

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 128/MP/2018

**Coram:
Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member**

Date of Order: 11.04.2019

IN THE MATTER OF

Revision of Transmission Tariff for Asset-I : 400 kV D/C Palatana - Silchar Twin Moose Conductor Transmission Line - 247.39 km, Asset-II: 400 kV D/C Silchar- Byrnihat (one circuit on D/C towers) Twin Moose Conductor Transmission Line : 214.41 km, Asset-III: 400 kV D/C Byrnihat-Bongaigaon (one circuit on D/C towers) Twin Moose Conductor Transmission Line -201 km, Asset IV: 400 kV D/C Silchar Azara (one circuit on D/C towers) Twin Moose Conductor Transmission Line- 256.41 km and Asset-V: 400 kV D/C Azara - Bongaigaon (one circuit on D/C towers) Twin Moose Conductor Transmission Line-159 km under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 and Regulation 86 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

AND

IN THE MATTER OF

North East Transmission Company Limited,
House No. 051358, Road No. 3,
Dhaleswar, Agartala, West Tripura-799007

....Petitioner

Versus

1. Tripura State Electricity Corporation Limited
Through its Managing Director
Bidyut Bhawan, North Banamaliupr,
Agartala-799001

2. Assam Electricity Grid Corporation Limited
Through its Managing Director
Bijulee Bhawan, Paltan Bazar,
Guwahati-781001

3. Meghalaya State Electricity Board,
Through its Managing Director
Lumjingshai, Short Round Road,
Shilong-793001



4. Department of Power
Government of Nagaland,
Through its Secretary
Electricity House, A.G. Colony,
Kohima-797001
5. Power & Electricity Department,
Government of Mizoram,
Through its Secretary,
New Secretariat Complex, Khatla,
Aizwal-796001, Mizoram
6. Electricity Department,
Government of Manipur,
Through its Secretary,
Keishampat, Imphal-795001
7. Department of Power,
Government of Arunachal Pradesh,
Through its Secretary,
Vidyut Bhawan, Department of Power,
Zero Point Tinali,
Itanagar-791111, Arunachal Pradesh
8. ONGC Tripura Power company Limited,
ONGC Tripura Assets, Baarghat Complex,
Agartala, Tripura-799014.
9. North Eastern Regional Power Committee
Through its Secretary,
Nongrim Hills, Shillong- 793003
Meghalaya

....Respondents

Parties Present:

Shri M.G. Ramachandran, Advocate, NETCL
Shri B. Nagar, NTECL
Shri M.K. Gupta, NTECL
Shri Naveen Kumar Mishra, NETCL

ORDER

The Petitioner, North East Transmission Company Limited (hereinafter to be referred as 'the Petitioner') has filed the present Petition seeking O & M charges in terms of Regulation 29 (4) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulation, 2014 (hereinafter to be referred as "Tariff Regulations,



2014”) prescribing the O & M charges for single circuit in place of 50% of the O & M charges applicable to the double circuit line. The Petitioner has made the following prayers :

- a) Allow the O&M charges in terms of the Regulation 29(4) of the Tariff Regulations, 2014 prescribing the O&M charges for single circuit in place of 50% of the O & M charges applicable to double circuit line and adjust the said relaxed O & M charges against the amount to be refunded by the Petitioner to Respondent Beneficiaries on account of reduction in the interest and financing charges achieved by the Petitioner on account of enhanced rebate from 0.25% to 1.10% towards timely payment and
- b) extend the time frame for additional capitalization beyond the grace period as per the specified norms under Regulation 14 and 3(13) of the CERC (Terms and Conditions of Tariff) Regulations, 2014.

2. The Petitioner has mainly submitted as under :

a) The Commission vide order dated 16.6.2009 in Petition No. 16/2009 granted transmission licence to the Petitioner for the construction of the following transmission line :

- i. 400 kV D/C Palatana – Silchur D/C line.
- ii. 400 kV D/C Silchur – Bongaigaon D/C line.

b) The individual single circuit 400 kV transmission line were connected to the 400 kv sub-stations at Silchar, Barnihat, Azara and Bongaigaon progressively. Based on these connections of individual circuits at sub-stations, 400 kV transmission line have been split into five assets, which have been commissioned as under :

Asset	Description	COD
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Asset I	Palatana - Silchar two 400 kV circuits (two circuits constructed on double circuit towers)	1.9.2012
Asset II	Silchar - Byrnihat one 400 kV circuit (one out of the two circuits constructed on double circuit towers)	1.3.2013
Asset III	Byrnihat - Bongaigaon one 400 kV circuit (one out of the two circuits constructed on double circuit towers)	22.2.2015
Asset IV	Silchar - Azara one 400 kV circuit (one out of the two circuits constructed on double circuit towers)	27.7.2014
Asset V	Azara - Bongaigaon one 400 kV circuit (one out of the two circuits constructed on double circuit towers)	16.1.2015

c) The above said transmission system is ready and the same is operational since February, 2015. The Commission vide order dated 29.7.2016 in Petition No. 233/TT/2015 determined the tariff for Asset I and Asset II for the control period 2009-14 under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 and the Commission vide its another order dated 16.8.2016 in Petition No. 213/TT/2015 determined the tariff for Assets I to V for the control period 2014-19 under Tariff Regulations, 2014.

d) The O & M Expenses for various assets which were commissioned progressively with Single Circuit (S/C) Line coming for the first time has, been determined by the Commission based on the O & M Charges provided in the Tariff Regulations, 2014 for the Double Circuit (D/C) Line under to the extent of 50% of the said charges, under Regulation 29 (4) of the Tariff Regulations, 2014.



The Commission has computed the O & M Expenses at 50% on the premise that the transmission System is commissioned on S/C basis and, therefore, only 50% of the O & M Charges applicable to the D/C Line.

e) The Commission has notified separately the applicable O & M Charges for a Single Circuit Line under Regulation 29 (4) of the Tariff Regulations, 2014, and therefore, O & M Expenses should be allowed, accordingly. The allowance of the half of the O & M charges applicable to the Double circuit Line by the Commission has led to a substantial loss to the Petitioner's company.

f) The actual O & M expenses incurred by the Petitioner to carry out O & M expenses during the period from 1.4.2014 onwards on annual basis is much higher than the O& M expenses allowed in the order dated 16.8.2016 in Petition No. 213/TT/2015. The details of O & M expenses is as under :

S.NO	YEAR	Total O&M charges	O&M charges allowed by CERC	Variations on (Short)/Excess	% (Short)/ Excess
1	2014-15	902.11	331.21	-570.90	-172.37
2	2015-16	1374.33	484.49	-889.84	-183.67
3	2016-17	1307.78	500.41	-807.37	-161.34
4	2017-18	1324.85	516.98	-807.87	-156.27
5	2018-19	1371.72	534.20	-837.52	-156.78

g) The O & M expenditure related to Single Circuit cannot be reduced proportionately and halved to the extent of 50% of the Double Circuit Line. The manpower as well other aspects of O & M expenses involved in Single Circuit Line cannot be considered in such a mathematical manner. The maintenance of Single Circuit Line involves large quantum of expenses which will be common on



economies of scale if Double Circuit Line is established as in the case of capital cost involved.

h) The Petitioner had borrowed a term loan of ₹1699.20 crore from Power Finance Corporation Limited for construction of the transmission system. The Petitioner has however been constantly attempting to reduce the interest burden by re-financing the loan and other mitigating actions. As a result of such efforts made by the Petitioner an enhanced rebate of 1.10% (from existing 0.25%) towards timely payment of the quarterly instalment has been obtained.

i) The Petitioner has sought extension of time for Additional Capitalisation of the Asset for the construction of an alternative route for the existing transmission overhead line passing through the Regional Institute of Science and Technology (RIST) at RiBhoi in the State of Meghalaya as per the directions of the Hon'ble Appellate Tribunal of Electricity in Appeal no. 80 of 2014 and I.A. No. 149 and 151 of 2014. The existing line (for which alternative route is to be constructed) was declared commercial on 20.2.2015. The cut-off date for the additional capitalization as per the Tariff Regulation, 2014 is 31.3.2018. The Petitioner can commence the construction of the alternative route as per the directions of the Hon'ble Appellate tribunal only upon the grant of the requisite forest clearance by the Authorities. Accordingly, the alternative route cannot be commissioned and declared under commercial operation before the expiry of the cut-off date.

j) The Petitioner has thus submitted that it requires extension of time from this Commission for consideration of this additional capitalization of the Asset. The Petitioner, therefore, reserved the right to seek such extension of time and



approval of additional capitalization beyond the cut-off date upon the competition of the alternative route.

3. The Petition was admitted and Notices were issued to the Respondents. However, no replies have been filed by the Respondents, despite Notice.

Analysis and Decision:

4. After considering the submissions of the Petitioner, the following issues arise for our consideration :

Issue No 1 : Whether the Petitioner is entitled to claim the O&M charges in terms of the Regulation 29(4) of the Tariff Regulations, 2014 prescribing the O&M charges for single circuit in place of 50% of the O&M charges applicable to double circuit line ?

Issue No. 2: Whether the Petitioner is entitled for extension of time frame for additional capitalization beyond the grace period as per the specified norms under Regulation 14 and 3(13) of the Tariff Regulations, 2014 ?

The above issues have been dealt in succeeding paragraphs.

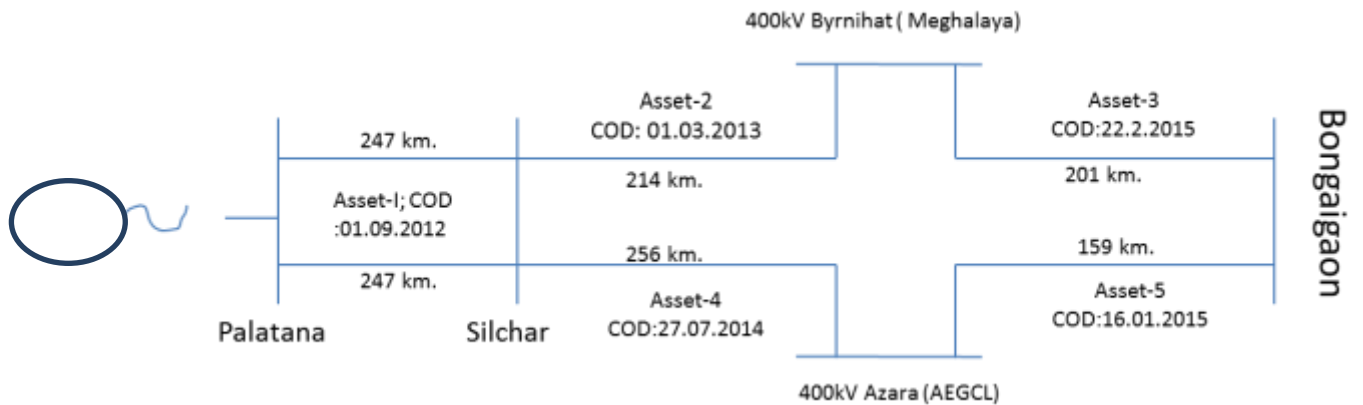
Issue No 1 : Whether the Petitioner is entitled the O & M charges in terms of the Regulation 29(4) of the Tariff Regulations, 2014 prescribing the O&M charges for single circuit in place of 50% of the O&M charges applicable to double circuit line?

5. We have considered the submissions of the Petitioner. The Petitioner has sought revision of tariff fixed by the Commission vide order dated 16.8.2016 in Petition No. 213/TT/2015. The Petitioner has mainly contended that the Commission has computed the O & M expenses at 50% on the premise that the transmission System is commissioned on S/C basis and, therefore, only 50% of the O & M Charges is applicable to the D/C. However, Regulation 29 (4) of the Tariff Regulations, 2014, notifies separately the applicable O & M Charges for a Single Circuit Line and accordingly for the period where the transmission system/element had been



commissioned by the Petitioner on an S/C basis, the O & M Expenses should be allowed, accordingly.

6. An Single Line Diagram is attached for better understanding of the same;



7. It is observed that the Asset-II, which was commissioned on 1.3.2013 (single circuit on D/C line) got completed as a D/C Line with the commissioning of Asset- IV on 27.7.2014. Similarly, the D/C line comprising of Asset-V and Asset-III got completed as D/C Line with the commissioning of Asset-III on 22.2.2015. The Petitioner is getting O & M charges for D/C line and with the commissioning of Assets – IV and III, although it may be halved in the tariff of each asset, but in totality, the Petitioner is getting full normative O & M charges for D/C line as per the Tariff Regulations, 2014.

8. It is observed that the Petitioner has not preferred any Review Petition or Appeal against the Commission’s order dated 16.8.2016 in Petition No. 213/TT/2015. Regulation 103 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2009 (hereinafter to be referred as “Business Regulations”) deals with power of Review of this Commission. Regulation 103 (1) of the Business Regulations read as under :

“(1) The Commission may, on the application of any of the person or parties concerned made within 45 days of making such decision, direction or order,



review such decisions, directions or orders and pass such appropriate orders as the Commission deems fit.”

The above Regulation entitles any person to approach the Commission seeking review of decisions, direction or order passed by the Commission, within 45 days of passing such decision, direction or order. However, the Petitioner has not filed any such Review Petition against the Commission’s order dated 16.8.2016 in Petition No. 213/TT/2015.

9. It is also observed that the Petitioner has not preferred any Appeal against the order dated 16.8.2016 in Petition No. 213/TT/2015. Section 11 of the Civil Procedure Code, 1908 deals with Res Judicata, which reads as under:

“No Court shall try any suit or issue-in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

10. A plain reading of Section 11 of the CPC shows that the principle of Res Judicata is attracted in the following conditions :

- (i) The matter directly and substantially in issue in the subsequent suit has been directly and substantially in issue in the former suit;
- (ii) The former suit has been a suit between the same parties or between, parties under whom they or any of them claim;
- (iii) The parties have litigated under the same title in the former suit;
- (iv) The court which decided the former suit is a court competent to try the subsequent suit or the suit in which such issue is subsequently raised; and
- (v) The matter directly and substantially in issue in the subsequent suit has been heard and finally decided by such Court.

11. Thus, raising the same issue pertaining to computation of O & M expenses attracts the principle of ‘Res Judicata’, as a court of competent jurisdiction has rendered



final judgment on merits in a previous action involving the same parties and claims. Since, the Petitioner has neither filed Review Petition nor preferred Appeal against the Commission's order dated 16.8.2016 in Petition No.213/TT/2015, the said order has attained finality and cannot be reopened at this stage.

12. In the light of above discussion, we are not inclined to grant any relief to the Petitioner in this regard.

Issue No 2: Whether the Petitioner is entitled for extension of time frame for capitalization beyond the grace period as per the specified norms under Regulation 14 and 3(13) of the Tariff Regulations, 2014.

13. As regards the extension of cut-off date, the Petitioner has submitted that Regional Institute of Science and Technology, Meghalaya (RIST) did not allow the construction of transmission line passing over its campus despite the fact that the approval under Section 164 of the Electricity Act, 2003. In this regard RIST Meghalaya filed a petition in April 2013 where the petitioner was directed to approach appropriate Electricity Regulatory Commission vide order dated 9.4.2013. RIST then approached the Meghalaya Electricity Regulatory Commission who directed vide order dated 6.5.2013 to approach the Central Commission. However, RIST failed to approach Central Commission and meanwhile the Petitioner filed a petition in Central Commission on 29.5.2013. The Commission vide an order dated 10.3.2014 allowed the Petitioner to resume work. However, RIST filed an appeal before Hon'ble Appellate Tribunal (APTEL) where Central Commission's order for allowing construction by NETCL (the Petitioner in instant petition) was stayed.

14. Further, as per the directions of the Hon'ble Appellate Tribunal in Appeal No. 80 of 2014, the Petitioner was required to construct an alternative route for the existing transmission overhead line passing through the Regional Institute of Science and



Technology (RIST), Meghalaya. The Petitioner has submitted that the Petitioner can commence the construction of the alternative route as per the directions of the Hon'ble Appellate tribunal only upon the grant of the requisite forest clearance by the competent authorities. As a result, the alternative route cannot be commissioned and declared under commercial operation before the expiry of the cut-off date. Therefore, the Petitioner will require extension of time from this Commission for consideration of this additional capitalization. The Petitioner, therefore, reserves the right to seek such extension of time and approval of additional capitalization beyond the cut-off date upon the completion of the alternative route.

15. We have considered submissions of the Petitioner. The Petitioner has sought liberty to seek extension of time for additional capitalization. However, the Petitioner has not claimed any specific time frame for the extension. The Petitioner may claim the capitalisation of expenditure in respect of these works, as and when incurred in terms of the provisions of the Tariff Regulations and the same will be considered in accordance with law.

16. The Petition No. 128/MP/2018 is disposed of in terms of the above.

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

Sd/-
(P. K. Pujari)
Chairperson

