been now declared successfully charged w.e.f. 01-09-2011 and the commercial operation has started on said date. However, the order dated 30-06-2015 passed by CERC is stated to be operative subject to decision of this Court in the present appeals, due to the interim order passed by this court.

13. Since we are in agreement with the Tribunal that in the present case, respondent No. 1 and the beneficiaries could not have been made liable to pay the tariff before transmission line was operational, we find no infirmity in the impugned order. Therefore, the appeals are liable to be dismissed. Accordingly, both the appeals are dismissed without prejudice to the right of the appellant, if any, available to it under law, against NTPC. There shall be no order as to costs ".

13. As per findings of the Tribunal's, which was upheld by the Hon'ble Supreme Court, 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 were ready, but the successful trial operation and charging could not be carried out without the



Raghunathpur TPS-Ranchi 400 kV D/C transmission line getting commissioned. As per the information available on the CEA's website, Raghunathpur TPS-Ranchi transmission line 400 kV D/C line got completed in March, 2015. As the bays could not have been charged for trial operation without the transmission line, we are not inclined to approve the date of commercial operation of instant asset as 1.4.2013, as claimed by the petitioner.

14. 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 400 kV D/C Raghunathpur TPS-Ranchi Transmission Line, which is stated to have been commissioned in March, 2015. Accordingly, the instant assets could be commissioned only in or after March, 2015. The petitioner is directed to file a fresh petition claiming tariff by taking the commissioning of the 400 kV D/C Raghunathpur TPS-Ranchi Transmission Line as the date of commissioning of the bays.

15. This order disposes of Petition No. 298/TT/2013.

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

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson

