

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 19/RP/2015
In 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 order : 7.9.2016

In the matter of

Review of order dated 26.5.2015 in Petition No.91/TT/2012 under Section 94 of the Electricity Act, 2003.

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.,
Urja Bhawan, 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. PKTCL
Building No. 10 B, 12th Floor
DLF Cibre City, Shankar Chauk
Haryana

.....**Respondents**

For petitioner : Ms. Ranjeetha Ramchandran, Advocate, PGCIL
Mrs. Sangeeta Edwards, PGCIL

For respondent : Shri Rajiv Shankar Dwivedi, Advocate, NHPC
Shri Vinod Kumar Yadav, Rajasthan Discoms
Shri B.L. Sharma, AVVNL
Shri K. Nayak, NHPC
Shri Jitendra Kumar Jha, NHPC

ORDER

The instant Review Petition has been filed by Power Grid Corporation of India Limited (hereinafter the Review petitioner) seeking review of the order dated 26.5.2015 in Petition No. 91/TT/2012 on the ground of errors apparent on the face of record and



for sufficient reasons in terms of Section 94 read with Regulation 103 of the Conduct of Business Regulations, 1999.

2. The facts of the case in brief are that the Petition No. 91/TT/2012 was filed by the Review Petitioner for approval of transmission tariff for combined assets for transmission system associated with Parbati-III HEP in Northern Region for tariff block 2009-14 in respect with the following assets:

- a. **Asset-I:** 400 kV D/C 400 kV D/C Parbati- Amritsar T/L along with associated bays at both ends
- b. **Asset-II:** LILO of 2nd Ckt of Parbati-II-Koldam T/L at Pooling Station along with associated bays and LILO at Parbati-III
- c. **Asset-III:** 400 kV 80 MVAR Bus Reactor at Parbati Pooling Station along with associated bays.

3. The Commission in its order dated 26.5.2015 did not allow the transmission tariff in respect of Asset-II on the ground that a portion of the LILO circuits of Asset-II was not being utilized as Koldam Switchyard was not commissioned. Para 6 of the order dated 26.5.2015 is extracted below:-

"6. A portion of the LILO circuits of Asset-II is not utilized as the Koldam switchyard has not been commissioned and the part of LILO cannot be put to trial operation without the line getting connected at the other end as per the APTEL order dated 2.7.2012 in Appeal No. 123 of 2011. Further, the petitioner has neither prayed for declaration of date of commercial operation under Regulation 3(12)(C) of the 2009 Tariff Regulations nor disclosed the information that the portion of LILO are not in use. Punjab State Power Corporation Limited (PSPCL), Respondent No. 6, has also



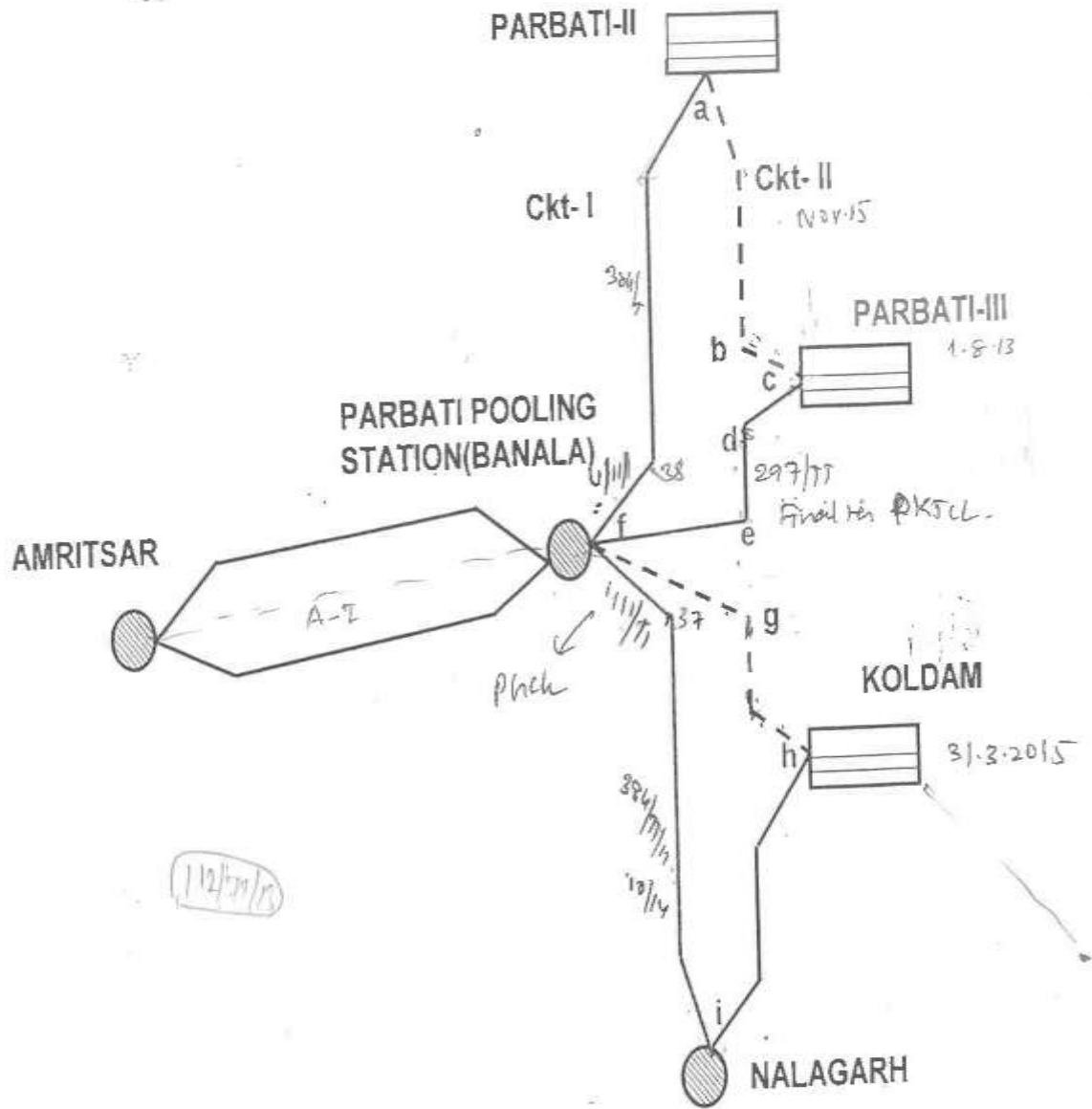
raised this issue in their submission. Since the Koldam Switchyard has not been commissioned, we are not inclined to grant tariff for Asset-II in this petition. The petitioner is at liberty to file the tariff of this asset when complete LILO is put into regular service after test charge and trial operation."

4. The Review Petitioner has submitted that above decision in the order dated 26.5.2015 suffers from an error apparent on the face of record and also for sufficient reasons on account of the following:-

(a) The Review Petitioner has submitted that in arriving at the conclusion in Para 6 of the order dated 26.5.2015, the Commission has referred to and relied on the decision of the Appellate Tribunal for Electricity dated 2.7.2012 in Appeal No. 123 of 2011. The Review Petitioner has submitted that the said judgment dated 2.7.2012 has been challenged before the Supreme Court by Civil Appeals No. 9302 and 9193 of 2012 and was pending on the date of filing the Review Petition. The Review Petition has been filed without prejudice to the rights and contentions of the Review Petitioner in the said Appeal.

(b) The Commission has disallowed the tariff for Asset-II observing that "since Koldam Switchyard has not been commissioned, we are not inclined to grant tariff for Asset-II in this petition". The Review Petitioner has submitted that disallowing tariff on the said ground is incorrect as there exists no strategic linkage of LILO with Koldam Power and the requirement of LILO was originated for evacuation of power from Parbati-III HEP which had already been commissioned on 24.3.2014. The Review Petitioner has relied on the schematic diagram as reproduced below:-





The Review Petitioner has submitted that the Asset-II is not connected to Koldam Power and therefore, the commissioning of Koldam Switchyard is not essential. On the other hand, Asset-II (b-c-d and e-f-g) is connected to PKTCL line, NHPC and Parbati Pooling Station and therefore, there is an error apparent on the face of record in so far as linking the commissioning of the Koldam Switchyard to the tariff of Asset-II is concerned.

- (c) The construction of the Asset-II has been completed by the Review Petitioner in all respects by 1.8.2013 and therefore, the Review Petitioner is entitled to the declaration of COD in respect of said assets w.e.f. 1.8.2013 in terms of Regulation 12(3)(c) of the Tariff Regulations, 2009. The Review Petitioner has submitted that it placed on record sufficient evidence for completion of work on 1.8.2013 at the time of filing of the petition which fact has not been disbelieved or disputed in the order dated 26.5.2015. Further, none of the respondents has raised any objection or dispute at the time of hearing of the Review Petition. Apart from that, the Review Petitioner has furnished Daily Report of POSOCO for 31.7.2013 indicating the synchronization of 400 kV Parbati-III-Banala line charged for the first time on 22.37 hrs of 30.7.2013. Further, completion and charging of the said line (portion c-d and e-f of the diagram) is also established by the fact that the NHPC had sought shut down of the line for carrying out the work at its end in POTHEAD yard on 6.9.2013 which continued till 22.10.2013. The Review Petitioner has submitted that if the line was not charged and was not in service, there was no requirement to seek shut down of the line by NHPC.



(d) There is no dispute that Asset-II was completed in all respects and duly charged w.e.f. 1.8.2013 and was thus capable of being utilized. The only submission is that the line is not being fully utilized which is admittedly for reasons other than those attributable to the Review Petitioner in any manner. This aspect is clearly distinguishable from the factual aspect concluded by the Appellate Tribunal in its judgment dated 2.7.2012 in Appeal No. 123 of 2011 in Barh-Balia case.

(e) Second Proviso to Regulation 3(12)(c) of the 2009 Tariff Regulations states that if the transmission asset is ready for regular service but is prevented from providing such services for reasons not attributable to the transmission licensee, the transmission asset is to be declared under commercial operation. As per the interpretation, scope and application of the second proviso, Asset-II could have been put to regular service if the elements to be undertaken by PKTCL or NHPC in the present case had been ready and it is not required that the physically regular service is to be done. The responsibility of the Review Petitioner was only to carry out LILO of the lines at Parbati Pooling Station (Banala) and Parbati-III which was completed by Review Petitioner by 1.8.2013. The fact that the asset is not being fully utilized is not due to any factor attributable to the Review Petitioner but because of the delay in work by PKTCL. Accordingly, the reasoning given in the order dated 26.5.2015 is contrary to Regulation 3(12)(c) of the 2009 Tariff Regulations.



(f) On 12.6.2013, NHPC requested for completion of the LILO lines by 30.6.2013 as Unit-I of the generation project had a successful spinning and the Unit-II was also ready for spinning. Accordingly, the Review Petitioner expedited the process and completed the LILO of Parbati II Koldam Circuit-II at Parbati-III and Parbati Pooling Station (Banala) on 1.8.2013 along with other assets associated with Parbati III HEP to facilitate the flow of power from Parbati Pooling Station.

(g) The Commission in its order dated 26.5.2015 had observed that Asset-I and Asset-III were commissioned w.e.f. 1.8.2013 at the request of NHPC and the transmission charges for these assets were approved from such date and NHPC was directed to bear the charges from the period from 1.8.2013 to 23.1.2014. The Review Petitioner has submitted that Asset-I cannot effect power flow from Parbati-III HEP of NHPC until and unless Asset-II which is connecting Parbati-III to the pooling station (c-d-e-f in the diagram) is commissioned. Both Asset-I and (c-d-e-f) portion of Asset-II were commissioned at the request of NHPC and are being used for evacuation of power from Parbati-III. Since the Commission has already acknowledged that Asset-I has been put to use, similarly, Asset-II has also been put to use.

(h) The other part of the transmission system (b-c and f-g) are incidental to LILO (c-d and e-f) and are to be completed along with the (c-d and e-f) in the interests of tower stability and to minimize the cost of the project. Therefore, such part (c-d



and e-f) should also be considered for determination of tariff of review petitioner from 1.8.2013.

5. Replies to the petition have been filed by NHPC (Respondent No. 18) and BRPL (Respondent No. 12).

6. Gist of submissions raised by NHPC Ltd in its replies dated 18.8.2015 and 28.9.2015 are as under:-

- a) The instant review petition is an abuse of process of law. The Commission has given a well-reasoned finding considering the facts on record. There is no error apparent on the face of record;
- b) The Review Petitioner's claim is not rejected and it has been simply postponed to be raised at appropriate time;
- c) As PKTCL portion of ckt-II is not commissioned, the work completed by the Review Petitioner under Asset-II cannot be fully utilized and hence commercial liability cannot be passed on to NHPC. The Review Petitioner should produce detailed status of complete scope of work under ATS as on 1.8.2013;
- d) From the record, it is estimated that the commissioning of transmission line and hydro power station were delayed due to reasons beyond control of the concerned parties. Blaming NHPC for delay in commissioning is not correct and unacceptable. Based on the assessment of work, the Review Petitioner was



requested to make the transmission line available by June, 2013 which could not be achieved by the Review Petitioner;

- e) The Review Petitioner's contention that there is no strategic linkage of LILO with Koldam Power Station is not correct. At present, Parbati-III HEP has no alternate path available in case of failure of existing path. The recovery of AFC for Asset-II should not be allowed unless the full system is put under commercial operation;
- f) NHPC requested the Review Petitioner to make the transmission line available by June, 2013 as NHPC was all set to commission the power station in June, 2013. The units were spun in May/June. The Review Petitioner could not make the line available by June, 2013 and did not make any communication with NHPC regarding connecting the ATS System with power station by 1.8.2013;
- g) Only part system of Asset-II was available for evacuation of power form Parbati-III Power Station and AFC cannot be granted without commissioning of the full asset.

7. The Review Petitioner in its rejoinder dated 15.10.2015 has submitted the following clarifications to the reply filed by NHPC:-

- a) The construction of Asset-II was complete in all respects on 1.8.2013 and therefore, it is entitled for approval of COD of Asset-II with effect from 1.8.2013 as provided under Regulation 3(12)(c) of the 2009 Tariff Regulations;



- b) All works within the scope of the petitioner's obligations are completed. The justification for approval of COD of Asset-II from 1.8.2013 has been submitted. The issue of liability of NHPC cannot be a subject matter of instant review petition;
- c) NHPC in its reply has admitted that Asset-II was ready and available for use in some respect and the allegation of NHPC is that it could not be fully utilized. The admission on the part of NHPC clearly shows that Asset-II was capable of being utilized but could not be utilized for reasons not attributable to the review petitioner;
- d) It is necessary for NHPC to place before the Commission the date on which the switchyard of NHPC generating station was ready and was put to use, notwithstanding the delay in commissioning of the power station.

8. BRPL has submitted that the Commission has not allowed the transmission tariff for Asset-II i.e. transmission system associated with Parbati-III-HEP, on the ground that a portion of the LILO circuits of Asset-II cannot be utilized as the Koldam Switchyard has not been commissioned and the LILO cannot be put to trial operation without the line getting connected at the other end. The Review Petitioner is raising an issue by pointing out error in judgment which cannot be cured in a review petition.

9. The Review Petitioner in its written submission has reiterated the submission already made in the Review Petition and its rejoinder to the reply of NHPC. In addition, the Review Petitioner has submitted that Barh-Balia case decided by the Appellate



Tribunal in its judgment dated 2.7.2012 in Appeal No. 123 of 2011 is distinguishable from the present case as in the said case, there was the issue of connectivity pending to the switchyard at Barh Sub-station of NTPC whereas in the present case connectivity at the LILO lines are in the middle of PKTCL transmission line at point (b) & (g) of the diagram. The Review Petitioner has submitted that the entire Asset-II is to be treated as being falling within the scope of Regulation 3(12)(c) of the 2009 Tariff Regulations and should be decided independent of the decision of the Appellate Tribunal in Appeal No. 123 of 2011.

Analysis and Decision

10. In para 6 of the impugned order, the Commission had observed the following:-

(a) A portion of the LILO circuit of Asset-II is not utilized as Koldam Switchyard has not been commissioned.

(b) Part of the LILO cannot be put to trial operation without the line getting connected at the other end as per the APTEL's order dated 2.7.2012 in Appeal No. 123/2011.

11. On the observation that Koldam Switchyard has not been commissioned and therefore a portion of the LILO is not being utilized, the Review Petitioner has submitted that there is no strategic linkage of LILO with Koldam HEP. Since Asset-II is not connected to Koldam HEP, commissioning of Koldam Swithyard is not essential for declaration of COD of Asset-II. On the other hand, Asset-II is connected to PKTCL line



NHPC and Parbati Pooling Station. The Review Petitioner has relied on diagram which has not been disputed by the respondent. NHPC has submitted that as PKTCL portion of ckt-II is not commissioned, the work completed by the Review Petitioner under Asset-II cannot be fully utilized. As regards the absence of strategic linkage of LILO with Koldam Power Station, NHPC has submitted that at present, Parbati-III HEP has no alternate path available in case of failure of existing path and therefore, the recovery of AFC for Asset-II should not be allowed unless the full system is put under commercial operation;

12. On perusal of the single line diagram, it is revealed that the LILO represented by the line (b-c-d) connects Parbati-III HEP with the Circuit-II of Parbati-II to Koldam HEP. Similarly, the transmission line represented by (d-e-f) connects Parbati-III HEP with Parbati Pooling Station (Banala). It is noticed that c-d-e-f is connecting to the Circuit-II of Parbati-III to Banala Pooling Station and not connected to the Switchyard of Koldam HEP. Therefore, even in case of non-availability of Koldam Switchyard, Asset II can be utilized for evacuation of power from Parbati III through Banala Pooling Station. The only objection of NHPC is that in the absence of Koldam Switchyard, alternate path is not available to NHPC to evacuate power from Parbati-III.

13. The Commission relied upon on the judgment of the Hon'ble Appellate Tribunal of Electricity (APTEL) dated 2.7.2012 in Appeal No.123 of 2011 while disallowing the tariff for Asset-II. The Review Petitioner has submitted that unlike Barh-Balia case decided by the Appellate Tribunal in judgment dated 2.7.2012 in Appeal No. 123/2011



where connectivity were pending to the switchyard at Barh Sub-station of NTPC, the connectivity at (b) and (g) are in the middle of PKTCL transmission line and therefore it is not correct to proceed on the basis that the present case is covered by the said decision of the Appellate Tribunal. It is noted that against the Appellate Tribunal's judgment dated 2.7.2012, the petitioner has filed a Civil Appeal No. 9193 of 2013 before the Supreme Court. The Hon'ble Supreme Court in judgment dated 3.3.2016 has decided the issue as under:-

“10. We have considered the rival submissions. Sub-section (72) of Section 2 of Electricity Act, 2003 defines the word “transmission lines”, which reads as under:-

“2(72) “transmission lines” means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a sub-station, together with any step-up and step-down transformers, switch-gear and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works.

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 of “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. 1.7.2010 as the energy supply line had not started on said date.”

14. The settled portion of law which emerges from the above decision of the Hon'ble Supreme Court is that declaration of CoD under Regulation 3(12) of 2009 Tariff Regulations cannot be allowed if switchgear and other works necessary to and used for the control of such cables and overhead lines are not available. In the present case, the petitioner has prayed for declaration of CoD of the LILOs (b-c-d) and (e-f-g) under



Regulation 3(12) of the 2009 Tariff Regulations. We find that the part of the LILO i.e. (b-c) and (f-g) are not in use as they were not connected to any transmission line or generating station at the end of 'b' and 'g'. Therefore the portion of line (b-c) and (f-g) cannot be declared under commercial operation under Regulation 3(12) of 2009 Tariff Regulations. Accordingly, we allow commercial operation of the transmission line represented by (c-d-e-f) of Asset II under Regulation 3(12) of 2009 Tariff Regulations.

15. It is observed that Asset-II was completed on the request of NHPC and part of the asset (c-d-e-f) ready for use to evacuate power from Parbati III HEP which was commissioned on 24.3.2014. Although PGCIL has claimed COD of Asset-II as 1.8.2013, it is further noticed that the metering arrangement was installed at NHPC end portion of the Asset-II. The petitioner requested NHPC to file the date when bays associated with the (b-c-d) were ready at Parbati-III Switchyard. However, NHPC did not furnish the same, keeping in view that the meters were installed on 28.8.2013 we conclude that bays at NHPC end were ready on 28.8.2013. Hence, we grant COD of asset c-d-e-f as 1.9.2013 as per the 2009 Tariff Regulations. Therefore, we direct that NHPC should be liable to pay the charges from 1.9.2013 till 23.4.2014. With effect from 23.4.2014, the transmission charges of (c-d-e-f) portion of Asset-II shall be included in the PoC charges as provided under Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010. As regards, (b-c) and (f-g), these elements will be declared under commercial operation with effect from the date of commercial operation of line a-b and g-h respectively. The petitioner is directed to submit the details of the cost of the portion of the transmission line



represented by (c-d-e-f) of Asset II as on 1.9.2013 for determination of tariff within 15 days from the issue of this order.

16. The instant review petition is allowed to the extent directed above and accordingly, the staff of the Commission is directed to work out the transmission tariff for (c-d-e-f) portion of Asset-II in Petition No.91/TT/2012 on receipt of required information from the review petitioner.

17. Review Petition No.19/RP/2015 is disposed of in terms of the above.

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

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson

