

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 21/RP/2018
in
Petition No. 110/MP/2016**

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

Date of order: 23rd of April, 2019

In the matter of

Review Petition under Section 94 of the Electricity Act, 2003 read with Regulations 103, 111 and 114 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 read with order 47 Rule 1 of the Code of Civil Procedure, 1908 for review of order dated 3.4.2018 read with corrigendum dated 26.4.2018 in Petition No. 110/MP/2016.

**And
In the matter of**

Power Grid Corporation of India Limited
Saudamini, Plot No. 2,
Sector-29, Gurgaon-122 001

... Review Petitioner

Versus

1. Purulia and Kharagpur Transmission Company Ltd.
C-2, 2nd Floor, The Mira Corporate Suites,
1 & 2 Ishwar Nagar, Okhla Crossing
Mathura Road, New Delhi - 110065

2. Bihar State Electricity Board
Vidhut Bhawan, 4th Floor
Bailey Road, Patna, Bihar-800021

3. Maithon Power Limited MA-5
Gogna Colony
Maithan Dam Post Office
Distt: Dhanbad
Jharkhand-828207

4. Grid Corporation of Orissa Limited
Shahid Nagar
Bhubaneshwar-751007

5. Damodar Valley Corporation
DVC Tower, Maniktala Civic Tower
VIP Road, Kolkata-700054

6. Power Department, Govt. of Sikkim
Kazi Road
Gangtok-737101

7. Jharkhand State Electricity Board
Engineering Building
HEC, Dhurwa
Ranchi-834004

8. West Bengal State Electricity Distribution Company Limited
Bidyut Bhawan, Bidhan Nagar
Block DJ, Sector-II, Salt Lake City,
Kolkata-700091

.....Respondents

Parties Present:

For the Review Petitioner: Ms. Suparna Srivastava, Advocate, PGCIL
Shri V.C.Shekhar, PGCIL
Ms. Manju Gupta, PGCIL

For the Respondents: Shri Jafar Alam, Advocate, PKTCL
Shri Deep Rao, Advocate, PKTCL
Shri Divyanshu Bhatt, Advocate, PKTCL
Shri TAN Reddy, PKTCL
Ms. Anisha Chopra, PKTCL
Shri R.B.Sharma, Advocate, BSP(H)CL
Shri Mohit Mudgal, Advocate, BSP(H)CL

ORDER

Power Grid Corporation of India Limited (hereinafter referred to as “the Review Petitioner”) has filed the present Review Petition under Section 94 (1) of the Electricity Act, 2003 (hereinafter referred to as the ‘Act’) read with Regulations 103, 111 and 114

of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 for review of the order dated 26.3.2018 in Petition No. 110/MP/2016 (hereinafter referred to as “impugned order”)

Brief facts of the case:

2. The Respondent No. 1, Purulia and Kharagpur Transmission Company Ltd. (hereinafter referred to as ‘PKTCL’), 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:

- (a) 400 kV Purulia (WB) -Ranchi (PG) line (PR Line); and
- (b) the 400 kV Kharagpur (WB)-Chaibasa (PG) line (KC Line)

3. The 400 kV bays with line reactor(s) at Ranchi (PG), Chaibasa (PG), Purulia (WB) and Kharagpur (WB) were to be implemented by the Petitioner, PGCIL under regulated tariff mechanism matching with the commissioning schedule of the above transmission system.

4. The Petitioner entered into the Transmission Service Agreement dated 6.8.2013 with Long Term Transmission Customers. The Commission in its order dated 30.5.2014 in Petition No. 326/TL/2013 granted the transmission licence to the Petitioner for inter-State transmission of electricity and in order dated 20.8.2014 in Petition No. 325/TT/2013 adopted the transmission charges for the transmission system.

5. The implementation of line bays for termination of the transmission lines and associated reactive compensation was entrusted to Review Petitioner. As agreed in the Standing Committee Meetings, the West Bengal State Electricity Transmission Co. Ltd. (WBSETCL) intended to implement the line bays at Purulia PSP (West Bengal) and Kharagpur (West Bengal) as deposit work of the Review Petitioner.

6. As per the TSA, both PR Line and KC Line were required to achieve commercial operation within 28 months from the effective date (9.12.2013) i.e. by 8.4.2016. However, due to various unforeseen and uncontrollable events that took place subsequent to the award of the Project, PKTCL could not complete the Project by the Scheduled date of commercial operation i.e. 8.4.2016. Accordingly, PKTCL approached the Commission through the Petition seeking compensatory and declaratory reliefs under the Transmission Service Agreement dated 6.8.2013 on account of, *inter alia*, following force majeure and change in law events affecting the construction of the transmission project:

(a) Delay in finalization of termination point at Purulia end of PR Line, and resultant delay in application for forest diversion proposal;

(b) The shifting of the termination point from the existing Purulia PSP 400 kV GIS sub-station to proposed New Purulia PSP 400 kV sub-station; and

(c) Interim arrangement for the termination of KC Line due to non-commissioning of the bays at Kharagpur.

7. The Commission after hearing the parties, in its order dated 3.4.2018 in Petition No. 110/MP/2016 decided the above issues as under:

“23. From the above discussion, it is clear that though WBSETCL in its letter dated 18.6.2014 had informed about the coordinates of the bays at New Purulia PSP located at a distance of two kilometres. The coordinates of the New Purulia PSP was approved in the Standing Committee Meeting held on 26.7.2015. Since, the Petitioner was not intimated about the final coordinates of the bays where the PR Line would terminate, the Petitioner could not undertake the construction of last phase of PR Line. Thus, the event was beyond the control of the Petitioner and is a force majeure event. This delayed the construction of the PR line.

26. At this stage, we intend to make some pertinent observations with regard to the varying positions being taken by PGCIL with regard to the bays in Purulia PSP in the present petition and in Petition No.210/TT/2016. As per the TSA entered into by the Petitioner as a result of competitive bidding, the SCOD of PR Line is 8.4.2016. This line is to be connected to the bays in Purulia PSP at one end and Ranchi 765/400 kV sub-station (POWERGRID) at other end which means that the substations are to be ready matching with the SCOD of 8.4.2016. However, as per Petition No.210/TT/2016, the investment approval was accorded on 24.3.2015 with a schedule commissioning period of 24 months which means that the SCODs of the sub-stations are 24.3.2017 which is almost one year after the scheduled commissioning of PR Line. In this connection, observations of the Commission in order dated 24.7.2017 in Petition No. 210/TT/2016 are as under..

This is a clear case of mismatch of SCOD of the transmission line with the SCOD of the sub-station. PGCIL as CTU should have ensured that the transmission lines being executed through competitive bidding and sub-station being executed through PGCIL itself are commissioned in a matching timeframe. Further, PGCIL in Petition No. 210/TT/2016 had submitted that its sub-station was delayed on account of delay in completion of the transmission line being implemented under TBCB by the Petitioner..

It is however, noticed that while non-completion of the transmission line is on account of delay in completion of the Purulia sub-station which is within the scope of work of PGCIL, in Petition No. 210/TT/2016 PGCIL has claimed COD of the Ranchi sub-station as 17.10.2016 under Proviso to Regulation 4(3)(ii) of the 2014 Tariff Regulations on the ground that the sub-station could not be put to use as the transmission line executed by the Petitioner was not ready. We caution PGCIL to take necessary measures to avoid such mismatch in future and also to bring to notice of the Commission, the entire facts while seeking the tariff and not only a part of it.

40...As per Article 6.2.1 of the TSA, the Petitioner is required to keep ready its element of the project for charging. If the point of connection was not provided, the Project shall be declared to have achieved COD seven days after the date on which it was declared by TSP to be ready for charging but not able to be charged for reasons not attributable to the TSP. It is noted that TSA does not incur any liability upon the Petitioner to make interim arrangement for termination of the PR Line due to delay in the commissioning of New Purulia sub-station bays. Accordingly, the Petitioner's claim that construction of LILO amounts to an additional scope of work under Article 12.1.1 of the TSA cannot be accepted. However, it is noted that the Petitioner has constructed interim arrangement due to non-availability of bays at Purulia end which was under the scope of PGCIL and PGCIL has failed to make available the bays in matching timeframe of transmission line. Therefore, PGCIL shall bear the expenditure incurred by the Petitioner on interim arrangement.”

8. The Review Petitioner has filed the present Review Petition seeking rectification of errors on the above findings of the Commission along with the following prayers:

“(a) Admit the present Review Petition and review and rectify the order dated 3.4.2018 passed in Petition No. 110/MP/2016; and

(b) Direct that the mismatch in commissioning of the subject transmission lines and the associated bays is not attributable to the Review Petitioner and has occurred on account of delay by WBSETCL in executing its statutory liabilities by delayed intimation of final locations for implementation of bays and therefore the Review Petitioner is not liable for any payments on that account.”

9. Notices were issued to the Respondents to file replies. Reply to the Review Petition has been filed by the Respondent No. 1, PKTCL and Respondent No.2, BSEB through Bihar State Power (Holding) Company Limited.

10. Respondent No. 1, Purulia and Kharagpur Transmission Company Ltd. in its reply dated 29.8.2018 has mainly submitted as under:

(a) As per the TSA, while PKTCL was responsible for constructing the Project, the construction of the associated inter-connection facilities required at the termination points of the individual transmission lines, namely PR Line and KC Line, was within the scope of the Review Petitioner.

(b) Subsequently, it was decided that the line bays at Purulia PSP (West Bengal) and Kharagpur (West Bengal) were to be implemented by WBSETCL as deposit works of the Review Petitioner. Further, the termination point for the PR Line was shifted from the originally envisaged GIS Switchyard at Purulia PSP

due to space constraint and it was decided that a New Purulia 400kV GIS be constructed by WBSETCL where the PR Line would be terminated. There was delay in finalisation of the co-ordinates of the new sub-station, which was responsible for the delay in construction of the PR Line. The new co-ordinates were communicated to PKTCL by WBSETCL vide letter dated 18.6.2014 and only thereafter PKTCL could construct the PR Line. Shifting of the termination point of the PR Line not only delayed the construction of the PR Line but also resulted in the alteration of the scope of work of PKTCL which has been recorded in the impugned order as well.

(c) In the meeting with the CEA dated 22.9.2015, it was noted that there was further delay in the finalisation of the location of the 400 kV bays for termination of the PR Line, which were being constructed by WBSETCL as deposit work of the Review Petitioner. Accordingly, the Review Petitioner suggested that an interim arrangement for the termination of PR Line be made. PKTCL was asked to connect the PR Line at a suitable location by LILO of one circuit of Purulia-Arambagh D/C Line of WBSETCL as an interim arrangement. Therefore, the responsibility of the entire delay has to be borne by the Review Petitioner as the works of line bays, which were being implemented by WBSETCL, were at the behest of the Review Petitioner. Similarly, there was delay in construction of the KC Line due to the non-readiness of the associated bays at Kharagpur, which were also under the scope of work of the Review Petitioner.

(d) Even though the works were being implemented by WBSETCL, the responsibility for the same squarely rested upon the shoulders of the Review Petitioner. Therefore, the Review Petitioner has violated the obligations under the TSA. In the instant case, WBSETCL was implementing the works as deposit work of the Review Petitioner and was functioning as the agent of the Review Petitioner. Therefore, the responsibility for any acts/ omissions on part of WBSETCL has to be borne by the Review Petitioner.

(e) The Review Petitioner is merely trying to shift its responsibility upon WBSETCL and is trying to escape the consequences of the breach of its contractual obligations. The interim arrangement for the termination of PR Line was on account of delay by the Review Petitioner in completing its scope of work.

(f) The Review Petitioner has conveniently chosen not to draw the attention of the Commission to the fact that it has already adjusted the timelines for the commissioning of the assets under its scope in accordance with the timelines for the commissioning of the New Purulia 400 kV GIS. The Review Petitioner has effectively subsumed the periods of its delays by delaying the process of obtaining the investment approval for the Project. The co-ordinates for the new termination point of PR Line were only communicated to PKTCL on 18.6.2014 and on 24.3.2015, i.e., 9 months after finalisation of these co-ordinates and the Review Petitioner took the required investment approval for the construction of the associated line bays and line reactors. The Review Petitioner in Petition No. 210/TT/2016 claimed the COD for its assets on the basis of the aforementioned

investment approval, which was approved by the Commission in its order dated 24.7.2017.

(g) The Review Petitioner, being the CTU, carries additional responsibility to ensure that the various transmission lines and associate elements are being constructed in a planned and synchronised manner to avoid any of the elements lying idle. However, in the instant case, the Review Petitioner did not even attempt to ensure that the timelines for achieving COD of its assets matched with the PKTCL's Project. Therefore, the entire duration of delay by WBSETCL in finalising the new co-ordinates, which is a Force Majeure event in accordance with the TSA, did not affect the construction timelines for the assets being constructed under the scope of the Review Petitioner. Further, the Review Petitioner conveniently delayed obtaining of its investment approval and did not make any effort to match the COD of its assets with the COD of the Project. On the contrary, Review Petitioner suggested implementation of the interim arrangements for the purposes of termination of the Project. Now, the Review Petitioner is trying to shift its burden and avoid the additional cost suffered by PKTCL on account of the interim arrangement.

(h) The allegations made by the Review Petitioner that the Commission has erred in issuing directions to the Review Petitioner for bearing the transmission charges from the date of deemed COD of KC Line, i.e. 20.5.2016, until the date of issuance of certificate by ERLDC for completion of trial-run of the said line, i.e. 18.6.2016, are baseless and devoid of any merit. CEA, vide its letter dated

13.5.2016, acknowledged that the 400 kV KC Line was ready for energisation, which was communicated by PKTCL to ERPC and copy of which was sent to the Review Petitioner.

(i) Due to delay on part of the Review Petitioner, it was decided that the KC Line would be inter-connected by LILO circuit of the Kharagpur – Kolaghat 400 kV D/C line near Kharagpur end, as an interim measure until the commissioning of bays at the Kharagpur sub-station. This proposal was discussed and agreed upon in the meeting of the Standing Committee on Power System in Eastern Region held on 29.3.2016, which has been recorded in the impugned order.

(j) The issue regarding liability to pay the transmission charges when a transmission element is ready but can't be put to regular use due to the unavailability of the downstream network has already been settled by the Appellate Tribunal, vide its judgment dated 27.3.2018 in Appeal No. 390 of 2017.

(k) The Commission in its order dated 21.9.2016 in Petition No. 43/MP/2016 has explained the facts in the instant case as one of the scenarios wherein the entity responsible for constructing the connecting line bays shall be responsible for bearing the transmission charges in the event of delay. The Commission has also upheld the aforementioned principle in its order dated 19.4.2016 in Petition No. 100/TT/2014, order dated 5.8.2015 in Petition No. 11/SM/2014, and order dated 4.1.2017 in Petition No. 155/MP/2016.

11. The Respondent No.2, Bihar State Power (Holding) Company Limited in its reply dated 8.10.2018 has submitted as under:

(a) The project is an inter-State project and accordingly, the entire responsibility to plan and co-ordinate is the statutory responsibility of the Review Petitioner as it has been notified by the Central Government as the Central Transmission Utility (CTU) for this purpose under Section 38(1) of the Electricity Act, 2003.

(b) The issue regarding deposit work of the Review Petitioner from WBSETCL should be settled by the Review Petitioner with the WBSETCL and not with other respondents. However, the Review Petitioner has approached the Commission for review of the impugned order and has claimed that the WBSETCL has delayed in executing its statutory liabilities by delaying intimation of final location for implementation of bays.

(c) In the CEA meeting held on 22.9.2015, the representative of the Review Petitioner stated that PGCIL is not a consultant of WBSETCL for this project and route alignment in relation to new position of bays is entirely the matter between PKTCL and WBSETCL. This would clearly show that the PGCIL as CTU participated in the meeting but clearly disowned its statutory function of planning and co-ordination of an inter-State transmission system.

(d) The Review Petitioner`s contention that implementation of work at New Purulia sub-station could have been taken up only upon the commissioning of New Purulia sub-station is misconceived and the same is without any basis. Both the activities i.e. implementation of work at New Purulia sub-station by the WBSETCL and the bays by the Review Petitioner could have been taken up simultaneously as parallel activities.

(e) The contention of the Review Petitioner in Para 14(B)(i) that it is prevented from placing the investment proposal for the scope of works before its own Board. Nothing is mentioned which prevents it to place investment proposal before the Board especially when it is a deposit work. The scope of work for bays is standardized.

(f) The contention of the Review Petitioner regarding timeline is meaningless as WBSETCL is purely a Contractor for commissioning the line bays and accordingly the PGCIL is not concerned about the procedure that is followed by its contractor but the Review Petitioner is responsible for its statutory duty under Section 38(2)(b) of the Electricity Act, 2003.

(g) The Review Petitioner is merely trying to re-argue its case avoiding its statutory responsibility stipulated in the Electricity Act, 2003. Re-arguing of matter is not permissible in the Review Petition.

(h) The Review Petitioner in effect is questioning the correctness of the order dated 3.4.2018 in Petition No. 110/MP/2016. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the later only can be corrected by exercise of review jurisdiction. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but such Petition lies only for patent error.

Analysis and Decision:

12. We have considered the submissions of the Review Petitioner and the Respondents. We have also perused the documents available on record. The Review Petitioner has sought review of the impugned order dated 3.4.2018 read with corrigendum dated 26.4.2018 on following grounds:

(a) The Commission`s decision regarding the expenditure incurred by PKTCL towards interim arrangement for termination of the PR line would be borne by PGCIL as the said interim arrangement has been required to be made by PKTCL on account of non-readiness of sub-station of PGCIL, is error apparent on face of the record; and

(b) The Commission decision regarding the transmission charges for the KC line from its COD i.e. 20.5.2016 till the date of its charging i.e. 18.6.2016 would be borne by PGCIL since the non-charging of the line has been on account of non-availability of bays in the scope of PGCIL .

A. Expenditure incurred by PKTCL towards interim arrangement for termination of the PR line:

13. With regard to expenditure incurred by Respondent No.1 towards interim arrangement for termination of the PR line, the Commission in its order dated 3.4.2018 in Petition No. 110/MP/2016 had observed as under:

“39. The Petitioner has submitted that in view of the delay in commissioning caused by the aforementioned distinct factors, as an interim arrangement, the Petitioner was directed to carry out alignment of the line to terminate at a suitable location through a Line-In-Line-Out (LILO) of Purulia PSP-Arambagh line. This interim arrangement was an addition in the scope of work. The Petitioner has stated that since, this interim arrangement was not part of the original scope of work, it amounts to an addition in the scope of work under Article 12.1.1 of the TSA entitling the Petitioner to claim relief in accordance with Article 12.2.1. of the TSA. The Petitioner has submitted that in the meeting held at CEA on 29.3.2016, in view of the anticipated delay in the commissioning of New Purulia 400 KV GIS by WBSETCL, it was decided that the Petitioner may connect Ranchi-New Purulia 400 KV line at a suitable location by a LILO of one circuit of Purulia-Arambagh D/C line of WBSETCL as an interim arrangement till the commissioning of 400KV GIS bays at New Purulia. In the said meeting, it was agreed that for the recovery of additional cost due to these changes, the Petitioner may approach the Commission. The relevant portion of the minutes of the meeting dated 29.3.2016 is extracted as under:

.....
As per said minutes of meeting, the interim arrangement was required to be formalized in the next meeting of SCPSPER and was required to be noted in the next meeting of the Empowered Committee on Transmission. However, the Petitioner has not placed on record the documents approving the interim arrangement.

40. Article 6.1.2 of TSA dealing with connection with the inter-connection facilities provides as under:

“6.1.2 The RLDC/SLDC (as the case may be) or the CTU/STU (as the case may be) of the Lead Long Term Transmission Customer may, for reasonable cause, including failure to arrange for interconnection Facilities as per Article 4.2 defer the connection for up to fifteen (15) days from the date notified by the TSP pursuant to Article 6.1.1 if it notifies to the TSP in writing, before the date of connection, of the reason for the deferral and when the connection is to be rescheduled. However, no such deferment on one or more occasions would be more than an aggregate period of 30 days. Further, the Scheduled COD would be extended as required, for all such deferments on day for day basis.

6.1.3 Subject to Articles 6.1.1 and 6.1.2, any Element of Project may be connected with the Interconnection Facilities when:

- (a) it has been completed in accordance with this Agreement and the Connection Agreement;
- (b) it meets the Grid Code, Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007 and all other Indian legal requirements and
- (c) The TSP has obtained the approval in writing of the Electrical Inspector certifying that the Element is ready from the point of view of safety of supply and can be connected with the Interconnection Facilities.”

Further, Article 6.2.1 of the TSA provides as under:

“6.2.1 An Element of the Project shall be declared to have achieved COD seventy two (72) hours following the connection of the Element with the Interconnection Facilities or seven (7) days after the date on which it is declared by the TSP to be ready for charging but is not able to be charged for reasons not attributable to the TSP or seven (7) days after the date of deferment, if any, pursuant to Article 6.1.2. Provided that an Element shall be declared to have achieved COD only after all the Element(s), if any, which are pre-required to have achieved COD as defined in Schedule 3 of this Agreement, have been declared to have achieved their respective COD.”

As per Article 6.2.1 of the TSA, the Petitioner is required to keep ready its element of the project for charging. If the point of connection was not provided, the Project shall be declared to have achieved COD seven days after the date on which it was declared by TSP to be ready for charging but not able to be charged for reasons not attributable to the TSP. It is noted that TSA does not incur any liability upon the Petitioner to make interim arrangement for termination of the PR Line due to delay in the commissioning of New Purulia sub-station bays. Accordingly, the Petitioner’s claim that construction of LILO amounts to an additional scope of work under Article 12.1.1 of the TSA cannot be accepted. However, it is noted that the Petitioner has constructed interim arrangement due to non-availability of bays at Purulia end which was under the scope of PGCIL and PGCIL has failed to make available the bays in matching timeframe of transmission line. Therefore, PGCIL shall bear the expenditure incurred by the Petitioner on interim arrangement.”

14. The Review Petitioner has mainly contended that the Commission should take into consideration the fact that the delay in finalization of coordinates for Purulia sub-station by WBSETCL led to delay in project execution by the Review Petitioner. According to the Review Petitioner, it was also affected by the same Force Majeure as claimed by PKTCL. The Review Petitioner has submitted that the delay in finalization of coordinates was discussed in the meetings held with CEA on 23.4.2015, 22.9.2015,

9.2.2016 and 29.3.2016. In the meeting held on 23.4.2015, an interim arrangement was agreed for commissioning of PR Line in case of delay in implementation of New Purulia sub-station by WBSETCL. Further, in the meeting dated 29.3.2016, PKTCL informed that the PR line would be ready by May, 2016 whereas the connecting bays were to be ready by November, 2016 due to delay in commissioning of New Purulia sub-station and it was agreed that the aforesaid interim arrangement will be utilized for commissioning of PR line. The interim arrangement was regularized in the 18th meeting of Standing Committee of Power System Planning of ERPC held on 13.6.2016. The Review Petitioner has submitted that the interim measure was adopted for facilitating commissioning of transmission line and did not entail a responsibility to pay for such interim arrangement by the Review Petitioner. According to the Review Petitioner, it could not have commissioned the bays without the sub-station or simultaneously with the substation but matching with the DOCO of the transmission line was impossible when the substation was under construction and was delayed. Therefore, the default of the Review Petitioner cannot be established and no liability in this regard can be imposed.

15. PKTCL has argued that in the meeting held on 22.9.2015 with CEA, the Review Petitioner suggested an interim arrangement for termination of PR Line in view of delay in finalization of location of 400 kV bays being constructed by WBSETCL as deposit work of the Review Petitioner. PKTCL has submitted that the Review Petitioner obtained Investment Approval almost after 9 months after the coordinates for the new termination point were informed by WBSETCL, i.e., the delay was already subsumed by the Review Petitioner. Further, the Review Petitioner, being CTU, carries additional

responsibility to ensure that the various transmission lines and associate elements are being constructed in a planned and synchronised manner to avoid any of the elements lying idle. However, in the instant case, the Review Petitioner did not even attempt to ensure that the timelines for achieving COD of its assets matched with PKTCL`s Project. Therefore, the responsibility of entire delay must be borne by the Review Petitioner as WBSETCL was implementing the work on behest of the Review Petitioner. PKTCL has submitted that the Review Petitioner is merely trying to shift its responsibility by attributing the entire delay on WBSETCL. PKTCL has also submitted that the Commission has taken a stern view of asymmetrical submission of information on part of the Review Petitioner in different proceedings and specifically censured the Review Petitioner from allowing such mismatch in the future.

16. The Respondent No.2, Bihar State Power (Holding) Company Limited has submitted that being CTU, it is the responsibility of the Review Petitioner to plan and coordinate implementation of ISTS. The Commission in the impugned order dated 3.4.2018 has very clearly brought out some pertinent observations with regard to the varying positions being taken by PGCIL with regard to the bays in Purulia PSP in the present petition and in Petition No.210/TT/2016. BSPHCL has submitted that the Review Petitioner has not taken any cognizance of its own statutory role under Section 38 (2) (b) of the Act in its Review Petition but keeps on blaming other parties for mismatch of the in commissioning of the subject inter-State transmission line and the associated bays.

17. We have considered the submissions of the Review Petitioner and the Respondents. The Review Petitioner has contended that PGCIL was to provide only 2 nos. of 400 kV bays after readiness of the sub-station which were assigned to WBSETCL on deposit work basis. The Commission in its order dated 3.4.2018 observed that PKTCL constructed interim arrangement due to non-availability of bays at Purulia end which was under the scope of the Review Petitioner and the Review Petitioner failed to make available the bays in matching timeframe of transmission line. Therefore, the Review Petitioner shall bear the expenditure incurred by the PKTCL on interim arrangement. The Commission in the impugned order has already considered all the submissions made by the Review Petitioner. With regard to delay in transmission system by a transmission licensee, the 2014 Tariff Regulations provides as under:

12....."Provided also that if the transmission system is not commissioned on SCOD of the generating station, the transmission licensee shall arrange the evacuation from the generating station at its own arrangement and cost till the associated transmission system is commissioned."

As per the above provision, if the transmission system is not commissioned on SCOD of the generating station, the transmission licensee is required to bear the cost of interim arrangement. In the instant case, interim arrangement was made due to delay in commissioning of sub-station by the associated transmission licensee i.e PGCIL. The execution of associated bays was the responsibility of PGCIL.

18. The Review Petitioner is trying to re-agitate the issue once again which is not permissible in review. We find no error apparent in our record on this count. Therefore, review on this count is rejected.

B. Transmission charges for the KC line from its COD i.e. 20.5.2016 till the date of its charging i.e. 18.6.2016:

19. With regard to date of commercial operation of the KC Line, the Commission in its order dated 3.4.2018 read with corrigendum dated 26.4.2018 in Petition No. 110/MP/2016 observed as under:

“45.The petitioner declared K-C line deemed COD on 13.5.2017 based on CEA Certificate dated 13.5.2017. We have perused CEA Certificate dated 13.5.2017. It is observed that the Petitioner made application to CEA on 15.3.2016 to which CEA responded on 25.4.2016 suggesting rectifications. The Petitioner was finally issued approval by CEA on 13.5.2017. Clause 6.2 of TSA provides following regarding Commercial Operation:

“An Element of the Project shall be declared to have achieved COD seventy two (72) hours following the connection of the Element with the Interconnection Facilities or seven (7) days after the date on which it is declared by the TSP to be ready for charging but is not able to be charged for reasons not attributed to the TSP or seven (7) days after the date of deferment, if any, pursuant to Article 6.1.2.

Provided that an Element shall be declared to have achieved COD only after all the Element(s), if any, which are pre-required to have achieved COD as defined in Schedule 3 of this Agreement, have been declared to have achieved their respective COD.”

In the instant case, for KC line, the inter-connecting bays were not available as on 13.5.2017. Hence, element could be declared commercial only 7 days after it was ready for charging but could not be charged due to non-availability of interconnection facilities. Therefore, we shall consider COD of KC line as on 20.5.2017..... The period till 20.5.2017 is condoned on account of forest clearance. Since, we have considered COD of the KC line as on 20.5.2017, the transmission charges from 20.5.2017 to 18.6.2017 i.e when the line was put to use shall be paid by Powergrid since the line could not be charged for non-availability of bays in scope of Powergrid.....

.....
57 (g) The Petitioner is entitled to extension of COD of PR Line by a period of 274 days and KC Line by a period of 42 days from respective SCOD. The transmission charges of KC Line from 20.5.2017 to 18.6.2017 shall be paid by PGCIL.”

20. With regard to CoD of KC line on 20.5.2016 and liability of transmission charges in respect of KC line for the period from 20.5.2016 till 18.6.2016, the Review Petitioner

has submitted that PKTCL vide its letter dated 13.5.2016 had declared the commercial operation of 400 kV D/C Chaibasa-Kharagpur line (KC Line) on 13.5.2016 (deemed COD). The Review Petitioner has further submitted that PKTCL while constructing the said transmission line as per scheme of interim arrangement had requested for shutdown of Ckt-I of 400 kV Khargapur-Kolaghat Line on 24.5.2016 and 25.5.2016 for the purpose of LILoing to form the two lines (i.e. 400 kV Chaibasa-Kharagpur line and 400 kV Chaibasa-Kolaghat line) through 400 kV D/C Kharagpur-Chaibasa line. However, the requisite shutdown was not granted by WBSETCL. PKTCL vide its letter dated 27.5.2016 again requested for shut down. In the intervening period, PGCIL had tried to charge the KC line from Chaibasa (PGCIL S/s end) end to check the healthiness of the KC Line. However, the same could not be successfully charged due to problems in line and the same was informed to PKTCL vide letter dated 31.5.2016. The Review Petitioner has submitted that PKTCL vide its letter dated 13.6.2016 informed that after all the corrective action and precautionary measures, it was ready for successful charging of Ckt-2 and requested PGCIL to grant permission and allow it to initiate the process for charging of Ckt-2. On 18.6.2016, ERLDC issued trial run certificate after completion of successful trial run operation of KC line. Therefore, it is clearly established that the line was not ready for commercial operation before 19.6.2016 as declared by PKTCL.

21. PKTCL has submitted that the allegations made by the Review Petitioner that the Commission has erred in issuing directions to the Review Petitioner for bearing the transmission charges from the date of deemed COD of KC Line, i.e. 20.05.2016, until the date of issuance of certificate by ERLDC for completion of trial-run of the said line,

i.e. 18.06.2016, are baseless and devoid of any merit. PKTCL has submitted that CEA, vide letter dated 13.5.2016, acknowledged that the 400 kV KC transmission line was ready for energisation, which was communicated to ERPC with a copy to the Review Petitioner on the same date itself. According to PKTCL, due to delay on part of the Review Petitioner, it was decided that the 400 KC transmission line would be interconnected by LILO circuit of the Kharagpur- Kolaghat 400 kV D/C transmission line near Kharagpur end, as an interim measure until the commissioning of bays at the Kharagpur sub-station. PKTCL has submitted that the Appellate Tribunal vide its judgment dated 27.3.2018 in Appeal No. 390 of 2017 (Punjab State Power Corporation Limited vs Patran Transmission Company Limited) has already settled the issue regarding liability to pay the transmission charges when a transmission element is ready but can't be put to regular use due to the unavailability of the downstream network.

22. BSPHCL has submitted that none of the ground for the review of the order dated 3.4.2018 is justified. In support of its contention, BSPHCL has relied upon the decision of the Hon`ble Supreme Court in the case of Parsion Devi and other Vs. Sumitra Devi and others [(1997) 8 SCC 715].

23. We have considered the submissions of the Review Petitioner and the Respondents. The Commission in the impugned order observed that the Petitioner made application to CEA on 15.3.2016 to which CEA responded on 25.4.2016 suggesting rectifications and the final approval by CEA was issued on 13.5.2016. Further, as per the TSA, an element could be declared commercial only 7 days after it was ready for charging but could not be charged due to non-availability of inter-

connection facilities. Therefore, the Commission approved COD of KC Line as on 20.5.2016.

24. The Commission in the impugned order further observed that transmission charges from 20.5.2016 to 18.6.2016, i.e., when the line was put to use shall be paid by PGCIL since the line could not be charged for non-availability of bays in scope of PGCIL. This principle has been adopted by the Commission in number of cases such as Petition Nos. 43/MP/2016, 155/MP/2016 and 236/MP/2015, etc., where a transmission element is ready for use but cannot be put to regular use due to unavailability of downstream network. Relevant portion of the order dated 4.1.2017 in Petition No. 155/MP/2016 is extracted as under:

“16. The next question arises that who shall bear the transmission charges of the elements from the date of SCOD till the commissioning of downstream stream asset by PSPCL. The issue regarding payment of transmission charges from the date of SCOD was deliberated in Petition No. 43/MP/2016 and the Commission vide order dated 21.9.2016 laid down the principles for such cases and observed as under:

“24. A related issue arises as to how recovery of transmission charges of transmission licensee shall be made when the transmission system under TBCB is ready as on its scheduled COD as per the provisions of the TSA but cannot be made operational or put to use due to non-availability/ delay in upstream/ downstream system. In our view, ISTS licensee executing the project under TBCB should enter into Implementation Agreement with CTU, STU, inter-State transmission licensee, or the concerned LTTC, as the case may be, who are responsible for executing the upstream/ downstream transmission system and clearly provide the liability for payment of transmission charges in case of the transmission line or upstream/downstream transmission assets. In the absence of Implementation Agreement, the payment liability should fall on the entity on whose account an element is not put to use. For example, if the transmission line is ready but terminal bays belonging to other licensees are not ready, the owners of upstream and downstream terminal bays shall be liable to pay the charges to the owner of transmission line in the ratio of 50:50 till the bays are commissioned. In case one end bays are commissioned, the owner of other end bays shall be liable to pay the entire transmission charges of the transmission line till its bays are commissioned. The above principle shall be followed by CTU in all cases of similar nature in future.”

As per the decision quoted above, if the downstream system of the elements in present case is not commissioned by the schedule date of commercial operation, the owner of the downstream system shall be liable to pay the transmission charges of the transmission system till the downstream system is commissioned...”

25. The Appellate Tribunal vide its judgment dated 27.3.2018 in Appeal No. 390 of 2017 has upheld the above decision of the Commission.

26. In the light of the above discussion, there is no error apparent on the face of the record and review of the impugned order on this ground does not survive.

27. Review Petition No. 21/RP/2018 is disposed of in terms of the above discussions.

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

sd/-
(P.K.Pujari)
Chairperson