CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 51/RP/2016
In
Petition No. 201/TT/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 : 31.07.2017

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 29.7.2016 in Petition No. 201/TT/2015

And in the matter of:

NTPC Limited
NTPC Bhavan,
Core-7, Institutional Area, Lodhi Road,
New Delhi – 110003 **…Review Petitioner**

Vs

1. Karnataka Power Transmission Corporation Ltd.
   (KPTCL) Kaveri Bhawan, K. G. Road
   Bangalore—560 009.

2. Transmission Corporation of Andhra Pradesh Ltd.
   (APTRANSCO) Vidyut Soudha, Khairatabad,
   Hyderabad-500 082.

3. Kerala State Electricity Boards (KSEB),
   Vydyuthi Bhavanam,
   Thiruvananthapuram-695 004.

4. Tamil Nadu Generation and Distribution Corporation Ltd.
   (TANGEDCO) NPKRR Maaligai, 800, Anna Salai,
   Chennai-600 002

5. Electricity Department,
   Government of Goa, Vidyuti Bhawan,
   Panaji, Goa 403001

6. Electricity Department,
   Government of Puducherry,
   Puducherry-605 001.

7. Eastern Power Distribution Company of Andhra Pradesh Ltd.,
   (APEPDCL) P&T Colony, Seethmmadhara,
   Visakhapatnam -530 020,
   Andhra Pradesh

8. Southern Power Distribution Company of Andhra Pradesh Ltd.
   (APSPDCL), Srinivasa Kalyana Mandapam Backside,
   Tiruchanoor Road, KesavayanaGunta,
   Tirupati – 517 501, Chittor District, Andhra Pradesh

9. Central Power Distribution Company of Andhra Pradesh Ltd.
   (APCPDCL), Corporate Office, Mint Compound,
   Hyderabad- 500 063

10. Northern Power Distribution Company of Andhra Pradesh Ltd.
    (APNPDCL), Opp. NIT Petrol Pump
    Chaitanyapur, Kazipet, Warangal – 506 004, Andhra Pradesh

11. Bangalore Electricity Supply Company Ltd.
    (BESCOM), Corporate Office, K. R. Circle,
    Bangalore-560 009, Karnataka

12. Gulbarga Electricity Supply Company Limited
    (GESCOM), Station Main Road,
    Gulbarga, Karnataka

13. Hubli Electricity Supply Company Ltd.,
    (HESCOM), Nava Nagar, P.B. Road,
    Hubli,Karnataka-580 025

14. MESCOM Corporate Office,
    Paradigm Plaza, AB Shetty Circle
    Mangalore – 575 001, Karnataka

15. Chamundeshwari Electricity Supply Corporation Limited
    (CESC), # 927, L. J. Avenue, Ground Floor,
    New KantharajaUrs Road, Saraswathi Puram,
    Mysore-570 009, Karnataka

16. Kudgi Transmission Limited
L&T infrastructure Development Projects Limited,
38 Cubban Road, Bangalore – 560001

17. Power Grid Corporation of India Limited
"Soudamini", Plot No.2, Sector 29
Gurgaon – 122 001 **....Respondents**

For Review Petitioner : Shri Matrugupta Mishra, Advocate, NTPC
Shri Sahil Kaul, NTPC
Shri B.S. Rajput, NTPC
Shri V.K. Jain, NTPC

For Respondents : Shri Sitesh Mukherjee, Advocate, PGCIL
Shri Gautam Chawla, Advocate, PGCIL
Ms. Akasha Tyagi, Advocate, PGCIL
Shri M.M. Mondal, PGCIL
Shri S.K. Venkatesan, PGCIL
Ms. Manju Gupta, PGCIL
Shri Aryaman Saxena, PGCIL
Shri S. Vallinayagam, Advocate, TANGEDCO
Shri Vaibhav Choudhary, Kudgi Transmission Ltd.
Shri Alok Shankar, Kudgi Transmission Ltd.

ORDER

This review petition has been filed by National Thermal Power Corporation of India Limited (NTPC) under Section 94(1)(f) of the Electricity Act, 2003 (the Act) read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations,1999 seeking review of the order dated 29.7.2016 in Petition No. 201/TT/2015 wherein tariff was allowed for 2014-19 period for 4 Nos. 400 kV Line Bays at Narendra (New) for Kudgi TPS-Narendra (New) 400 kV 2xD/C Quad lines, under "Sub-station Extension works associated with transmission system required for evacuation of power from Kudgi TPS (3x800 MW in phase-I) of NTPC Limited" in Southern Region (hereinafter referred to as the "instant assets") under Central

Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2014 (hereinafter referred to as "2014 Tariff Regulations").

Brief facts of the case:

2. Power Grid Corporation of India Limited (PGCIL) filed Petition No. 201/TT/2015 seeking tariff for instant assets in Southern Region as per 2014 Tariff Regulations. As per the Investment Approval (IA) dated 17.2.2014, the project was scheduled to be commissioned within 22 months from the date of IA of Board of Directors i.e. 5.2.2014. Therefore, the scheduled date of commissioning of the transmission system was 4.12.2015. Initially, PGCIL claimed tariff for the instant assets on the basis of anticipated date of commercial operation of 31.8.2015. However, vide affidavit dated 30.3.2016, PGCIL revised the COD to 11.12.2015 and the tariff was accordingly allowed. However, NTPC informed that Kudgi STPP generation project has been delayed and first unit of Kudgi STPP was scheduled for commissioning in March, 2016. The Commission, referring to its earlier order dated 27.6.2016 in Petition No. 236/MP/2016, held that the tariff for the bays covered in the Petition No.201/TT/2015 will be borne by NTPC till the date of commercial operation of its first unit or start of LTA whichever is earlier and thereafter the transmission charges are to be governed by the provisions of Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges & Losses) Regulations, 2010 (2010 Sharing Regulations). The relevant portion of the order dated 29.7.2016 in petition No 201/TT/2015 is extracted hereunder:-

> **"Sharing of Transmission Charges**
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> 73. We have considered the submissions of the petitioner and respondents. The issue of payment of transmission charges after a detailed examination of similar issues, has already been decided by the Commission, in order dated 27.6.2016 in Petition

No.236/MP/2015. The relevant portion of the order dated 27.6.2016 in Petition No.236/MP/2015 is as below:-

"42. It is noted that 400 kV D/C Kudgi TPS-Narendra (New) transmission line is connectivity line for NTPC Kudgi STPP and obtained clearance from CEA on28.7.2015. However, NTPC Kudgi STPP switchyard obtained clearance from CEA on 24.8.2015 and charged the switchyard on 16.11.2015, after PGCIL' s sub-station was made ready. 400 kV Narendra (new) sub-station pertaining to PGCIL was charged on l5.11.2015. In view of the above, the transmission charges shall be payable by NTPC and PGCIL in the following manner:

(a) It is noted that the petitioner completed its entire scope of the work on 27.3.2015. However, due to non-availability of inter-connection facility required to be developed by NTPC and PGCIL at each end, it could not commission the transmission line. Therefore, 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) CEA vide its letter dated 24.8.2015 accorded the approval for energisation of 11 no. bays of 220 kV and 4 No. bays of 400 kV and 60-60 MVA, 400 kV station transformer and associated equipment at Kudgi STPP of NTPC. From the letter of CEA, it is observed that the bays pertaining to NTPC was ready in the month of August, 2015. However, PGCIL Narendra (New) sub-station was charged through PGCIL Kolhapur-New Narendra line from 15.11.2015. Subsequently, 400kV Kudgi Switchyard was charged on 16.11.2015. Therefore, the petitioner" stransmission line could not be utilized due to non-completion of elements under the scope of PGCIL. Accordingly, PGCIL shall pay the transmission charges to the petitioner for the period from 24.8.2015 to 15.11.2015.

(c) As per Regulation 8(5) of the Sharing Regulations, the charges for connectivity line of NTPC are required to be paid by NTPC till date of COD of first unit of Kudgi or date of start of LTA, whichever is earlier. Accordingly, from the period 16.11.2015, NTPC shall pay the transmission charges to the petitioner in terms of the Regulation 8 (5) of the Sharing Regulations.

(d) As per Regulation 11 of the Sharing Regulations, CTU is responsible for raising the bills of transmission charges to ISTS transmission licensees. Accordingly, CTU is directed to raise the bills to PGCIL and NTPC for the period from 4.8.2015 to 23.8.2015 in the ratio of 50:50 and to PGCIL for the period from 24.8.2015 to 15.11.2015 and to NTPC from 16.11.2015. After collecting the transmission charges, CTU shall disburse the same to the petitioner immediately."

"45. In our view----------„

Issue No.4: What should be payment of charges for startup power by NTPC?

"46. NTPC vide affidavit dated 14.12.2015 has contended that the charges payable by NTPC would correspond to the charges determined by the Commission for the relevant node under PoC mechanism and the same shallbe adjusted in the pooledaccount in the next quarter. Therefore, the charges of beneficiaries would be reduced to the extent payment is made by the generator. Accordingly, the transmission charges as per the TSA for the first element of the petitioner are required to be included in the PoC charges. NTPC has submitted that as per provisions of the 4th amendment of Connectivity Regulations, it is required to pay the transmission charges corresponding to KTL's Line-1 only for drawl of startup power from 21.11.2015 onwards till commissioning of Unit-1 of Kudgi STPP. These charges would correspond to charges of relevant node as approved by the Commission. According to NTPC, the transmission charges for first element need to be included and recovered through POC mechanism as the transmission charges are payable only from COD of the transmission lines and not from the date of completion/deemed COD as claimed by the petitioner in accordance with Transmission Service Agreement and Sharing Regulations."

74. The bays considered under this petition are part of connectivity lines i.e.Kudgi TPS-Narendra (New), whose sharing of transmission charges have been decided above. The tariff for the bays covered in the instant petition is to be borne by NTPC till COD of its first Unit or date of start of LTA whichever is earlier. Thereafter, 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.

75. The bays considered under this petition are part of connectivity lines i.e.Kudgi TPS-Narendra (New), whose sharing of transmission charges have been decided above. The tariff for the bays covered in the instant petition is to be borne by NTPC till COD of its first Unit or date of start of LTA whichever is earlier. Thereafter, 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 order dated 29.7.2016, the Review Petitioner has filed the instant review petition seeking to charge IDC and IEDC for the period of delay in commissioning of its generation unit instead of full transmission charges.

4. The review petition was heard and admitted on 11.11.2016 and notices were issued to the respondents to file their replies. PGCIL has filed its reply vide affidavit dated 30.12.2016 and the Review Petitioner filed its rejoinder vide affidavit dated 15.3.2017.

Grounds for Review

5. The grounds submitted by the Review Petitioner for review in the review petition are as follows:-

a. In the impugned order, transmission charges have been held to be payable by the Review Petitioner in the manner as determined for Kudgi Transmission Limited (KTL) in the order dated 27.6.2016 in Petition No. 236/MP/2015. However, the facts in Petition No. 236/MP/2015 are not *pari materia* to those of the instant petition as KTL was awarded the project for construction of transmission line under the competitive bidding guidelines notified by the Ministry of Power, Government of India and accordingly, the transmission charges were determined as per the provisions of 2010 Sharing Regulations. Whereas, the instant case is governed by 2014 Tariff Regulations and accordingly, the transmission tariff for PGCIL has been determined as per 2014 Tariff Regulations. The second proviso to Clause 3 of Regulation 4 and second proviso to Clause 2 of Regulation 12 of 2014 Tariff Regulations expressly prescribe the procedure/ mechanism for recovery of transmission charges by a Transmission Licensee in case of delay in the commissioning of a generating station, as a result of which the licensee is unable to achieve its Scheduled Commercial Operation Date (SCOD). In such circumstances, it is provided that the developers shall approach the Commission for approval of date of commercial operation and the generator shall bear the IDC or transmission charges till the generating station is commissioned. However, the Commission under Para 74 of the impugned order directed that the transmission charges pertaining to the instant assets shall be borne by the Review Petitioner till COD of its first Unit or date of start of LTA, whichever is earlier. Thus, the direction of the Commission is not in accordance with the second proviso to Regulation 12(2) of the 2014 Tariff Regulations and this is an error on the face of the record.

b. In second proviso to Clause 2 of Regulation 12 of the 2014 Tariff Regulations, the term 'commission' has been diligently used against expressions like commercial operation or COD and thus, the Commission had categorically intended that the transmission charges, under the circumstances mentioned therein, shall be made payable by the generating company till commissioning of its unit juxtaposed to the COD of its unit. In this reference, in a similar petition filed by PGCIL in Petition No. 254/TT/2015, for determination of transmission tariff for the period 2014-19 for 400 kV DC Lara STPS 1 to Raigarh (Kotra) PS, the Commission held that the Review Petitioner is liable to pay the transmission charges only till the commissioning of the generating station and not thereafter. The relevant extract of the aforesaid order dated 25.5.2016 in Petition No. 254/TT/2015 are being reproduced below:

> **"Sharing of Transmission Charges**
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> 42. NTPC in its reply submitted that for the execution of the ATS of Lara STPP Stage-I (2X800 MW) NTPC and PGCIL have signed an indemnification agreement. The agreement provides that:
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> "NTPC has agreed to bear transmission charges as determined by CERC for Lara-I-Raigarh (Kotra) 400kV D/C line and its associated bays from August, 2015 or actual date of commissioning of said line and bays, whichever is later, till commissioning of 1st generating unit."

43. NTPC has agreed to bear transmission charges for line to be used for drawl of start-up power. It is observed that NTPC is agreed to pay the transmission charges for drawl of startup power till the commissioning of the generating unit.

44. The transmission charges for the instant assets shall be borne by NTPC till the commissioning of the generating station. Once the generating station 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."

In view of the above, the impugned order is contradictory to the aforesaid earlier order passed in a similar matter and the same amounts to error apparent on the face of record.

c. In the impugned order, no cogent reason has been adduced while imposing liability on the Review Petitioner for payment of transmission tariff till COD of its first Unit or date of start of LTA whichever is earlier, contrary to the 2014 Tariff Regulations which provides that such transmission charges shall be payable by the generating company till the generating station is commissioned. Thus, in the impugned order, the liability has been imposed for an extended period of time by referring to COD instead of the date of commissioning of the first unit of generating plant.

d. The indulgence of the Commission is sought for imposing IDC and IEDC instead of transmission charges.

e. The two Nos. 400/220 kV ICTs were put under the scope of the Review Petitioner while approving Associated Transmission System in 33rd Standing

Committee Meeting on Power System Planning in Southern Region so that KPTCL can draw its share from 6 Nos. 220 kV lines emanating from Kudgi STPP switchyard and terminating at various 220 kV sub-stations/ load centers of KPTCL. The system of 400/220 kV was introduced at the behest of KPTCL which vide letter dated 7.10.2011 requested for the same. In this reference, on an average 200-300 MW power is flowing through 400 kV Kolhapur-Narendra (New) transmission line. The liability of the Review Petitioner is also necessarily to be limited till power flow starts from 400/220 kV ICTs to 220 kV network of KPTCL and thereafter charges may be included in the PoC as per Regulation 43 of 2014 Tariff Regulations.

f. One number 400/220 kV ICT at Kudgi STPP was charged on 6.9.2016. Therefore, the present review petition may be allowed to the effect that the Review Petitioner shall bear the IDC and IEDC for the bays till commissioning of its first Unit or date of start of power flow into 220 kV network, whichever is earlier.

6. PGCIL in its reply has made following submissions:-

a. The review petitioner has sought review of the impugned order in view of imposition of the transmission charges instead of IDC and IEDC. However, the Review Petitioner was directed to pay the transmission charges as per Clause 3 of Regulation 4 read with Regulation 12 of the 2014 Tariff Regulations. In the instant case, although the 4 bays were ready, they were prevented from being put to regular service on account of the delay in commissioning of the concerned generating station. As per the second proviso to Clause 3 of Regulation 4 of the 2014 Tariff Regulations, the Commission is vested with the discretion to direct a generating station to either pay the transmission charges or IDC and IEDC in the event the transmission element cannot be put to regular services on the account of reasons attributable to the generating station. In the present matter, the aforesaid direction to Review Petitioner appears to be carefully considered whereupon the Commission exercised the discretion to direct NTPC to pay the transmission charges and not IDC and IEDC. If the same is reversed, it will have dampening effects on the revenue of the PGCIL by deferment of the same, until NTPC achieves its COD.

b. The Review Petitioner has submitted that instead of transmission charges, it should be made liable to bear IDC and IEDC, until the 'commissioning' of Unit-I. However, the same is incorrect on two grounds. Firstly, this Commission has directed the recovery of transmission charges through PoC from the 'COD' of Unit-I of the generating station and not mere commissioning. Secondly, the revenue of PGCIL will be deferred despite taking all reasonable care and duly coordinating with NTPC for initial drawl of start-up power and subsequent utilization of transmission assets for evacuation of power after COD of the generating unit/station. In view of the foregoing, PGCIL submitted that disallowing the recovery of the transmission charges shall affect not only its viability and sustainability but also act as a precedent for all future cases for seeking lesser liability.

7. NTPC vide rejoinder to reply of PGCIL dated 15.3.2017 while reiterating the grounds in the review petition, made an additional submission that Unit-1 of Kudgi STPP achieved commissioning on 25.12.2016 as such the IDC and IEDC or Transmission Charges as decided by the Commission are payable by NTPC only till 24.12.2016. From 25.12.2016, the billing, collection and disbursement of the transmission charges approved by the Commission for the Narendra (New) Sub-station bays shall be governed by the provisions of 2010 Sharing Regulations, as amended from time to time as provided in Regulation 43 of the 2014 Tariff Regulations.

Analysis and decision

8. The Review Petitioner has sought review of the impugned order on the following three grounds:-

(i) KPTCL can draw its share of power through the 220 kV lines emanating from Kudgi STPP from the date of charging of 400/220 kV ICT at Kudgi STPP by the Review Petitioner. Hence, the liability of Review Petitioner should be limited till the date power flow starts from 400/220 kV ICTs to 220 kV. One 400/220 kV ICT at Kudgi STPP was charged on 6.9.2016.

(ii) As provided in the second proviso to Clause 2 of Regulation 12 of the 2014 Tariff Regulations, the Review Petitioner is liable to bear only IDC and IEDC and not the entire transmission charges as held by the Commission in the impugned order.

(iii) The Review Petitioner is liable for the charges only till the commissioning of the generating station as provided in the second proviso to Regulation 12(2) of the 2014 Tariff Regulations and not till the COD of its first unit as held by the Commission in the impugned order.

9. We have considered the submissions of the Review Petitioner. As regards the Review Petitioner's contention that the Kudgi-Narendra (New) 400 kV lines can be utilized for drawal by Karnataka through 400/220 kV ICTs in the generation switchyard of Kudgi TPS and hence its liability should be limited upto the charging of the 400/220 kV ICT, comments of CEA were sought. CEA furnished its comments vide letter dated 20.12.2016, which are as under:-

> "(i) The 400/220 kV ICTs are part of Kudgi TPS generation facility and not part of a transmission system. The associated transmission system (ATS) for this generation project consists of the 400 kV lines emanating from 400 kV bus of Kudgi TPS, i.e. Kudgi TPS – Narendra(New) 2xD/C lines, Narendra(New)- Madhugiri 765kV line, Madhugiri-Bidadi 400kV lines and six number of 220 kV lines to be drawn from 220kV bus of Kudgi TPS. These six number of 220 kV lines from 220 kV bus of Kudgi TPS are to be implemented by KPTCL and thus the 220kV bus at Kudgi TPS serves as interface of ISTS and Karnataka state network. In nutshell, the 400/220 kV ICTs is part of Kudgi TPS generation facility and not part of an ATS.
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> (ii) The ATS for a generating station is not a standalone system, but is part of the interconnected grid, and as such it transmits electricity not only from the associated generation plant but also of other facilities connected in the grid. This is the base principle of sharing of transmission charges through POC mechanism. The transmission charges are to be ultimately paid by drawing entities/States, and they do so because ISTS serves them with flow of power from generating stations. It would, however, be unfair to drawing entities/States if they are loaded with additional transmission charges of an ATS when its associated generating station has not been commissioned.
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> (iii) In the present case, KPTCL has yet to commission its six number of 220kV lines, and even if they do prior to commissioning of the Kudgi generation, the power flow on these lines would be incidental flow of inter-connected grid and not because of Kudgi generation. It may also be noted that - at present, Karnataka is meeting its load in that area (i.e north of Karnataka area around Kudgi, Basvanabagewadi, Bijapur etc.) from the existing interconnections.
>
> (iv) The states may also raise the issue of utilization of 400/220kV ICT of generating switchyard even after commissioning of the Kudgi generation, if KPTCL does not implement its planned six lines. This would then be similar to the case where, the downstream 220kV system from an ISTS 400/220kV S/S is not built by the state.

> (V) A generation can also not be absolved of paying transmission charges by merely building a generation switchyard and not commissioning its generating units."

10. CEA has stated that the 400/220 kV ICTs are part of Kudgi TPS generation facility and not part of an Associated Transmission System (ATS) and ATS of a generating station is not a standalone system and it is a part of interconnected grid and it enables transmission of electricity not only of the associated generation but also other facilities connected to the grid. CEA has stated that it would be unfair if entities are loaded with transmission charges of an ATS when its associated generating station has not been commissioned. In the present case, KPTCL has not commissioned its six number of 220 kV lines, and even if they are commissioned prior to commissioning of the Kudgi generation, the power flow on these lines would be incidental flow of inter-connected grid and not because of Kudgi TPS generation. CEA has further stated that a generator cannot be absolved of its responsibility just by constructing the generation switchyard in place of commissioning of generating units. We agree with the comments of CEA. The charging of the 400/220 kV ICTs in Kudgi TPS generation facility by the Review Petitioner will not serve any useful purpose to the grid without the commissioning of the associated generating station as contended by the Review Petitioner. As such, the charges as decided by the Commission in Petition No. 201/TT/2015 have to be borne by Review Petitioner. Accordingly, review on this count is not allowed.

11. The second contention of the Review Petitioner is that it is liable to bear IDC and IEDC as provided under second proviso to Regulation 12(2) of the 2014 Tariff Regulations and not transmission charges as held by the Commission. The relevant portion of the impugned order is as under:-

"We have considered the submissions of the respondents and the petitioner. COD for bays associated with Kudgi-Narendra Line-1 at Narendra is considered as 11.12.2015 as per COD declaration certificate dated 11.12.2015 of the petitioner and RLDC Certificate dated 4.4.2016. Regarding COD of other bays at Narendra, we note that NTPC has referred to the provisions of Regulation 4(3)(ii), which has been reproduced at para-19 and has confirmed that out of 4 bays, 3 bays associated with Kudgi-Narendra Line were not ready at NTPC end. Whereas, the petitioner has submitted during hearing on 2.6.2016 that it has completed its scope of work but the scope of work of NTPC is not complete. As per the provisions of Regulation 4(3)(ii), the petitioner cannot declare COD on its own without approval of the Commission and needs to approach the Commission for the same. The petitioner did not seek approval of COD under Regulation 4(3)(ii) of the 2014 Tariff Regulations in the original petition. However, it was sought during the hearing held on 2.6.2016. We approve the COD of the 3 bays also as 11.12.2015 under Regulation 4(3)(ii) of the 2014 Tariff Regulations, as the petitioner had made its elements ready but was prevented from regular service for reasons not attributable to it. However, the petitioner is directed to approach the Commission, in advance, in future, for approval of COD under Regulation 4(3)(ii) of the 2014 Tariff Regulations…."

12. In the instant case, the transmission assets (bays) were ready but the Review Petitioner was not able to put the assets into regular service because of the delay in commissioning of the generating station i.e. for reasons not attributable to the Review Petitioner. Accordingly, the COD of the instant bays was approved under the second proviso to Regulation 4(3) of the 2014 Tariff Regulations. As regards the liability of transmission charges, the second proviso to Regulation 12(2) of the 2014 Tariff Regulations provides as under:-

"Provided further that if the generating station is not commissioned on the SCOD of the associated transmission system, the generating company shall bear the IDC or transmission charges if the transmission system is declared under commercial operation by the Commission in accordance with second proviso of Clause 3 of Regulation 4 of these regulations till the generating station is commissioned."

13. The Review Petitioner has argued that as per the above provision, the generating station which is unable to commission its unit as on SCOD of the associated

transmission system is required to bear the IDC only and not the transmission charges. In our view, the interpretation of the Review petitioner is not correct. The second proviso to Regulation 4(3) of the 2014 Tariff Regulations is in the two parts. The first part pertains to a situation where the generating station does not achieve the COD as on the SCOD of the associated transmission system. SCOD has been defined as under:-

> "(54) 'Scheduled Commercial Operation Date or SCOD' shall mean the date(s) of commercial operation of a generating station or generating unit or block thereof or transmission system or element thereof as indicated in the Investment Approval or as agreed in power purchase agreement or transmission service agreement as the case may be, whichever is earlier;"

14. Thus, SCOD is the date of commercial operation of a generation station or unit thereof or the transmission system as per the investment approval or PPA or TSA as the case may be. If the transmission system is ready for declaration of COD but is prevented from doing so, then the generating company is required to pay IDC from the SCOD of the transmission system till the COD of the generation station. The second part of the second proviso to Regulation 12(2) says that the generating company shall bear the transmission charges if the transmission system is declared under commercial operation by the Commission in accordance with second proviso of Clause 3 of Regulation 4 of the 2014 Tariff Regulations till the generating station is commissioned. The second proviso to Regulation 4(3) of the 2014 Tariff Regulations is extracted as under:-

> "(ii) in case a transmission system or an element thereof is prevented from regular service for reasons not attributable to the transmission licensee or its supplier or its contractors but is on account of the delay in commissioning of the concerned generating station or in commissioning of the upstream or downstream transmission system, the transmission licensee shall approach the Commission through an appropriate application for approval of the date of commercial operation of such transmission system or an element thereof."

15. As per the second proviso to Regulation 4(3) of the 2014 Tariff Regulations, the Commission can declare deemed COD of the transmission system if it is ready to be put into use but it is prevented from doing so for reasons not attributable to the transmission licensee. Therefore, when the deemed COD has been declared as per the approval of the Commission, the transmission charges shall be paid by the generating company till the generating unit achieves COD. There is another reason as to why IDC shall not be applicable after the COD of the transmission system. Since the capital cost is determined as on the COD after taking into account the IDC during the construction period and after COD, IDC is not applicable, transmission charges shall be payable after COD. In over view, as per the second proviso to Regulation 12(2), the Review Petitioner is liable to bear the transmission charges, if the COD of the concerned assets is approved by the Commission under proviso (ii) of Clause (3) of Regulation 12 of the 2014 Tariff Regulations and if the COD is not approved by the Commission under the said provision, then the Review Petitioner is liable to bear the IDC and IEDC. Since in the instant case, the Commission has approved the COD under clause 3 of Regulation 4 of the 2014 Tariff Regulations, the direction that the transmission licensee is entitled to recover the transmission charges from the generating station due to non-commissioning of the generating station is in accordance with clause 2 of Regulation 12 of the 2014 Tariff Regulations. Accordingly, review on this count is not allowed.

16. The third contention of the Review Petitioner is that it is liable to bear the charges of the instant assets only upto commissioning of the generating station and not beyond as the Commission has consciously and diligently used the word “commissioned” as against the words “date of commercial operation or COD” second proviso of clause 2 of

Regulation 12 of the 2014 Tariff Regulations. In our view, in second proviso to Regulation 12(2), the word “commissioned” has been used in the sense of COD. If the COD of the generating station does not take place in the same time frame as the COD of the transmission system, then the generator is liable to pay the transmission charge till the COD of the generating station. If the interpretation of the Review Petitioner is accepted, it will lead to an anomalous situation in which the transmission charges cannot be serviced from the date of commissioning to the COD of the generating station. Keeping in view the spirit of the regulation, we are of the view that PGCIL is entitled to recover the transmission charges from the date of the commercial operation of the transmission system till the date of commercial operation of the generating station.

17. Further, Regulation 8(6) of the 2010 Sharing Regulations provides as under:-

> “For Long Term Transmission Customers availing power supply from inter-State generating stations, the charges attributable to such generation for long term supply shall be calculated directly at drawal nodes as per methodology given in the annexure-I. Such mechanism shall be effective only after commercial operation of the generator. Till then it shall be the responsibility of the generator to pay transmission charges.”

18. The second proviso to Clause 2 of Regulation 12 of the 2014 Tariff Regulations has to be read with Regulation 8(6) of the 2010 Sharing Regulations. Accordingly, the transmission charges are to be payable by the Review Petitioner in the instant case till COD of first unit of the generating station. Review on this count is also not allowed.

19. The Review Petition No. 51/RP/5016 is disposed in terms of above.

sd/-	sd/-	sd/-	sd/-
(Dr. M.K. Iyer)	**(A.S. Bakshi)**	**(A.K. Singhal)**	**(Gireesh B. Pradhan)**
Member	**Member**	**Member**	**Chairperson**