

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

PETITION NO. 31/RP/2016

Coram:

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

**Date of Hearing: 10.08.2016
Date of Order : 26.08.2016**

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. 247/TT/2015, wherein the tariff for 2 No. 220 kV Line Bays at Moga under “Augmentatin of Transformers in Northern Region-Part A” 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. The instant asset was scheduled to be commissioned on 5.10.2014. However, it was commissioned on 28.6.2015 after a time over-run of 9 months due to non-readiness of downstream assets of PSTCL. The review petitioner has sought approval of COD of the instant asset under proviso (ii) of Regulation 4(3) of 2014 Tariff Regulations as the instant asset was ready but the same was not put into regular service as the downstream assets being executed by PSTCL were not ready. The review petitioner also submitted the RLDC certificate stating that the bays were idle charged (no load condition) in support of completion of the instant asset.

3. Taking into consideration the submissions of the review petitioner and the documents on record, the COD of the instant assets was approved under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations. As regards the sharing of tariff charges, the Commission held that the transmission charges approved for the instant assets would be borne by the beneficiary Discom till the commissioning of the downstream assets. On commissioning of the downstream assets, the approved tariff would be included in the PoC charges as provided under Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 (hereinafter referred to as "2010 Sharing Regulations"). The relevant portion of the order dated 29.4.2016 in Petition No. 247/TT/2015 is extracted hereunder:-

"42. 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."

4. Aggrieved by the said order, the review petitioner has filed the instant review petition seeking review of the order dated 29.4.2016 in Petition No. 247/TT/2015 on the limited extent of sharing of the transmission charges. The review petitioner has submitted the following reasons for seeking the review of order dated 29.4.2016:-

- i. On account of the non-readiness of the downstream system viz. 220 kV downstream line executed by PSTCL, the review petitioner sought approval of the COD for 2 nos. 220 kV Line Bays under the Augmentation Scheme in Northern Region in accordance with Regulation 4(3)(ii) of the 2014 Tariff Regulations. Accordingly, the review petitioner filed Petition No. 247/TT/2015

for approval of COD and for determination of tariff for period from COD i.e. 28.06.2015 to 31.03.2019 for the instant assets.

ii. As per the provisions of Section 38(2)(b) of the Electricity Act, 2003 the review petitioner, in line with their statutory functions, initiated formal communication with the state utilities and other concerned agencies regarding the commissioning of the instant asset. The progress of the augmentation of Moga Sub-station in line with the PSTCL 220 kV incoming lines was therefore taken up in various meetings and through numerous correspondences cum reminders. Despite repeated reminders and inordinate delay of intimation by PSTCL regarding their incoming 220 kV lines, the commissioning of the instant lines was delayed.

iii. 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 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.”

iv. Taking into consideration the RLDC certificate submitted by the review petitioner, the Commission observed that in the absence of the corresponding state transmission system the subject asset was idle charged with no load

condition and therefore went on to determine the COD of the subject asset as 28.6.2015 under Regulation 4(3)(ii) of the 2014 Tariff Regulation.

- v. The transmission charges were imposed by the Commission on the beneficiary Discom alone till the commissioning of the downstream system which goes against the mandate of Regulation 43 of 2014 Tariff Regulation which provides for the sharing of transmission charges as per the relevant provisions of 2010 Sharing 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 2014 Tariff Regulations or 2010 Sharing Regulations. There is no contractual liability of a state transmission utility or Discoms to pay the transmission charges till the commissioning of the downstream system. Such a mode of recovery has not been envisaged in the Regulations and it cannot be made a subject matter of contract at this stage when the transmission system is ready and has achieved COD.
- vii. The 2010 Sharing Regulations is a deviation from the earlier principle of recovery of costs from the beneficiaries of a particular region who required a transmission project. There can be 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 Commission in its order has directed to bill to concerned DISCOM, however the same is not in line with the 2010 Sharing Regulations. Hence, the review petitioner requested to include the tariff in the PoC charges w.e.f. 28.6.2015 i.e. from the date of completion of scope of work.
- x. The review petitioner took all due measures within their scope to complete the subject transmission system and hence it is not at fault and acted in bonafide manner and it should not be penalized if such licensee or contractor or supplier is not at fault as provided in the second proviso to Regulation (3) of the 2014 Tariff Regulations.
- xi. Any charge or levy shall have to be in compliance with the provisions if the Act and the relevant regulations. The Transmission Licensee is authorized to levy charges in the manner enumerated in the 2010 Sharing Regulations and 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.

5. The matter was heard on 10.8.2016. Learned counsel for the review petitioner reiterated the submissions made in the review petition and submitted there is 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 as specified in the impugned order.

6. 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. 247/TT/2015. Accordingly, the COD of the instant assets was approved vide order dated 29.4.2016 under the said Regulation as claimed by the petitioner as the downstream assets of the PSPTCL were not commissioned and it was directed that the transmission charges allowed would be borne by the beneficiary Discom till the downstream system was commissioned by the Discom. We are of the view that the beneficiaries should not be made liable for any charges of a transmission element when they are not receiving any services and it should be borne by the party which has not executed its portion of the transmission system. In the instant case, the assets were not put to use on 28.6.2015 and they were not providing any service to the beneficiaries due to non-commissioning of the downstream assets by the Discom. Hence, we are of the view that the beneficiaries should not be burdened with the transmission charges when the instant assets were not providing any service to them. As such, we do not find error in holding the concerned Discom liable for the transmission charges till completion of the downstream assets by it. We do not find



any reason to review order dated 29.4.2016. Accordingly, the review petition is rejected.

7. This order disposes of Petition No. 31/RP/2016.

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

Sd/-
(A.S. Bakshi)
Member

