

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 19/RP/2018
in
Petition No. 62/MP/2017**

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

Date of order: 4th of April, 2019

In the matter of

Petition for review of the order dated 26.3.2018 in Petition No. 62/MP/2017 under Section 94 of the Electricity Act, 2003 read with order 47 Rule 1 of the CPC and Regulation 103 (1) of the Central Electricity Regulatory Commissions (Conduct of Business) Regulations, 1999

**And
In the matter of**

Powergrid NM Transmission Limited
B-9, Qutab Institutional Area,
Katwaria Sarai, New Delhi-110 016

...Review Petitioner

Versus

1. IL&FS Tamil Nadu Power Company Ltd
'B' Block, Navin's PRESIDIUUM, 4TH Floor
103, Nelson Manickam Road
Aminjekarai
Chennai-600 029

2. Chief Engineer (PSM-II)
Central Electricity Authority
PSPM Division, Swa Bhawan
Rama Krishna Puram
New Delhi-110 066

3. Chief Operating Officer
Central Transmission Utility
Saudamini, Plot No.2, Sector-29
Gurgaon

4. PFC Consulting Limited
1st Floor, 'Urjanidhi'
1, Barakhamba Lane, Connaught Place
New Delhi-110 001

....Respondents

Parties Present:

Shri Sitesh Mukherjee, Advocate for PGNMTL
Shri Deep Rao, Advocate for PGNMTL
Shri Harish Kaushik, Advocate for PGCIL
Shri R.P.Padhi, PGCIL
Shri B. Vamsi, PGCIL
Ms. Manju Gupta, PGCIL
Shri V.C. Sehkar, PGCIL
Shri S. Vallinayagam, Advocate for TANGEDCO
Shri R. Katihraavan, TANGEDCO

ORDER

Powergrid NM Transmission Limited (hereinafter referred to as "the Review Petitioner") has filed the present Review Petition under Section 94 (1) (f) of the Electricity Act, 2003 (hereinafter referred to as the 'Act') read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 and Regulation 103 (1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, for review of the order dated 26.3.2018 in Petition No. 62/MP/2017 (hereinafter referred to as "impugned order") in which the Commission refused to approve the methodology for apportionment of transmission charges between 765 kV D/C Nagapattinam-Salem transmission line and Salem-Madhugiri transmission line and to approve the payment of transmission charges for Nagapattinam Salem transmission line with effect from 23.10.2016.

2. Petitioner was selected as a successful bidder through the international tariff based competitive bidding under Section 63 of the Electricity Act, 2003 to establish transmission system comprising of the following elements:

S. No.	Transmission line	Completion Target	Element(s) which are pre-required for declaring the commercial operation (COD) of the respective Element
1.	Nagapattinam Pooling Station-Salem 765 kV D/C line	36 months from effective date	765 kV S/C Salem - Madhugiri
2.	Salem-Mahugiri 765 kV S/C line	36 months from effective date	765 kV D/C Nagapattinam Pooling Station - Salem

3. The Petitioner entered into the Transmission Service Agreement dated 2.2.2012 with Long Term Transmission Customer, namely IL&FS Tamil Nadu Power Company Ltd. The Commission in its order dated 12.6.2013 in Petition No. 121/TL/2012 granted the transmission licence to the Petitioner for inter-State transmission of electricity and in order dated 9.5.2013 in Petition No. 122/2012 adopted the transmission charges for the project.

4. Nagapattinam Salem transmission line was completed, charged and declared commercial operation on 23.10.2016. However, Salem-Madhugiri transmission line could not be completed due to severe RoW issues including compensation by land owners. On 23.3.2016, the Petitioner approached CEA to allow taking up the work to complete the transmission lines independently in accordance with the Commission's direction dated 28.1.2015 in Petition No. 284/ADP/2015. CEA in the minutes of meeting on "Transmission System associated with IPPs of Nagapattinam/Cuddalore Area, Package A" held on 15.9.2016 informed that the allocation of tariff for each of the two transmission lines, is not prescribed in the TSA. With regard to apportionment of cost to individual transmission lines, CEA informed that in case a decision is taken to

implement the transmission lines individually, the same would be looked into by the Commission.

5. Subsequently, the Petitioner approached the Commission along with the following prayers:

“(a) Approve the methodology for apportionment of transmission charges between 765 kV D/C Nagapattinam-Salem transmission line and Salem-Madhugiri transmission lines; and

(b) Payment of transmission charges for 765kV D/C Nagapattinam-Salem transmission line with effect from 23rd October 2016- the date of CoD and date the line was also put to use.”

6. The Commission after hearing the parties, in its order dated 26.3.2018 declined to approve the methodology for apportionment of transmission charges in the absence of any provision in the RfQ/RfP and TSA regarding apportionment of transmission charges between different elements of the transmission system being executed through TBCB route, and the Review Petitioner did not enclose the certificate of CEA to the effect that commissioning of Nagapattinam-Salem transmission line is in the interest of the power system and safety and security of the grid.

7. Aggrieved by the above decision of the Commission, the Review Petitioner has filed the present Review Petition along with the following prayers:

“(a) Review and modify the impugned order dated 26.3.2018 passed by the Commission in Petition No. 62/MP/2017 in terms of the submissions set out in the present petition.

(b) Sanction the payment of transmission charges for the 765 kV D/C Nagapattinam Salem transmission line with effect from 23rd October 2016 i.e. the COD of the line and the date the line was also put to use; and

(c) Approve the apportionment of transmission charges between 765 kV D/C Nagapattinam-Salem transmission line and 765 k V S/C Salem-Madhugiri transmission lines in the ratio as determined by the Empowered Committee in its meeting dated

1.2.2011 and affirmed by the CEA vide letter dated 4.5.2017.”

8. During the course of hearing Review Petition on 12.12.2018, learned counsel for TANGEDCO submitted that the Commission in its letter dated 6.3.2018 directed the Review Petitioner to implead TANGEDCO as party to the Petition No. 62/MP/2017. Learned counsel submitted that in this Petition, TANGEDCO is the sole beneficiary of the transmission system. However, despite the Commission direction dated 6.3.2018, the Review Petitioner has not impleaded the TANGEDCO as party to the Petition/ Review Petition even though TANGEDCO is paying the transmission charges for this transmission system. In response, learned counsel for the Review Petitioner submitted that since TANGEDCO is not a signatory of the TSA, it has not been impleaded as party to the Petition/Review Petition. On the other hand, learned counsel for the Review Petitioner submitted that since TANGEDCO is not a signatory to the BPTA or the TSA, it has not been impleaded as a party to the main Petition/Review Petition.

9. We have considered the submissions of the Review Petitioner and TANGEDCO on the issue of impleadment of TANGEDCO as a party to the main petition or Review petition.

10. The Review Petitioner was selected as a successful bidder through the international tariff based competitive bidding under Section 63 of the Electricity Act, 2003 to establish transmission system. Subsequently, the Petitioner approached the Commission for grant of transmission licence and adoption of transmission tariff of the transmission system. The Petitioner entered into the Transmission Service Agreement dated 2.2.2012 with Long Term Transmission Customer, namely IL&FS Tamil Nadu

Power Company Ltd. which was the generating company, as at that point of time no beneficiary was identified. However, subsequently, IL & FS is supplying power to Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) on the basis of the PPA with the latter.

11. Where the generator who has been granted LTA to a target region but who has subsequently, entered into PPA and is supplying power under the PPA to a DIC, then the concerned DIC is required to pay the transmission charges. In this regard, Regulation 2.8.1 (a) of the Annexure-1 of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 is extracted as under:

“2.8.1.a. Methodology for calculation of PoC rates and billing of POC charges

(i) PoC rates for billing towards LTA/MTOA shall be calculated only on Withdrawal nodes (as Withdrawal charges) and for generators who have Long Term Access to target region (as injection charges) corresponding to untied power. PoC rates shall not be calculated for ISGS with identified long term customers/ beneficiaries with whom PPA have been signed.

Example for billing a Generator who have LTA to target region:

Suppose a Generator "A" has LTA of 900 MW to target region (WR-500 MW, NR-400 MW).He ties up 150 MW of power with U.P through PPA. "A" shall be billed for $500+250 = 750$ MW as its LTA to target region.”

As per the above provision, if a generator has PPA with a beneficiary, PoC charges shall not be calculated for the generating station but for the beneficiaries with whom PPA has been signed. It is noted that in the present case, bills are raised against TANGEDCO being the sole beneficiary of IL&FS who is paying the PoC charges.

Further, Long Term Transmission Customer has been defined in the TSA as under:

“Long Term Transmission Customer(s) means a person availing or intending to avail access to the inter-State Transmission System for a period up to twenty-five years or more, and for the purposes of this Project, shall refer to entities listed in Schedule 1 of the Agreement or any such other person who executes a Supplementary Agreement for availing Transmission Service as per the provisions of the TSA.”

Schedule 1 of the TSA provides as under:

S. No.	Name of the Long Term Transmission Customer	Address of Registered office	Law under which incorporated	Allocated Project capacity (In MW)
1.	IL&FS Tamil Nadu Power Company Limited	B-Block, Navin's Presidium, 4 th Floor, 103, Nelson Manickam Road, Chennai	The Companies Act, 1956	As per CERC methodology of sharing charges (PoC methodology) corresponding to LTOA of 1150 MW

Note:

- A. The above list of Long Term Transmission Customer is on date. Any addition or deletion in this list after the award of Lol shall be duly notified to the parties to the TSA.

The new Long Term Transmission Customers shall become a party to the TSA after agreeing to the terms and conditions of the TSA and signing a Supplemental Agreement as annexed in Schedule 12 to the TSA.”

As per the above schedule, IL&FS Tamil Nadu Power Company Limited is only LTTC. However, new LTTC (s) can become party to the TSA after agreeing to the terms and conditions of the TSA and signing the Supplementary Agreement.

12. As per the above provision, ILFS is required to make TANGEDCO party to the TSA after entering into PPA with TANGEDCO. Further, as per para 2.8.1(a) of Annexure 1 to the Sharing Regulations, in case of generators granted LTA to target region who have signed PPAs subsequently, billing has to be done to the beneficiary and not to the generator to the extent of capacity tied up under the TSA. In other words,

the concerned beneficiary becomes a deemed signatory to the TSA. Therefore, irrespective of whether TANGEDCO has signed the TSA or not, it is a necessary party who is being billed and is paying the transmission charges. Accordingly, the Review Petitioner is directed to implead TANGEDCO as party to the Review Petition and file revised memo of parties by 10.4.2019. TANGEDCO shall file its reply by 18.4.2019 with advance copy to the Petitioner, who shall file its rejoinder, if any, by 26.4.2019. The parties shall ensure the completion of pleadings within the due date mentioned above.

13. Matter shall be listed for hearing in due course for which separate notice shall be issued to the parties.

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

sd/-
(P.K. Pujari)
Chairperson