

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 55/RP/2016 alongwith 27/IA/2017
in
Petition No. 173/TT/2013 and Petition No. 111/TT/2015**

Coram:

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

Date of Order : 30.01.2018

In the matter of:

Review of the Commission's order dated 15.6.2016 in Petition No. 173/TT/2013 and Petition No. 111/TT/2015 under Regulation 94 of the Electricity Act, 2003 read with Regulations 103, 111 and 114 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

And in the matter of:

NTPC Limited
NTPC Bhawan, Scope Complex Institutional Area,
Lodhi Road,
New Delhi-110003.

...Review Petitioner

Vs

1. Powergrid Corporation of India Ltd.
Saudamini, Plot No. 2, Sector-29,
Near IFFCO Chowk,
Gurgaon-122001.
2. Essar Power M.P Limited,
Prakash Deep Building, 10th Floor,
7 Tolstoy Marg,
New Delhi-110 001
3. Power Grid Corporation of India Limited
"Saudamini", Plot No. 2, Sector 29
Gurgaon -122001
4. National Load Despatch Centre,
B-9, Qutub Institutional Area,
Katwaria Sarai, New Delhi-110 016



5. Western Region Power Committee,
F-3, MIDC Area, Marol, Opp. SEEPZ, Central Road,
Andheri (East),
Mumbai-400 093
6. Essar Steel India Limited,
27th KM on Surat-Hazira Road,
Hazira-394 270, Distt.-Surat
7. Government of Madhya Pradesh,
Energy Department, Mantralaya,
Vallabh Bhavan, Bhopal-462 004

.....Respondents

For Petitioner : Shri Suparna Srivastava, Advocate, NTPC
Shri Parimal Piyush, NTPC

For Respondents : Shri Sitiesh Mukherjee, Advocate, EPTCL
Shri Vishal Binod Advocate, EPTCL

ORDER

The Instant review petition has been filed by NTPC seeking review of order dated 15.6.2016 in Petition Nos. 173/TT/2013 and 111/TT/2015, with regard to Commission's directions to NTPC and Essar Power Transmission Company Ltd (EPTCL) to jointly approach the Commission for grant of transmission charges for two 400 kV bays at NTPC Gandhar Switchyard.

Background

2. EPTCL is a subsidiary of Essar Power Limited (EPL). EPL through its other subsidiary, Essar Power M.P. Limited (EPMPL), set up Mahan Thermal Power Project in Singrauli District in the State of Madhya Pradesh ("Mahan TPS") with a capacity of 2 x 600 MW in the first phase and ultimate capacity of the project is 1800 MW-2000 MW. Out of the power generated from the project, 700 MW power was proposed to be transmitted to the steel plant of Essar Steel Limited and Essar Steel (Hazira) Limited, Hazira in the State of Gujarat. Subsequently, EPTCL obtained transmission



licence from the Commission on 10.4.2008 for undertaking transmission of power generated from Mahan TPS. The transmission assets covered under the licence are as under:-

(a) Transmission lines

Sr. No.	Transmission lines	Approximate line length (kms)
1.	400 kV D/C (triple conductor) transmission line from Mahan to Sipat Pooling Sub-station	315
2.	LILO of existing 400 kV S/C Vindhyachal-Korba transmission line of Powergrid at Mahan	20
3.	400 kV D/C (twin conductor) transmission line from Gandhar NTPC switchyard to Hazira	97

(b) Sub-stations

Sr. No.	Sub-stations
4.	3x500 MVA 400/220 kV Sub-station at Hazira
5.	2x50 MVAR line reactors at Sipat pooling Sub-station
6.	2x50 MVAR line reactors at Mahan
7.	1x80 MVAR, 420 kV switchable bus reactor at Mahan TPS along with its associated 400 kV bay
8.	2 Nos. 400 kV line bays at Sipat pooling station
9.	2 Nos. 400 kV line bays at Gandhar (NTPC) switchyard
10.	4 Nos. 400 kV line bays at Mahan TPS

Two Nos. of 400 kV bays were to be installed at the Switchyard of the Gandhar TPS of NTPC. As per the Commercial Agreement entered into between EPTCL and NTPC, the bays would be owned, controlled and maintained by NTPC at Gandhar Switchyard and NTPC would be entitled to recover the annual transmission charges from EPTCL as per Commission's Tariff Regulations. Further, as per the Agreement, the capital cost of the bays to be adopted for the calculation of tariff was to be the same as capitalized in the books of accounts of NTPC. Accordingly, NTPC constructed the two bays at the NTPC Gandhar Switchyard and commissioned



the same on 23.2.2013. EPTCL filed the tariff Petition Nos. 173/TT/2013 and 111/TT/2015 for grant of transmission charges for the transmission assets covered under the licence. In respect of the 2x400 kV bay at Gandhar Switchyard EPTCL claimed the asset as special O&M Expenses on actual basis. EPTCL was granted provisional tariff vide order dated 12.9.2013. On that basis, EPTCL was making payment to NTPC. The Commission after consideration of the claim issued the following directions vide order dated 15.6.2016. The relevant portion of the order dated 15.6.2016 is reproduced hereunder:-

“70. As per Investment Approval, 3x500 MVA ICTs were to be installed at Haziara Sub-station; however, petitioner has installed only 2x500 MVA ICTs at Hazira. Hence, 2 Nos, (400 kV) bays to ICTs have been considered. Therefore, the 400 kV bays to be considered for O&M Expenses are 5 Nos. as the petitioner's claim. On 11.2.2010, EPTCL and NTPC entered into commercial agreement for 02 no. bays of NTPC Gandhar Sub-station. As per the terms of agreement, NTPC will own, construct and maintain these 2 bays and would recover the annual transmission charges from EPTCL as per Commission's Tariff Regulations. The petitioner has submitted that annual payment to be paid to NTPC is to the tune of Rs.500 lakh per year and has prayed that this amount may be allowed as special O&M Expenses on "actual" basis.

71. It is observed that the transmission licence was granted to the petitioner for two 400 kV line bays at Gandhar (NTPC) switchyard, which was also agreed by NTPC in 9th meeting of WR constituents held on 3.7.2007 at Indore regarding long term access applications. Later, the petitioner and NTPC have agreed that NTPC would own, construct and maintain these bays and recover the annual transmission charges from the petitioner. Accordingly, NTPC has completed these two 400 kV line bays at Gandhar (NTPC) switchyard

72. We direct NTPC and the petitioner to jointly approach the Commission for approval of tariff of two 400 kV line bays at Gandhar (NTPC) switchyard. After approval of the tariff, the petitioner shall recover the same through PoC and reimburse it to NTPC.”

After the issue of order dated 15.6.2016, EPTCL has stopped paying to NTPC.

3. Pursuant to the observations and directions contained in order dated 15.6.2016, EPTCL vide its letter dated 5.7.2016 requested NTPC to take steps for filing of petition for approval of tariff of the bays at Gandhar at the earliest failing which EPTCL would not be in a position to reimburse any amount to



NTPC. NTPC, however, requested EPTCL to continue making the payment of the monthly charges as billed by it for the usage of two 400 kV bays at Gandhar Switchyard in terms of Agreement dated 11.2.2010 till the matter is decided.

Grounds of Review

4. NTPC has filed the review on the following grounds:-

(a) The 400 kV Gandhar-Hazira (radial) line which terminates at Gandhar Gas Power Station switchyard and for which the two 400 kV bays have been constructed, are dedicated in nature and do not form part of the meshed network of inter-State transmission system. The construction and owning of the two bays by NTPC is an internal arrangement as between EPTCL and NTPC and it does not alter the decision taken in the 9th Meeting of Western Region constituents that the same is not part of the pooled transmission system of the CTU in the process of power evacuation from Mahan TPS.

(b) The Electricity (Removal of Difficulty) (Fifth) Order, 2005 postulates that a generating company or a person setting up a captive generating plant is not required to obtain a licence under the Act for establishing, operating or maintaining a dedicated transmission line. The Gandhar-Hazira 400 kV line alongwith its associated bays, is dedicated in nature and the fact that the bays have been built and operated by NTPC, does not alter their dedicated nature. As such, they cannot be considered for grant of licence and also for approval of transmission tariff for inclusion in the PoC and its consequent sharing by DICs.

(c) The Bulk Power Transmission Agreement (BPTA) dated 7.2.2009, signed between EPL and PGCIL, clearly defines the status of the Gandhar-Hazira transmission line as dedicated transmission system. In the BPTA, it is also



specified that this line will operate in radial mode till Essar Steel Hazira end and that it will never become a part of the meshed network and will not be connected in future with the transmission system of GETCO at 220 kV level at Hazira end.

5. After hearing the parties, the respondents were directed to file their respective replies and the NTPC to file rejoinder. The Commission vide RoP dated 4.5.2017 also directed NTPC to furnish the details of the cost of the two 400 kV bays at NTPC Gandhar Switchyard.

6. EPTCL in its reply dated 25.1.2017 has submitted that NTPC is seeking review of the Commission's order dated 10.4.2008 in Petition No. 157 of 2007 whereby EPTCL was granted a transmission licence. EPTCL has submitted that non-payment of transmission tariff is on account of direction of the Commission in order dated 15.6.2016 to recover and reimburse the tariff for NTPC bays only after the tariff is determined. The same was clarified to NTPC through letters by EPTCL. EPTCL has submitted that the Gandhar-Hazira line developed by EPTCL and the NTPC Gandhar Switch bays form part of the license granted to EPTCL. The Commission in order dated 10.4.2008 has clarified that it does not propose to treat the transmission system of EPTCL as a 'dedicated' transmission system' as it may be utilized for carrying power other than the purpose for which it is constructed. EPTCL has further submitted that the transmission licence order clearly provides that the NTPC bays were included as the licensed transmission assets of EPTCL upon the advice of CTU, which was accepted by EPTCL. EPTCL has also submitted that the annual transmission charges through POC could be recovered by NTPC only after the Commission approves the tariff. In view of the above, NTPC be directed to submit the capital cost details for its bays in terms of the Commission's order dated 15.6.2016.



7. In response, the NTPC in its rejoinder dated 3.5.2017 has reiterated the submissions made in the review petition. The NTPC has specifically denied that it was seeking review of order dated 10.4.2008 passed by the Commission in Petition No. 157/2007 whereby a transmission licence was granted to the EPTCL for its transmission assets. NTPC has further submitted that the Commission omitted to consider the nature of the two bays. The two 400 kV line bays at Gandhar Switchyard were constructed by the NTPC in terms of the 11.2.2010 Agreement between NTPC and EPTCL and monthly usage charges are to be paid by EPTCL in terms of the said Agreement. NTPC has submitted that NTPC is not seeking revocation of the licence issued to EPTCL and the two bays at Gandhar Switchyard should be treated as per the commercial agreement between NTPC and EPTCL and it should not be treated as an ISTS and not included in the PoC charges. NTPC, however, furnished the Auditor certified capital cost of the two bays at Gandhar Switchyard, debt-equity ratio and loan portfolio of Gandhar GPS.

8. Madhya Pradesh Power Management Company Limited (MPPMCL) in its reply dated 23.1.2017 has submitted that the requirement for obtaining a licence arises only when the line is intended to be used as a main transmission line and a part of inter-State transmission network. As per the Electricity (Removal of Difficulty) (Fifth) Order, 2005 no licence is required for establishing, operating or maintaining the transmission lines which are of dedicated nature. MPPMCL has affirmed that a decision was taken in the meeting with regard to transmission of power from Mahan TPS that Mahan TPS generation Switchyard kV D/C (triple) line, Gandhar (NTPC)-Hazira (Essar Steel) 400 D/C and establishment of 400/220 kV 3 x 500 MVA sub-station at Hazira (Essar) are dedicated transmission system for Mahan TPS generation project which shall be built, owned,



operated and maintained by EPMPPL to interconnect the generation project with WR grid and point drawl at Hazira. MPPMCL has also submitted that since the transmission line is of dedicated nature, inclusion of this line in PoC charges as decided in this order will create unnecessary burden on the beneficiaries.

Analysis and Decision

9. We have considered the submissions of the respondents and NTPC. NTPC has contended that the two 400 kV bays at NTPC Gandhar Switchyard are part of the Associated Transmission System of EPTCL established for evacuation of power from Mahan TPS to its subsidiaries Essar Steel Limited and Essar Steel (Hazira) Limited in Gujarat. NTPC has submitted that it was agreed in the 9th Meeting of Western Region constituents that the instant two bays at Gandhar Switchyard besides other elements are part of the dedicated transmission system of Mahan TPS and hence they cannot be issued licence and their transmission charges should not be included in the PoC charges. MPPMCL has submitted that a transmission licence is required only if the transmission assets are intended to be used as inter-State transmission network and in the instant case the two bays are part of the dedicated transmission system for evacuation of power from Mahan TPS. MPPMCL has further submitted that since the transmission assets are of dedicated nature, they should not be included in the PoC charges as it would burden the beneficiaries. EPTCL in its reply submitted that NTPC is seeking the review of the Commission's order dated 10.4.2008 in Petition No.157/2007 in which EPTCL was granted the transmission licence. NTPC in its rejoinder to the reply of EPTCL has denied that it is seeking the review of the order dated 10.4.2008 and has submitted that the two bays at Gandhar Switchyard have been maintained by it on the request of EPTCL in terms of bilateral Agreement dated 11.2.2010 between NTPC and EPTCL. Accordingly it should not be treated as an ISTS and should not be included in



the PoC charges. We have considered the submissions of parties. The Commission while granting transmission licence to EPTCL observed as under:-

“13. It is further made clear that the Commission does not propose to treat the transmission system as a “dedicated” transmission system, for construction, maintenance and operation of which licence is not needed by the generating company, since the system may be utilized in future for carrying power other than that for which it is being proposed to be constructed presently.”

Accordingly, transmission tariff was granted to the Associated Transmission System of Mahan TPS in order dated 15.6.2016 considering the same as ISTS. The order granting transmission licence to EPTCL has not been challenged and has attained finality. Therefore, the grounds raised by NTPC and MPPMCL with regard to the nature of the transmission lines lack merit and cannot be considered in review.

10. As regards the contention of NTPC and MPPMCL that the transmission charges of the two bays at Gandhar Switchyard should not be included in the PoC charges, it is clarified that the two bays formed part of the licence granted to EPTCL and therefore are considered as ISTS. Therefore, the tariff shall be reimbursed in accordance with the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 (2010 Sharing Regulations).

11. NTPC was directed to submit the cost of the two bays at Gandhar Switchyard and accordingly NTPC has submitted the same alongwith rejoinder to the reply of EPTCL. EPTCL is directed to file a petition for determination of tariff of the two bays at Gandhar Switchyard within 30 days of issue of this order on the basis of the details of cost furnished by NTPC. Further, NTPC is directed to provide further details, if any, required by EPTCL for filing the tariff petition.



Interlocutory Application No.27/2017 filed by EPTCL

12. EPTCL has submitted that the Commission in RoP dated 24.1.2017 had directed that till the disposal of the review petition, EPTCL would be reimbursed transmission charges provisionally as allowed in order dated 12.9.2013 in Petition No.173/TT/2013 from June, 2016 onwards, pro-rated to the capital cost of the bays to enable EPTCL to pay to NTPC. Though EPTCL approached NTPC to issue revised invoices for further submission to CTU, NTPC did not issue revised invoices as a result of which the interim directions of the Commission could not be given effect to. EPTCL further approached CTU which expressed its inability to recover the transmission charges.

13. It is observed that EPTCL has not paid the transmission charges from the bays to NTPC since the issue of order dated 15.6.2016. Further, despite directions of the Commission in ROP dated 24.1.2017, EPTCL has not been reimbursed the provisional tariff for the bays. Pending filing of the tariff petition as per our order in para 11 above and determination of tariff for the bays at Gandhar Switchyard, we direct that as an interim measure, EPTCL be reimbursed tariff at the rate of 80% of the transmission charges claimed by EPTCL (80% of which EPTCL has claimed from CTU towards transmission charges) from POC from June, 2016 onwards till the determination of final tariff of the bays. EPTCL is directed to make payment of the charges to NTPC within 3 days of receipt of transmission charges from CTU.

14. Review Petition No. 55/RP/2016 and Interlocutory Application No.27 of 2017 are disposed in terms of above.

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

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

