**CENTRAL ELECTRICITY REGULATORY COMMISSION**
**NEW DELHI**

**Review Petition No. 40/RP/2018**
**in Petition No. 175/TT/2017**

**Coram**

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

**Date of order : 29.11.2019**

**In the matter of:**

Petition for review and modification of order dated 29.6.2018 in Petition No. 175/TT/2017 under section 94(1)(f) of the Electricity Act, 2003 read with Regulation 103 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

**And in the matter of:**

Delhi Transco Limited,
Shakti Sadan, Kotla Road,
New Delhi – 110002. **...** Review Petitioner

Vs.

1. Power Grid Corporation of India Limited,
Saudamini, Plot No. 2, Sector-29,
Gurgaon - 122001 (Haryana).

2. Rajasthan Rajya Vidyut Prasaran Nigam Limited,
Vidyut Bhawan, Janpath,
Jaipur – 302005.

3. Ajmer Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Panchsheel Nagar,
Makarwali Road,
Ajmer-305004

4. Jaipur Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Jyoti Nagar,
Jaipur – 302 005.

5. Jodhpur Vidyut Vitran Nigam Limited,
New Power House, Industrial Area,
Jodhpur – 342 003.

6. Himachal Pradesh Electricity Board Limited,
Vidyut Bhawan,
Kumar House, Complex Building-II,
Shimla – 171 004.

7. Punjab State Power Corporation Limited,
PSEB Head Office, The Mall,
Patiala – 147 001.

8. Haryana Power Purchase Centre,
Shakti Bhawan, Sector-6,
Panchkula (Haryana)-134 109.

9. Power Development Department,
Government of Jammu & Kashmir,
Mini Secretariat, Jammu.

10. Uttar Pradesh Power Corporation Limited,
Shakti Bhawan, 14, Ashok Marg,
Lucknow – 226 001.

11. BSES Yamuna Power Limited,
Shakti Kiran Building, Karkardooma,
Delhi – 110 092.

12. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place,
New Delhi – 110 019.

13. Tata Power Delhi Distribution Ltd.,
Grid Sub-station Building, Hudson Lines,
Kingsway Camp, Delhi – 110 009.

14. Chandigarh Administration,
4th Floor, Additional Deluxe Building,
Sector 9-D, Chandigarh – 160 009.

15. Uttarakhand Power Corporation Limited,
Victoria Cross Vijeyta Gabar Singh Urja
Bhawan, Kanwali Road, Balliwala Chowk,
Dehradun – 248 001

16. North Central Railway,
Subedar Ganj Road, Subedarganj
Allahabad – 211 015.

17. New Delhi Municipal Council,
Palika Kendra, Parliament Street,
New Delhi – 110 001. ….**Respondents**

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| **For Petitioner** | **:** | Ms. Swapna Seshadri, Advocate<br>Shri Ashwin Ramanathan, Advocate<br>Ms. Ritu Aporva, Advocate<br>Shri Anish Garg, DTL<br>Shri Sumit Gupta, DTL<br>Shri Ajay Kumar Sharma, DTL<br>Shri Mohit Sharma, DTL |
| **For Respondents** | **:** | Shri R.B. Sharma, Advocate, BRPL<br>Shri Mohit Mudgal, Advocate, BYPL<br>Shri Sekhar Saklani, BYPL<br>Shri Sanjay Srivastav, BRPL |

## O R D E R

Delhi Transco Limited ('DTL') has filed the present Review Petition seeking review of order dated 29.6.2018 in Petition No. 175/TT/2017. The Commission in order dated 29.6.2018 in Petition No. 175/TT/2017 determined the tariff of two inter-State transmission lines i.e. Asset-1: 400 kV D/C Mandola-Bawana Transmission Line and Asset-2: 400 kV D/C Bamnauli-Ballabhgarh Transmission Line (hereinafter referred to as "transmission assets") of the Review Petitioner for the period 2014-19 in accordance with Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as "2014 Tariff Regulations").

**Background**

2. In terms of the Commission's order dated 14.3.2012 in Petition No. 15/SM/2012, the Review Petitioner's two double circuit lines, namely, (i) 400 kV Double Circuit Mandola-Bawana transmission line and (ii) 400 kV Double Circuit Bamnauli-Ballabhagarh transmission line were identified as inter-State transmission lines. Accordingly, the Review Petitioner was directed to file tariff petition in respect of the said lines for inclusion in the POC charges. Thus, the Petitioner filed Petition No. 218/TT/2013 in respect of the said lines for the period 1.7.2011 to 31.3.2014 and the Commission vide order dated 21.3.2016 approved their tariff. Subsequent to this, the Review Petitioner filed Petition No. 175/TT/2017 for approval of tariff in respect of the aforesaid two transmission lines for the period 2014-19 and the Commission vide order dated 29.6.2018 approved the tariff of the said lines. Similar petitions claiming tariff for the inter-State transmission lines were also filed by the other States. The information submitted by the State utilities was incomplete and inconsistent. Besides this, some of the lines identified as inter-State transmission lines in order dated 14.3.2012 in Petition No. 15/SM/2012 were found to be more than 25 years old and the States were not having the details of capital cost, funding etc. In order to deal with above disparities, the Commission revised the methodology adopted for determination of tariff for the 1.7.2011 to 31.3.2014 period and devised a new methodology for allowing transmission tariff during the 2014-19 period of such transmission lines. The revised methodology was applied in orders dated 19.12.2017 in Petitions 88/TT/2017, 173/TT/2016 and 168/TT/2016 filed by Madhya Pradesh Power Transmission Corporation Limited, Maharashtra State Electricity Transmission Company Limited and Uttar Pradesh Power

Transmission Corporation Limited respectively. The Commission adopted the same methodology in order dated 4.5.2018 in Petition No. 112/TT/2017 while granting tariff for ISTS lines connecting Rajasthan (owned by Rajasthan Rajya Vidyut Prasaran Limited) with other States. The Commission derived benchmark cost on the basis of transmission lines owned by PGCIL. The useful life of the transmission line was considered as 25 years and for lines more than or equal to 25 years, only O & M Expenses and interest on working capital (IWC) was decided to be allowed as per the existing tariff regulations. For the assets that were put into commercial operation on or after 1.4.2014, the tariff as per the said methodology was decided to be allowed on the basis of audited financial capital cost.

3. The Commission, in the impugned order, observed that the Review Petitioner has not submitted the audited capital cost certificates in the case of instant assets and as such the tariff was allowed in respect of them in line with the methodology explained in the preceding paragraph. The Review Petitioner has submitted that they submitted the audited acquisition cost of the transmission assets in the Original Petition. The Review Petitioner has further submitted that they had also given all the relevant details required for computation of tariff. The Review Petitioner has submitted that the Commission reduced the weighted average rate of interest on loan contrary to the provisions of Regulation 26 of 2014 Tariff Regulations. The Review Petitioner has also submitted that in the impugned order, the Commission failed to take note of the fact that they had given the Revised Income Tax Rate for 2014-15 to 2018-19. However, the Commission

did not allow Income Tax by grossing up the return on equity which is contrary to the stipulation as provided under Regulation 25 of 2014 Tariff Regulations.

4. Aggrieved by the aforesaid observations of the Commission, in the impugned order, the Review Petitioner has submitted that non-consideration of audited acquisition capital cost, non-consideration of tariff computation details already submitted in respect of the transmission assets in the Original Petition regarding weighted average rate of interest on loan as well as non-consideration of Revised Income Tax Rate for 2014-15 to 2018-19 are errors apparent on the face of record which require modifications.

5. In the instant Review Petition, the Review Petitioner has made the following prayers:-

"a) Admit the Review Petition,

b) Allow the present Review Petition on the aspects of tariff determination, rate of interest on loan and grossing up of return on equity,

c) Modify the tariff calculations in the order under Review, and

d) Pass such further order (s) or directions (s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case."

**Submissions of the Review Petitioner**

6. The Review Petitioner has narrated the following grounds for review of the impugned order:-

a) The impugned order is premised on the methodology devised by the Commission mainly for the inter-State transmission lines for which tariff was sought that were more than 25 years old and in respect of which no proper details were available with the owners of these lines for fixation of tariff. The applicability of the said methodology is in essence confined to allowing the transmission tariff of inter-State transmission lines which are more than 25 years old and the States do not have the details of capital cost, funding etc. available with them. The Review Petitioner's case is distinct from the category of cases wherein the aforesaid methodology was applied by the Commission as the Review Petitioner had given the audited acquisition cost of the transmission assets in the Original Petition. No inference can be drawn from the Commission's order dated 19.12.2017 in Petitions 88/TT/2017, 173/TT/2016 and 168/TT/2016 filed by Madhya Pradesh Power Transmission Corporation Limited, Maharashtra State Electricity Transmission Company Limited and Uttar Pradesh Power Transmission Corporation Limited respectively as well as order dated 4.5.2018 in Petition No. 112/TT/2017 as these orders are based on the foundation of facts wherein no cost details of transmission assets were available with owners of those inter-State transmission lines while the Review Petitioner was in possession of acquisition cost details of the transmission assets of inter-State transmission lines owned by it and the same was even supplied by it in the Original Petition.

b) The Commission, in the impugned order, reduced the weighted average rate of interest on loan despite the fact that Review Petitioner is drawing loans from State Government/Government Agencies i.e Government of National Capital Territory of Delhi and Commercial Banks on overall requirement basis.

Thus, the impugned order is clearly based on the principles contrary to Regulation 26 of 2014 Tariff Regulations.

c) In terms of Commission's RoP for the hearing dated 8.5.2018 in Petition No. 175/TT/2017, the Review Petitioner submitted the Revised Income Tax for 2014-15 to 2018-19. However, the Commission, in the impugned order dated 29.6.2018, did not allow the Income Tax by grossing up the return on equity as envisaged under Regulation 25 of 2014 Tariff Regulations.

7. The Review Petition was admitted vide order dated 30.1.2019 and notice of the same was served upon the respondents.

**Reply of the Respondents**

8. The respondents, BRPL and BYPL vide affidavits dated 22.2.2019 and 18.3.2019 respectively filed their reply to the Review Petition. They have submitted that the acquisition cost of the transmission assets cannot be compared with the book value of the assets any time during its useful life as the acquisition cost is always higher than its book value known as its capital cost after deduction of the cumulative depreciation. The respondents have further submitted that audited acquisition cost and capital cost are not same and that the Review Petitioner did not furnish the capital cost certificate. Regarding the weighted average rate of interest on loan, the respondents submitted that the Review Petitioner has made a comparison between the claimed and allowed weighted average rate of interest on loan. The respondents have further submitted that the Commission has given reasons in the impugned order for weighted average rate of interest on loan. Regarding the issue relating to grossing up of return on equity, the

respondents have submitted that the normative tariff working methodology was applied in the present case as the audited capital cost information was not available. The respondents have further submitted that in view of the judgment of Hon'ble Supreme Court in the matter of Parsion Devi and others Vs. Sumitra Devi and others reported in (1997) 8 SCC 715, no ground for review of the impugned order is made out by the Review Petitioner. The respondents have further submitted that there is no error apparent on record requiring review and modification of the impugned order.

**Rejoinder of the Review Petitioner**

9. In response, the Review Petitioner vide affidavit dated 12.4.2019 submitted that they had submitted the audited capital cost of the transmission assets covered in the present petition and the same is available at Page No. 126 of the consolidated pleadings in the main petition. She further submitted that the acquisition cost as mentioned in the Auditor's Certificate is the capital cost that was incurred by the Review Petitioner. She controverted the contentions of the respondents that the Review Petitioner submitted the acquisition cost of the transmission assets and not the book value which will be reflected in the audited capital cost. On the remaining two issues, namely, (i) interest on loan and, (ii) grossing up of income tax, the Review Petitioner has reiterated the submissions made in the Review Petition.

**Analysis & Decision**

10. We have heard the learned counsel for the parties and have gone through the documents on record.

11. Learned counsel for the Review Petitioner contended that the Commission's methodology for allowing the transmission tariff of inter-State transmission lines which are more than 25 years old is binding on the owners of such lines who do not have the details of capital cost, funding etc. available with them. She further contended that the Commission has erred by equating the Review Petitioner with other ISTS licensees which have not given details of the capital cost. She contended that they submitted the audited acquisition capital cost of the transmission assets in the main petition, but somehow it went unnoticed by the Commission. Resultantly, the Commission in the impugned order observed that the Review Petitioner did not submit the audited capital cost certificates in respect of the transmission assets. She contended that for this reason, the tariff was allowed for the two inter-State transmission lines in line with the methodology as discussed in the Commission's order dated 19.12.2017 in Petitions 88/TT/2017, 173/TT/2016 and 168/TT/2016 filed by Madhya Pradesh Power Transmission Corporation Limited, Maharashtra State Electricity Transmission Company Limited and Uttar Pradesh Power Transmission Corporation Limited respectively as well as in order dated 4.5.2018 in Petition No. 112/TT/2017.

12. Learned counsel for BRPL and BYPL has contended that acquisition cost is always higher than book value. Explaining the term "book value", he contended that it is known as capital cost after deduction of cumulative depreciation. He contended that there is clear demarcation between audited acquisition cost and the capital cost and the fact of the matter is that the Review Petitioner did not furnish capital cost certificate. He submitted that there is no error apparent on record on this score.

13. We have examined the above contentions of the parties and have also scrutinized the record of the Original Petition. The Commission evolved a methodology to determine the tariff of the transmission lines owned by the States, which are used for conveyance of power to another State, and for which the capital cost is not available. This methodology is evolved on the basis of the capital cost of the different transmission lines owned by PGCIL and it is applied to all the transmission lines owned by the State which convey power to the neighbouring States. In instant case, the Commission in the impugned order observed that the Review Petitioner has not submitted the audited capital cost and hence tariff was allowed for the two lines owned by the Review Petitioner in line with the methodology evolved by the Commission and which is applied to all the States.

14. The Review Petitioner has subsmitted the audited acquisition cost in respect of Mandola-Bawana and Bamnauli-Ballabhgarh transmission lines alongwith 2 nos. 400 kV bays each at Ballabhgarh and Mandola. However, as pointed out by the Respondents, the “book value” is different from the “acquisition cost”. The Review Petitioner has not submitted the capital cost based on the “book value” and has only submitted the audited acquisition cost of the two transmission lines. Besides the price paid for the assets, additional costs associated with the purchase are also part of the acquisition cost. As the Review Petitioner did not submit the capital cost based on the “book value”, like many other States, we do not find force in the contention of the Review Petitioner that they cannot be equated with other States which have not given details of the capital cost. In the absence of the capital cost based on the “book value”, the Commission, in

the case of the Review Petitioner, adopted the methodology used for determination of transmission tariff of the inter-State transmission lines owned by other States, which is based on the capital cost based on the “book value”. We, therefore, do not find any error apparent on record.

15. The next contention of the Review Petitioner is that by way of the impugned order, the Commission has reduced the weighted average rate of interest on loan despite the fact that Review Petitioner is drawing loans from State Government/Government Agencies i.e Government of National Capital Territory of Delhi and Commercial Banks on overall requirement basis. This is derogatory to Regulation 26 of 2014 Tariff Regulations and, therefore, the difference between what was claimed by the Review Petitioner as Rate of Interest and what was allowed by the Commission constitutes the error apparent on record.

16. We have examined the contentions of the parties on the issue of difference in the weighted average rate of interest of loan as claimed by the Review Petitioner and as allowed by the Commission. On perusal of the order dated 29.6.2018, we find that the Commission considered the following aspects while calculating the tariff, as quoted in para 6 of the order.

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> 17. While calculating tariff, the following has been considered:-
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> (i) Useful life of the transmission line shall be deemed to be 25 years.
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> (ii) Prevailing depreciation rates as per the 2014 Tariff Regulations shall be considered uniformly for all the previous tariff periods so as to do away with the Advance Against Depreciation which was in vogue during earlier

tariff periods. Notwithstanding the depreciation considered as recovered earlier, for the purpose of these tariff calculations, remaining depreciable value shall be spread over the remaining useful life of the transmission line, where the elapsed life is more than or equal to 12 years.

(iii) Normative Debt-Equity ratio shall be 70:30.

(iv) Normative loan repayment during a year shall be deemed to be equal to the depreciation allowed for that year.

(v) Rate of Interest on normative loan shall be the weighted average rate of interest as derived on the basis of PGCIL's Balance Sheet.

(vi) In order to avoid complexity,grossing up of rate of Return on Equity with tax rate is being dispensed with.

(vii) Bank rate as defined in 2014 Tariff Regulations, 2014 as on 1.4.2014 shall be applied for calculating the rate of interest on working capital on normative basis.

(viii) O& M Expenses as per the 2014 Tariff Regulations shall be considered.

(ix) Where the life of transmission line is more than or equal to 25 years as on 1.4.2014, only O & M Expenses and IWC shall be allowed in lieu of complete tariff.

18. Thus, in effect, this is a normative tariff working methodology which shall be applied in those cases where the audited capital cost information is not available.

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17. On re-examination of the weighted average rate of interest on loan allowed by us in the order dated 29.6.2018 in line with the benchmarks as discussed above in the methodology, we find that the rate of interest on normative loan shall be the weighted average rate of interest as derived on the basis of PGCIL's balance sheet. Thus, we find no error apparent on record requiring us to review the impugned order on this ground.

18. The Review Petitioner has contended that in terms of Commission's RoP dated 8.5.2018, the Review Petitioner submitted Revised Income Tax details for the period from 2014-15 to 2018-19. It has further contended that in the impugned order, the Commission did not allow the income tax by grossing up the return on equity and observing as such is violation of Regulation 25 of 2014 Tariff Regulations.

19. Examining the issue of grossing up of return on equity with the tariff methodology as applied to the present case, we find that under para 6 of the order dated 29.6.2018, grossing up of rate of return on equity with tax rate is being dispensed with in order to avoid complexity of dealing with different effective tax rates for different companies. Thus, we do not do not find any error apparent on record.

20. For the reasons as mentioned in the foregoing paragraphs, we do not find any error apparent on record and therefore any reason for review of the order dated 29.6.2018. The Review Petition is, therefore, disposed of accordingly.

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| **(Dr. M.K. Iyer)** | **(P.K. Pujari)** |
| **Member** | **Chairperson** |