

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Review Petition No. 42/RP/2016  
in  
Petition No. 236/MP/2015**

**Coram:**

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

**Date of Order: 11<sup>th</sup> of October, 2017**

**In the matter of:**

Review petition 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 seeking review of the order dated 27.6.2016 in Petition No. 236/MP/2015

**And**

**In the matter of:**

Power Grid Corporation of India Ltd.  
Saudamini, Plot No. 2, Sector-29,  
Gurgaon-122 001 (Haryana)

.....Petitioner

**Vs.**

1. Kudgi Transmission Corporation Ltd.  
Building No. 3, Second Floor, Sudeep Plaza,  
MLU sector 11, Pocket-4, Dwarka, New Delhi-110 075
2. Bangalore Electricity Supply Company Ltd. (BESCOM)  
Krishna Rajendra Circle,  
Bangalore-560009
3. Hubli Electricity Supply Company Ltd.,  
P.B. Road, Nava Nagar Hubli,  
Karnataka-580025
4. Chamundeshwari Electricity Supply Corp. Ltd. (CESC Mysore),  
Corporate Office, 927, L. J. Avenue,  
New Kantharaja Urs Road,  
Saraswathi Puram, Mysore-570009
5. Gulbarga Electricity Supply Company Ltd. (GESCOM)  
Main Road, Gulbarga,  
Karnataka-585102



6. Mangalore Electricity Supply Company Ltd. (MESCOM)  
Paradingm Plaza, A.B Shetty Circle,  
Mangalore-575001.

7. Kerala State Electricity Board Ltd.,  
Viydyuthi Bhavanam, Pattom,  
Thiruvananthapuram-695004

8. Power Company of Karnataka Ltd.  
Cauvery Bhavan, K.G. Road  
Bangalore-560001

9. AP Southern Power Distribution Company Ltd. (APSPDCL)  
H. No. 193-93 (M) Upstairs, Renigunta Road,  
Tirupathi-517501

10. Tamil Nadu Generation and Distribution Corporation Ltd.  
NPKRR Maaligai, 144, Anna Salai,  
Chennai-600 002

11. Southern Power Distribution Company of Telangana Ltd. (TSSPDCL)  
6-1-50, Mint Compound, Hyderabad-500063

12. AP Eastern Distribution Company Ltd.,  
Sai Shakthi Bhavan, 30-14-09, Near Saraswathi Park,  
Visakhapatnam-530020

13. Central Electricity Authority  
Sewa Bhawan, Sector-1, R.K. Puram, Delhi-110066

14. Northern Power Distribution Company of Telangana Ltd.  
H. No. 1-1-504, Opp.: NIT Petrol Pump, Chaitanyapuri,  
Warangal-560004.

15. Power System Operation Corporation Limited  
B-9, Qutab Institutional Area, Katwaria Sarai,  
New Delhi-110016

...Respondents

**Parties present:**

Shri Sitesh Mukherjee, Advocate, PGCIL  
Shri Gautam Chawla, Advocate, PGCIL  
Ms. Akansha Tyagi, Advocate, PGCIL  
Shri Aryaman Saxena, PGCIL  
Ms. Suparna Srivastava, Advocate, NTPC Ltd.  
Shri Alok Shankar, Advocate, KTL  
Shri V.K. Jain, NTPC  
Shri V.K. Garg, NTPC  
Ms. Pratikhsha Mishra, Advocate, BESCO  
Shri S.S. Barpanda, NLDC



## ORDER

The present Review Petition has been filed by Power Grid Corporation of India Ltd. (hereinafter referred as "PGCIL") seeking review of the order dated 27.6.2016 in Petition No. 236/MP/2015 (Impugned order) on the ground of errors apparent on the face of the record and the consequent modification in liability to pay transmission charges for the first element of the transmission project.

### **Brief facts of the case:**

2. L&T Infrastructure Development Projects Limited (LTIDPL) was selected based on the international tariff based competitive bidding to execute the following transmission system on build, own, operate and maintain basis and to provide transmission service to the Long Term Transmission Customers of the project:

(a) 2 Nos 400 kV D/C transmission line Kudgi TPS to Narendra (New);

(b) 765 kV D/C transmission line Narendra (New) to Madhugiri;

(c) 400 kV D/C transmission line Madhugiri to Bidadi.

3. LTIDPL acquired Kudgi Transmission Limited (KTL) as its wholly owned subsidiary and entered into a Transmission Service Agreement (TSA) dated 14.5.2013 with the Long Term Transmission Customers of the transmission system. After adoption of tariff and grant of transmission licence for the said transmission asset, KTL executed the project. The effective date of the transmission system was 30.8.2013. The first element of the project was scheduled to be commissioned within 18 months from the effective date and the other two elements within 24 months of the effective date. Therefore, the scheduled SCOD of the first element was 28.2.2015. Since the project was proposed to be developed as evacuation facility for



Kudgi TPS (3X800MW Phase-I) of NTPC, the following inter-connection facilities were required to be developed prior to the commissioning of the first element of the project:

<b>S. No.</b>	<b>Name of the Agency Responsible</b>	<b>Inter-connection facility</b>
<b>1</b>	NTPC Kudgi Power Plant (3 x 800MW)	400 kV Bays allotted to KTL for connecting Element- 1
<b>2</b>	PGCIL	Narendra (New) 765/400kV Pooling station - Respective Bays allotted to KTL for connecting Element- 1
<b>3</b>	PGCIL	Multi Circuit Tower for terminating 2 circuits (second 400kV D/C line) of Element -1

4. Even though entire scope of work for the first element was completed on 27.3.2015, the element could not be tested and charged due to non-availability of inter-connection facility required to be developed by NTPC and PGCIL. The first element was inspected by Electrical Inspector on 28.7.2015 and declared as ready for charging. As per Article 6.2 of the TSA, an element is deemed to be completed 7 days after the TSP declares the facility ready for charging. Therefore, in terms of the TSA, KTL declared the transmission line to be under commercial operation from 4.8.2015 which was notified by the petitioner to all Long Term Transmission Customers vide its letter dated 6.8.2015. As per Article 10.1 of the TSA, the petitioner is entitled to tariff from the date of commercial operation of the element of the project. The petitioner, after declaring the COD of the first element, raised bills for transmission charges. Since the dispute arose as to whether the tariff of the first element shall be included in the PoC charges, KTL filed Petition No.236/MP/2015 seeking a direction that it is entitled to recover transmission charges from the date of completion of the first element of the transmission project. The Commission after

hearing KTL, LTTCs, PGCIL, NTPC and POSOCO decided the following through the impugned order:

- (a) The transmission charges for the period from 4.8.2015 to 23.8.2015 shall be shared by both NTPC and PGCIL in the ratio of 50:50.
- (b) From the CEA letter dated 24.8.2015 (regarding energisation of the transmission line), it was observed that the bays of NTPC were ready in the month of August, 2015. However, PGCIL Narendra (New) sub-station was charged on 15.11.2015 and subsequently, 400 kV Kudgi Switchyard was charged on 16.11.2015. PGCIL was directed to pay the transmission charges to KTL for the period from 24.8.2015 to 15.11.2015 as KTL's transmission line could not be utilised due to non-completion of element under the scope of PGCIL.
- (c) For the period from the period 16.11.2015 till the COD of first unit of Kudgi STPS, NTPC was directed to pay the transmission charges to KTL in terms of the Regulation 8 (5) of the Sharing Regulations.
- (d) NTPC was also directed to pay nodal charges for use of ISTS [other than Kudgi-Narendra (New)] towards drawl of start-up power as per rates prescribed under Sharing Regulations.
- (e) CTU was directed to raise the bills to PGCIL and NTPC in accordance with the above directions and disperse the transmission charges to KTL immediately.

5. The Review Petitioner has filed the present Review Petition on the following grounds:

(a) Reliance on incorrect facts: The Review Petitioner has submitted that NTPC in its pleadings had submitted that since it could not avail start-up power until the completion of 400 kV bays at New Narendra sub-station, the line remained idle due to delay on the part of the Review Petitioner. The Review Petitioner has submitted that even after having made alternate arrangement for start-up power to avoid bottling of power, it was still considered a defaulting party for which the above line could not be used by NTPC to draw start-up power which was not the intended purpose of the said scheme. Moreover, the construction of the New Narendra sub-station was never envisaged as a part of TBCB project or generation associated project. It was a separate project which was under implementation as part of Southern Region Strengthening Scheme XVII (SRSS-XVII) with scheduled commercial operation by March 2015. However, the implementation of New Narendra sub-station got delayed on account of multiple factors such as force-majeure in the form of strikes and local agitation, etc. during the intervening period of April, 2015 to July, 2015, which was the prima-facie reason for the delay in commissioning of the said sub-station beyond June, 2015, and therefore, the Commission erred in upholding that the said delay is irrelevant to the instant Petition.

(b) Review Petitioner is not a party to the TSA: The Review Petitioner has submitted that the Commission has erred in directing the Review Petitioner to pay the transmission charges to KTL as the same has no legal basis, either

under the TSA, or applicable Regulations. The Commission considered TSA as the basis for recovery of transmission charges. The Review Petitioner has submitted that neither the Review Petitioner is a party to the TSA nor it has signed any Indemnification Agreement. Therefore, no liability can be incurred by the Review Petitioner due to mismatch of the commissioning dates of the first element of the transmission lines and the New Narendra substation. Moreover, the TSA only provides for liability to be incurred by the generator or the Long Term Transmission Consumers ("LTTCs") in case there is a default or a mismatch in the commissioning date of the power plant/LTTCs ability to off take power. Therefore, there is no provision in the TSA which holds that the Review Petitioner is liable to pay transmission charges in the present factual matrix.

(c) Mistaken/ additional responsibilities of the CTU: The Review Petitioner has submitted that the Commission has erred in holding that the Review Petitioner is responsible for raising bi-lateral bills for collection and disbursement of the transmission charges in the capacity of the CTU. As per the provisions of the Sharing Regulations, CTU is required to collect PoC charges only after inclusion of an ISTS line in the ATC, until such time, the payment of transmission charges is a bi-lateral issue between two parties. The Review Petitioner has submitted that the liability to pay the transmission charges germinates either on the generator under Regulation 8(6) of the Sharing Regulations or flows from the Indemnification Agreement or TSA and in both the scenarios, the remedy available for a transmission licensee is a bi-lateral remedy originating from either a force of contract or Regulations of the Commission. Articles 6.3.1 and 6.4.1 of the TSA provides for a well-defined

mechanism for payment of transmission charges by the defaulting party and the defaulting party is required to make the payment directly to the other party.

6. The Review Petitioner has prayed for modification of the impugned order in terms of the submission made in the Review Petition; for issue of direction to the effect that CTU is not responsible for collection and disbursement of transmission charges for any transmission licensee until their inclusion of the transmission line in PoC pool; direction to KTL to recover the transmission charges, until the inclusion of the instant transmission line under the PoC, through bi-lateral billing.

7. Notices were issued to the Respondents to file their replies. Kudgi Transmission Limited, NTPC Ltd., Kerala State Electricity Board Limited (KSEB), Bangalore Electricity Supply Company Ltd. (BESCOM) and Mangalore Electricity Supply Company Ltd. (MESCOM) have filed their replies.

8. Kudgi Transmission Limited, vide its reply dated 2.11.2016, has submitted as under:

(a) Since, the present Review Petition is devoid of merits, it needs to be rejected.

The Commission has rightly held that delay in commissioning of the transmission line cannot be construed as a reason for not paying the transmission charges to the KTL and the issues raised by the Review Petitioner shall be dealt with while determination of tariff of the assets of the Review Petitioner in accordance with the law. Therefore, the issue of force-majeure is still alive and same would be adjudicated while determining the tariff of the Review Petitioner.



- (b) KTL has completed its entire scope of work on 27.3.2015. However, due to non-availability of inter-connection facility required to be developed by NTPC and Review Petitioner at each end, KTL could not commission the transmission line.
- (c) As regards the Review Petitioner's contention that no liability can be incurred due to mismatch of the commissioning dates of the first element of the transmission lines and the New Narendra sub-station as the Review Petitioner has neither signed the TSA nor has signed the Indemnification Agreement with KTL, it has been submitted that as per the provisions of the Sharing Regulations, the generating station is liable to pay transmission charges in the event transmission line is ready and the generating station is delayed. Therefore, in terms of Sharing Regulations, the liability of the beneficiary or the generating station to pay the transmission charges to an ISTS licensee is not linked to utilization of the line, but instead to the commissioning of the line.
- (d) NTPC was ready to draw startup power from July, 2015 onwards and was not able to draw till November 2015 due to non-availability of Review Petitioner's sub-station at New-Narendra and therefore, liability to pay transmission charges to KTL till November, 2015 as per Sharing Regulations and due to mismatch in the commissioning schedules for the petitioner's lines (February, 2015) and PGCILs sub-station (December, 2015) lies with the Review Petitioner only.
- (e) Review Petition cannot be considered as an appeal for contesting all findings which are against the Review Petitioner. The Hon'ble Supreme Court in case of *Sow Chandra Kante and Anr. V. Sheikh Habib*, has held that a mere

repetition of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient.

9. NTPC, vide its reply dated 13.12.2016, has submitted as under:

- (a) The contention of the Review Petitioner that in the absence of signing of TSA/ Indemnification Agreement with KTL, it is not liable to pay transmission charges to KTL, NTPC has clarified that since it is not a signatory of TSA and has also not signed Indemnification Agreement with KTL, these charges cannot be payable by NTPC only.
- (b) The Review Petitioner has referred to the minutes of meeting of 34<sup>th</sup> Standing Committee Meeting of Southern Region stating that Narendra (New) sub-station works associated with Kudgi TPP to Narendra (New) transmission lines were contingent upon commissioning of SRSS XVII transmission scheme which is not factually correct as there is no reference to such timelines in the said minutes of meeting in this regard.
- (c) The contention of the Review Petitioner that NTPC should have commissioned its unit in time, failing which the generator is liable to pay transmission charges, is not correct. The unit was delayed due to reasons beyond the control of NTPC which is similar to the case of PGCIL claiming delay due to force majeure conditions in commissioning of its New Narendra sub-station. Therefore, the generator alone is not liable to pay the transmission charges to KTL.

(d) With regard to commissioning schedule of New Narendra sub-station, NTPC has submitted that the Commission in Petition No. 236/MP/2015 has already addressed the issue while enquiring about the mismatch of schedule of New Narendra sub-station with KTL transmission lines from Kudgi STPP to New Narendra sub-station. As per the minutes of 33<sup>rd</sup> and 34<sup>th</sup> SCM of Southern Region, it was never a part of SRSS-VII Scheme and it is a part of ATS related to evacuation of power from Kudgi STPP. In the 29th Empowered Committee Meeting (ECM) on transmission system held on 15.6.2012, it was recorded that the Review Petitioner would provide 4 nos. of 400 kV bays at Kudgi STPP by June, 2015. Therefore, the Review Petitioner in its capacity as CTU was well aware in year 2012 about the requirement of bay readiness at its sub-station by June, 2015. Therefore, the arguments advanced by PGCIL for commissioning the New Narendra sub-station by August, 2015 on best efforts basis are not valid. However, due to delay by PGCIL, NTPC drew start up power from 220 kV system of KPTCL for around 15 days' time before the New Narendra sub-station was commissioned on 16.11.2015. To utilize the system, NTPC started drawing start up power from 400 kV system from 16.11.2015 onwards.

(e) CTU also co-ordinates the schedule for TBCB projects and was therefore, aware of the schedule of KTL, despite the fact that the original schedule for associated bays with KTL lines i.e. December, 2015 was mismatched right from the beginning itself.

10. BESCO and MESCOM vide their joint reply dated 27.12.2016, have submitted as under:

(a) The Commission vide order dated 21.8.2012 in Petition No. 169/SM/2012 had held that the Connection Agreement is a statutory requirement and has to be signed by all the generators without any exception and all the generating companies whose generating stations were commissioned after 1.1.2010 were directed to sign the Connection Agreements as per format given by 30.9.2012. Therefore, it is clear from the Format Con-6 of the draft Connection Agreement that the Agreement is required to be entered into between CTU, Applicant Company and the inter-State Transmission Licensee. The responsibilities of the three parties have been defined in the Tripartite Agreement which provides that there is no role of any LTA customer in establishment of inter-connection facilities required for commissioning of the project. Therefore, the claim of the Review Petitioner that BESCO and MESCOM as LTA customers are liable to pay transmission charges from the date of completion of first element of the transmission project is bereft of merits and are liable to be dismissed.

(b) As per Article 5 (2) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014, trial operation in relation to a transmission system or an element thereof shall mean successful charging of the transmission system or an element thereof for 24 hours at continuous flow of power, and communication signal from sending end to receiving end and with requisite metering system, telemetry and protection system in service enclosing certificate to that effect from concerned Regional Load Dispatch Centre. However, there is no charging of transmission system or communication signal as required without which no transmission could take

place; therefore, BESCO and MESCOM cannot be made liable to pay transmission charges as claimed by the Review Petitioner.

(c) Since, LTA Customer was in no way responsible for commissioning of the project or inter-connection facilities, no liability can be foisted on it for payment of transmission charges for any failure of any other party under the TSA or any Regulations.

(d) The Review Petitioner has contended that transmission line cannot be declared under commercial operation unless it is test charged from both the ends. Since, NTPC has not charged its first element, the actual COD cannot be before 16.11.2015. The Review Petitioner has further contended that the transmission line cannot be charged without readiness of bays at either end and for a transmission system to be commercially operational, the transmission system has to be in regular service after successful charging and trial operation which requires other elements such as bays, etc. to also be ready and switchgear and other connected works to be complete. However, as per Article 6.2.2 of the TSA, it is only upon the achieving of the SCOD, transmission charges become recoverable from LTA customer. Since, the first element had not achieved COD, the liability to pay transmission charges cannot be on the LTTCs.

11. KSEBL, vide its reply dated 16.1.2017, has submitted that the Review Petition is not maintainable, as it does not fall within the parameters laid down under sub-rule (1) of Rule 1 of order 47 of the Code of Civil Procedure in view of the fact that the submissions raised by the Review Petitioner in the Review petition is not a new matter and has already been discussed and decided in Petition No. 236/MP/2015.



The Commission in Petition No. 236/MP/2015 has rightly held that since, the transmission line of KTL could not be utilized due to non-completion of elements under the scope of the Review Petitioner, the liability to pay the transmission charges to KTL lies with the Review Petitioner only. Therefore, there is no merit in the allegations of the Review Petitioner.

**Analysis and Decision:**

12. We have considered the submissions made by the Review Petitioner, KTL, NTPC, BESCO, GESCOM and KSEBL. The Review Petitioner has sought review of the Impugned order on the following grounds:

- (a) New Narendra sub-station of the Review Petitioner was part of the system strengthening scheme and was not associated with the evacuation system of Kudgi STPP of NTPC. The Review Petitioner has pre-poned and planned the compressed time line only to provide evacuation power for Kudgi STPP of NTPC. Therefore, the Review Petitioner is not liable to pay transmission charges for the associated transmission system for both KTL and the Review Petitioner.
- (b) Since, the Review petitioner is not a party to the TSA, it is not liable to bear the transmission charges for KTL's transmission line.
- (c) CTU is not responsible for collection and disbursement of transmission charges for any transmission licensee until the inclusion of the transmission line in PoC pool. KTL has to recover the transmission charges, until the inclusion of the instant transmission line under the PoC, through bi-lateral billing.

**(A) Narendra sub-station of the Review Petitioner was not part of Kudgi Transmission System**

13. The Review Petitioner has submitted that it was entrusted with implementation of SRSS XVII Transmission Scheme in the 31<sup>st</sup> Steering Committee Meeting of Southern Region which included establishment of 765/400 kV sub-station at Narendra (New Kudgi) (initially charged at 400 kV). On the other hand, the transmission system required for evacuation of power from Kudgi STPP of NTPC was discussed and agreed in the 33<sup>rd</sup> Steering Committee Meeting of Southern Region held on 20.10.2011 which included Kudgi TPS-Narendra (New) 400 kV 2XDC quad lines. Further, in the 29<sup>th</sup> meeting of the Empowered Committee on Transmission held on 15.6.2012, it was agreed that the implementation of the evacuation system of Kudgi TPS would be undertaken through tariff based competitive bidding whereas the associated bays with these lines would be implemented by the Review Petitioner. The Review Petitioner has submitted that the scope of work relating to Kudgi TPS-Narendra(New) 400 kV 2XDC quad lines agreed to be executed by the Review Petitioner is Extension of Narendra (New) Sub-station at Kudgi. The Review Petitioner has submitted that 765/400 kV sub-station at Narendra (New Kudgi) was already under construction by the Review Petitioner which was to be extended to accommodate (i) 4 nos. of 400 kV line bays at Narendra (New) for Kudgi TPS-Narendra (New) 400 kV 2XDC quad lines and (ii) 2 nos. 400 kV line bays at Narendra (New) for Narendra (New)- Madhugiri 765 kV D/C line initially charged at 400 kV. The Review Petitioner has submitted that NTPC informed in the 34<sup>th</sup> Standing Meeting Committee of SR about the commissioning scheduling of first unit of Kudgi TPS by June, 2015 and requested for implementation of the Kudgi TPS- Narendra (New) 400 kV 2XDC quad lines alongwith the 400 kV



bays in a compressed time schedule matching with the generation. The Review Petitioner agreed to provide the bays matching with the commissioning of the first unit of Kudgi TPS on best effort basis even though the commissioning of the bays was contingent upon SRSS XVII transmission scheme. The Review Petitioner has submitted that the KTL's transmission line and 4 nos. of 400 kV bays to be implemented by the Review Petitioner were preponed to match with the schedule commissioning of first unit of Kudgi TPS by June, 2015. The Review Petitioner has further submitted that the transmission system is not being utilized for the intended purpose as the first unit of NTPC had not achieved COD by August, 2016 when the Review Petition was filed. The Review Petitioner has submitted that since a compressed time schedule was kept to meet the demand of the Kudgi TPS, it was imperative for NTPC to commission the unit on time failing which NTPC would be liable to bear the transmission charges for the transmission system of KTL as well as the Review Petitioner from the respective date of commercial operation of the associated transmission system.

14. The Review Petitioner has further submitted that as per the agreed scheme, NTPC was supposed to draw start-up power from 220 kV network being implemented by KPTCL. NTPC in the meeting with Chief (Engineer), CEA held on 24.4.2015 informed that the first unit of Kudgi TPS was re-scheduled for commissioning in March, 2016. NTPC further informed that it would require drawing start-up power from June, 2015 onwards and the construction of 400 kV bays at NTPC Kudgi should be ready by 30.6.2015. In the said meeting it was informed that 220 kV transmission system of KPTCL was originally planned to provide start-up power to NTPC. The Review Petitioner received a request letter in June, 2015 seeking permission to draw start-up power. The Review Petitioner informed in the



meeting of CEA held on 10.7.2015 that the works of the 400 kV DC (Quad) Narendra (New)-Narendra transmission line could not be completed due to severe ROW issue. Member, CEA advised the Review Petitioner to complete the work by August, 2015.

15. In the light of the submission of the Review Petitioner as recorded in Para 11 and 12 above, the Review Petitioner has submitted that at no point of time it had committed for commissioning of the bays by August, 2015. The Review Petitioner has submitted that the instant arrangement was an alternative arrangement requested by NTPC at the last leg of implementation of SRSS XVII transmission scheme. The Review Petitioner has submitted that the Commission has failed to appreciate the scope of work to be carried out by KTL, NTPC and the Review Petitioner alongwith the scheme for alternative arrangement.

16. NTPC has submitted that the statement of the Review Petitioner that Narendra (New) sub-station works associated with the Kudgi TPS to Narendra (New) lines were contingent upon the SRSS XVII transmission scheme is not actually correct. NTPC has submitted that from the minutes of the 33<sup>rd</sup> and 34<sup>th</sup> Standing Committee Meeting of SR Region, it is clear that the Narendra (New) sub-station was never a part of the SRSS XVII scheme. The said sub-station was actually a part of the ATS related to the evacuation of power from Kudgi STPP. Therefore, the arguments given by the Review Petitioner for commissioning of the Narendra (New) sub-station by August, 2015 on best effort basis are not correct. NTPC has further submitted that it drew start-up power from 220 kV system of KPTCL for around 15 days before the Narendra (New) sub-station was commissioned on 16.11.2015 after which NTPC started drawing start-up power through 400 kV system of the Review Petitioner from 16.11.2015 onwards.

17. We have considered the submission of the Petitioner and NTPC. In the 29<sup>th</sup> Empowered Committee Meeting on Transmission Planning held on 15.6.2012 following decisions were taken:-

"6.6 Name of Scheme: Transmission System required for evacuation of power from Kudgi TPS (3x800 MW in Phase-I) of NTPC Limited Scope:

<b>Transmission Scheme</b>	<b>Estimated Line Length (km)</b>	<b>Estimated Cost (Rs. in crore)</b>
i) Kudgi TPS - Narendra (New) 400 kV 2xD/C quad lines	<b>10</b>	40
ii) Narendra (New) - Madhugiri 765 kV D/c line	350	1000
iii) Madhugiri - Bidadi 400 kV D/c (quad) line.	100	200
<b>Estimated Cost (Rs. Crore)</b>		<b>1240</b>

*Note:*

- > *POWERGRID to provide 6 Nos of 400 kV bays at Narendra (New), 4 Nos. of 400 kV bays at Madhugiri, and 2 Nos. of 400 kV bays at Bidadi POWERGRID to confirm 4 Nos. of 400 kV bays at Kudgi generation switchyard of NTPC. The system to be made ready by June, 2015.*
- > *Associated bays to be provided by POWERGRID/Generator to be matched with commissioning of the transmission scheme - CTU to coordinate."*

Therefore, the bays were executed by the Review Petitioner for the Kudgi STPS with expected commissioning by June, 2015. On account of the ROW issues, the bays of the Review Petitioner could be completed. In the meeting taken by Member (PS), CEA, the Review Petitioner was advised to complete the work by August, 2015. After resolution of the ROW issue, the Review Petitioner was ready for commissioning of its sub-stations on 16.11.2015 after which NTPC started using the bays for drawl of start-up power. We are unable to agree with the Review Petitioner that the Narendra sub-station developed by the Review Petitioner was in the nature of alternate arrangement and not part of the kudgi transmission system. Since Narendra sub-station was part of Kudgi TPS and the Petitioner delayed in

achieving COD of the sub-station, it is required to pay the transmission charges to KTL. Therefore, we do not find any infirmity in the impugned order. It is however noted that in the impugned order, the Review Petitioner was directed to pay the transmission charges from 24.8.2015 to 15.11.2015 on the basis of the submission that its sub-station was ready for COD on 15.11.2015. However, the Review Petitioner declared commercial operation of Narendra sub-station on 11.12.2015. Therefore, the Review Petitioner becomes liable for payment of transmission charges to KTL for the period 24.8.2015 till 11.12.2015. To this extent, the impugned order shall stand modified.

**(B) The Review Petitioner is not a party to the TSA and hence not liable to pay the transmission charges to KTL.**

18. The Review Petitioner has submitted that since the Review Petitioner is neither a party to the TSA nor has signed any indemnification Agreement with KTL, it is not liable to pay the transmission charges due to mismatching of the commissioning dates of first element of the transmission lines of KTL and New Narendra sub-station. The Review Petitioner has submitted that the TSA only provides for the liability to be incurred by the generator or Long Term Transmission Customer in case there is a default or mismatch in the commissioning date of the power plant/LTTCs ability to off-take power. The Review Petitioner has submitted that there is no provision in the TSA that supports the directions of the Commission to pass an order that holds the Review Petitioner liable to pay the transmission charges.

19. NTPC has submitted that NTPC is also not a signatory to the TSA and has not signed Indemnification Agreement with KTL. NTPC has submitted that these charges cannot be payable by NTPC only. The LTTCs have submitted that since the

transmission line of KTL could not be used for supply of power from Kudgi STPP to the beneficiaries on account of the delay on part of the Review Petitioner to achieve COD of Narendra sub-station, the LTTCs shall not be liable to pay the transmission charges.

20. We have considered the submission of the parties. It is not necessary that the Review petitioner should have signed TSA or Indemnification Agreement as a pre-condition for its liability to pay the transmission charges to KTL. In the absence of any such agreement, the Commission decided that any party whether it is a generator or transmission licensee who is responsible for the delay while the other party is ready with its generating unit or transmission system shall be liable to pay to the other party the transmission charges. In our view, the Review Petitioner cannot be allowed to take advantage of its own wrong. The Review Petitioner failed to achieve COD of Narendra (New) sub-station by June 2015 as decided in the Standing Committee on Transmission Planning, even though Kudgi TPS-Narendra(New) 400 kV 2XDC quad lines was ready for COD. Therefore, the Review Petitioner has been held liable to pay the transmission charges as it prevented KTL to inter-connect the transmission line. We do not find any merit in this argument and the ground urged for review is rejected. The review Petitioner is seeking rehearing of the matter on merit which cannot be permitted through the process of review.

**(C) CTU not responsible for billing and collection of transmission charges on behalf of other transmission licensees prior to COD**

21. The Review Petitioner has submitted that the Commission erred in holding that the Review petitioner is responsible for raising the bilateral bills for collection and disbursement of transmission charges in its capacity of Central Transmission Utility. The Review Petitioner has submitted that as per the Sharing Regulations,



CTU is authorized to collect PoC charges only after inclusion of an ISTS line in the Annual Transmission Charges. Till such time a transmission line gets included in the ATC, the payment of transmission charges is bi-lateral issue between the parties. The Review Petitioner has submitted that as per the Article 6.3.1 and 6.4.1 of the TSA between the KTL and LTTCs, the defaulting party shall make payments to the other party. Therefore, there is apparent error in the order and needs to be corrected.

22. The Commission has entrusted the responsibility of billing, collection and disbursement to the CTU under PoC mechanism. After introduction of PoC mechanism, it is difficult for individual transmission licensees to raise separate bills on different DICs. As CTU is responsible for raising the bills for transmission charges on behalf of ISTS transmission licensees under Regulation 11 of the Sharing Regulations, the Commission has accordingly directed CTU to raise the bills to NTPC and PGCIL and make payment to KTL. The Commission vide its order dated 4.1.2017 in Petition No. 155/MP/2016 has also clarified the procedure for billing by CTU as under:

“17. The petitioner is directed to provide YTC details of its assets to NLDC and CTU. NLDC shall provide the same to RPC for inclusion in RTAs. The assets shall be billed along with bill 1 under the provisions of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission charges and losses), Regulations, 2010 as amended from time to time. ISTS licensees shall forward the details of YTC to be recovered as per formats provided under the Sharing Regulations to NLDC. ISTS licensees shall forward the details of entity along with YTC details from whom it needs to be recovered as per applicable orders of the Commission to NLDC (only in cases of bilateral billing due to non-availability of upstream/downstream system). Based on the input received from respective licensees and the Commission`s order, NLDC shall provide details of billing pertaining to non-availability of upstream/downstream system to respective RPCs for incorporation in RTAs for all cases of bilateral billing. On this basis, CTU shall issue the bills. The process given in this para shall be applicable to all future cases of similar nature and all concerned shall duly comply with the same.”

23. We are of the view that there is no patent illegality or error in directing CTU to raise the bills for transmission charges for payment to KTL. The review on this ground is rejected.

24. The Review Petition No. 42/RP/2016 is disposed of in terms of above.

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

**sd/-**  
**(A.S. Bakshi)**  
**Member**

**sd/-**  
**(A.K. Singhal)**  
**Member**

**sd/-**  
**(Gireesh B. Pradhan)**  
**Chairperson**