

**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: 8.1.2020

In the matter of

Review of Order dated 26.03.2018 in Petition No. 62/MP/2017 filed by POWERGRID NM Transmission Limited (erstwhile Nagapattinam - Madhugiri Transmission Company Limited).

And

In the matter of

POWERGRID NM Transmission Limited,
(Erstwhile Nagapattinam-Madhugiri Transmission Company Limited)
Registered office: B-9, Qutab Institutional Area,
Katwaria Sarai, New Delhi 110 016.

.....**Petitioner**

Vs

1. IL & FS Tamil Nadu Power Company Ltd,
"B" Block, Navin's Presidium, 4th Floor,
103, Nelson Manickam Road, Aminjikai,
Chennai – 600 029.



2. Chief Engineer (PSPM-II)
Central Electricity Authority
PSPM Division, Sewa Bhawan, Rama Krishna Puram,
New Delhi – 110 066.
3. Chief Operating Officer,
Central Transmission Utility (CTU)
Saudamini, Plot No.2, Sector – 29
Gurgaon.
4. PFC Consulting Limited
(A wholly owned subsidiary of PFC Ltd.)
1st Floor, “Urjanidhi”, 1, Barakhamba Lane, Connaught Place,
New Delhi – 110 001.
5. Tamil Nadu Generation and Distribution Corporation Limited
(Through its Chairman cum Managing Director)
NPKRR Maaligai,
144, Anna Salai, Chennai - 600002

.....**Respondents**

Parties present: Shri M.G Ramachandran, Senior Advocate, PGNMTL
Shri Aryaman Saxena, Advocate, PNMTL
Shri Siddhant Buxy, Advocate, PNMTL
Shri Karan Arora, Advocate, PNMTL
Shri V.C. Sekhar, PNMTL
Ms. Manju Gupta, PNMTL
Shri S. Vallinayagam, Advocate, TANGEDCO



ORDER

The Review Petitioner, POWERGRID NM Transmission Limited, has filed the present Review Petition seeking review and modification of the Commission's order dated 26.03.2018 in Petition No. 62/MP/2017. The Commission, vide Order dated 26.03.2018, refused to approve the methodology for apportionment of transmission charges between 765kV Nagapattinam - Salem D/C transmission line and 765kV Salem – Madhugiri S/C transmission lines and the payment of transmission charges for 765kV Nagapattinam - Salem D/C transmission line with effect from 23.10.2016 viz. the Commercial Operation Date (COD) of the line and the date from which it was put to use.

2. The Review Petitioner vide this instant review petition has prayed for the following reliefs:

- a) *Review and modify the Impugned Order dated 26.03.2018 passed by this Hon'ble 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 765kV 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;*
- c) *Approve the apportionment of transmission charges between 765 kV D/C Nagapattinam-Salem transmission line and 765kV S/C Salem-Madhugiri transmission lines in the ratio as determined by the Empowered Committee in its meeting dated 01 .02.2011 and affirmed by the CEA vide letter dated 04/05.09.2017 and*



d) Pass such other order(s) and/ or direction(s) as this Hon'ble commission may deem just and proper in the facts and circumstances of the case.

Submission by Review Petitioner

3. The Review Petitioner submitted that in the 25th meeting of the Empowered Committee on Transmission, chaired by a Member of the Commission, dated 01.02.2011, the Project was discussed and agreed for implementation through Tariff-Based Competitive Bidding route. Scope of works and cost of the elements under the project that was agreed upon is as follows:

S. No.	Transmission Scheme	Estimated line length	Estimated cost (Rs. Crores)
1.	Transmission System Associated with IPPs of Nagapattinam/ Cuddalore Area – Package A		
	Nagapattinam Pooling Station - Salem 765 kV D/C line	250km	650
	Salem - Madhugiri 765 kV S/C line	250km	375

4. The Review Petitioner has submitted that in terms of the above, the total cost of the project was estimated as Rs. 1025 Crore and percentage share of the individual elements was estimated to be 63.41% and 36.59% respectively.

5. The Review Petitioner has submitted that the Nagapattinam-Salem D/C transmission line was part of transmission system to evacuate power from the IL&FS generation project. From Salem Pooling Station, Salem-Madhugiri S/C transmission line was meant for strengthening of transmission system to transfer power from IL&FS as well as other generation projects in Nagapattinam/ Cuddalore area.



6. The Review Petitioner submitted that the commissioning schedule for IL&FS generation project was October' 2014 (Unit #1) and February' 2015 (Unit 2), and the transmission system was required to avoid constraints in evacuation of power from the IL&FS generation project. The Review Petitioner has submitted that accordingly, it made all efforts to commission the instant transmission assets at the earliest. However, the Nagapattinam-Salem transmission line was completed, whereas the Salem-Madhugiri line was held up due to severe Right of Way (RoW) problems near Bengaluru Area. Keeping in view the requirement of 765kV Nagapattinam - Salem D/C line for evacuation of power from IL&FS generation project, the 765kV Nagapattinam - Salem D/C transmission line was commissioned and declared under commercial operation w.e.f. 23.10.2016. The instant asset is being utilized by IL&FS for evacuation of power on Long Term basis to TANGEDCO, as well as for selling power under Short-Term Open Access.

7. It is submitted by the Review Petitioner that the IL&FS Tamil Nadu Power Company Ltd is the only Long Term Transmission Customer (LTTC) of the project. In the Impugned Order, the Commission refused to sanction the payment of transmission charges for the Nagapattinam-Salem Transmission Line on the ground that the Transmission Service Agreement dated 2.2.2012 between the Review Petitioner and Long-Term Transmission Customer doesn't contain any provisions for the apportionment of transmission charges between different elements of the transmission system being executed through TBCB route and certificate of CEA is not available 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.



8. The Review Petitioner has submitted that the aforementioned findings were erroneously returned by the Commission, overlooking the decision of CEA to grant its imprimatur to the completion of both the transmission lines independently and clear finding that each of the lines in the project may be commissioned independently. Further, the utilization of the line has also been certified by the CEA. The Review Petitioner has submitted that such certification by the CEA is the only requirement under the CERC (Indian Electricity Grid Code) Regulations, 2010 to exempt commissioning of pre-requisite elements. Further, it is submitted by the Review Petitioner that the Commission also overlooked the fact that the cost break-up of the two transmission lines was provided in the minutes of meeting dated 01.02.2011 of the Empowered Committee.

9. The Review Petitioner has submitted that the entire procedure was followed by the BPC (Bid Process Coordinator) before transferring SPV (Special Purpose Vehicle) to the successful bidder in the instant project. However, the percentage share of individual elements (which is generally derived based on the cost break-up of elements as per the cost decided by the Empowered Committee) was not captured in the TSA, presumably because it was one of the initial projects notified for bidding. As a matter of practice, it is understood that such percentage share of individual elements as per the cost break-up is included in the TSAs signed for TBCB projects. As can be seen from the summary report, the percentage share of individual elements out of the quoted transmission charges for the project as captured in the TSA is generally derived based on the cost break-up of elements as per the cost approved by the Empowered Committee.



10. At Para 27 of the Impugned Order, the Commission returned a finding that the cost break-up was not part of the TSA. In this regard, relevant observations of the Commission are quoted below:

“In our view, since there is no provision in the RfQ/RfP and TSA regarding apportionment of transmission charges between different elements of the transmission system being executed through TBCB route...”

11. The Review Petitioner has submitted that in light of the fact that CEA had provided the cost break-up of the elements as per the request by the Commission and also the cost break-up between the different elements of the Project has been provided in the minutes of the 25th Empowered Committee meeting held on 01.02.2011, the Commission may take into cognizance the entire process of providing the cost break-up of individual elements and adopt the same approach as followed for other TBCB projects rather than outrightly rejecting or denying the payment of transmission charges merely on the ground that percentage break-up of individual elements was not provided in the TSA. Since the cost break-up was available in the recommendation of CEA as well as minutes of the Empowered Committee, the Impugned Order suffers from an error apparent on the face of the record.

12. The Review Petitioner has submitted that at Para 24 of the Impugned Order, the Commission held as follows:

“24. CEA has given the tentative apportionment of the cost between the two transmission lines based on the estimated cost recorded in the Empowered Committee meeting and has also stated that Nagapattinam-Salem DC transmission line after its COD is being used for evacuation of power. However, CEA has not specifically certified that commercial operation of the said transmission line without the COD of the Salem-Madhugiri SC line is in the interest of power system and safety and security of the grid.”



On this basis, the Commission refused to sanction the payment of transmission charges for the 765kV Nagapattinam-Salem D/C transmission line.

13. The Review Petitioner has submitted that in the Impugned Order, the Commission returned a clear finding that in response to the Review Petitioner's request vide letter dated 23.3.2016, CEA had granted its imprimatur to the commissioning of the two transmission lines independently vide letter dated 26.12.2016. Further, the Commission also returned a clear finding to the effect that CEA had clarified, vide letter dated 04/05.09.2017, that the cost break-up between the two transmission lines, based on length of line as computed by actual implementation/ survey, could be considered in the ratio of 60:40 respectively. Further, the CEA has also confirmed the independent commissioning of both the lines. Indeed, there is no finding in the Impugned Order of any disadvantage whatsoever from a technical standpoint to the segregated commissioning of the elements of the Project.

14. The Review Petitioner has submitted that after returning these clear findings, it was not open to the Commission to refuse to approve the payment of transmission charges for the 765kV Nagapattinam-Salem D/C line on the erroneous basis that CEA had not clarified that independent commissioning of the Nagapattinam-Salem transmission line would be in the interest of the power system and safety and security of the grid. As per Regulation 6.3A 4(v) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010:

"An element shall be declared to have achieved COD only after all the elements which are pre-required to achieve COD as per the Transmission Services Agreement are commissioned. In case any element is required to be commissioned prior to the commissioning of pre-required element, the same can be done if CEA confirms that such



commissioning is in the interest of the power system.”

15. As per the above regulation, CEA has to certify that commissioning of any element without the pre-requisite element is in the interest of the power system. In the instant case, CEA has certified that both the lines can be commissioned independently. Further, CEA has also advised cost apportionment in the ratio of 60:40 between the lines. Thus, CEA has confirmed that 765kV Salem-Madhugiri transmission line is not a pre-requisite and 765kV Nagapattinam-Salem transmission line can be commissioned independently and its transmission charges are payable in the ratio of 60:40 of the total quoted transmission charges. Further, CEA had also certified the quantum of power flow on the line since its commissioning, which establishes the fact that the line is being utilized for evacuation of power from the IL&FS generation project. In light of the fact that the CEA had made a clear determination that Nagapattinam-Salem transmission line can be independently commissioned which was definitely in the interest of the power system, and further confirmation of CEA vide letter dated 04/05.09.2017 regarding the usefulness of the line, the Commission erred in not granting approval.

16. The Review Petitioner has submitted that the CEA's power to sanction independent commissioning of a transmission element flows from Regulation 6.3A 4(v) of CERC (Indian Electricity Grid Code) Regulations, 2010. Further, it bears mention that the Commission essentially set at naught the CEA's sanction, by operating on the premise that there was complete non-observance of Regulation 6.3A 4(v) of CERC (Indian Electricity Grid Code) Regulations, 2010.



17. The Review Petitioner has submitted that at Para 27 of the Impugned Order, the Commission returned a finding that “no certificate of CEA is available to the effect that commissioning of 765kV Nagapattinam-Salem D/C transmission line is in the interest of the power system and safety and security of the grid.” Regulation 6.3A 4(v) of CERC (Indian Electricity Grid Code) Regulations, 2010 does not stipulate that the CEA must certify that the independent commissioning of a transmission element is in the safety and security of the grid. Therefore, the imposition of this requirement by the Commission is not supported by the text and structure of the aforesaid Regulation.

18. The Review Petitioner has submitted that the TSA clearly envisages payment of transmission charges by the Long-Term Transmission Customer to the Review Petitioner from the COD of any transmission element. Notably, the TSA does not make the payment of transmission charges contingent upon the commissioning of any associated elements. In this regard, Article 10.1 of the TSA is quoted below:

“Subject to provisions of this Article 10, the Long Term Transmission Customers shall pay to the TSP, in Indian Rupees, on monthly basis, the Monthly Transmission Charges from the date on which an Element(s) has achieved COD until the Expiry Date of this Agreement, unless terminated earlier, in line with the provisions of Schedule 5 of this Agreement.”

19. The Review Petitioner has submitted that IL&FS whose power is being evacuated over the 765kV Nagapattinam-Salem transmission line is making payment of LTA charges for quantum of 540 MW and has paid transmission charges to the tune of Rs. 153 crore to the PoC pool since commissioning of the 765kV Nagapattinam-Salem transmission line. In addition, IL&FS is also utilizing the instant asset for evacuating power for transactions under Short-Term Open Access. The short-term transmission



charges so paid by IL&FS are also being reimbursed to PoC pool. However, no transmission tariff whatsoever has been paid since 2016 despite commissioning the line and providing transmission services. Such a situation is threatening the viability of the Review Petitioner's continued operations.

20. The Review Petitioner has submitted that the present petition is a fit case for review since the refusal to grant transmission charges for the 765kV Nagapattinam-Salem D/C transmission line as mentioned at Para 27 of the Impugned Order constitutes an error apparent on the face of the record. Further, the sanction granted by the CEA for the independent commissioning of the 765kV Nagapattinam-Salem transmission line would be set at naught if the Review Petitioner is not allowed to claim transmission charges for 765kV Nagapattinam-Salem transmission line. It has submitted that the Impugned Order operates in a prejudicial and inequitable manner against the Review Petitioner, by rendering it without any monetary recompense for the uninterrupted use of the 765kV Nagapattinam-Salem transmission line for a period of roughly 18 months by Respondent No. 1 i.e., from 23.10.2016 to till date.

Submission by Review Petitioner vide affidavit dated 10.12.2018

21. At Para 27 of the Impugned Order, the Commission had returned a finding that no certificate of CEA is available to the effect that commissioning of 765kV Nagapattinam-Salem transmission line is in the interest of the power system and safety and security of the grid. The matter has subsequently been taken up with Central Electricity Authority (CEA) by the Review Petitioner and CEA has now issued letter dated 07.12.2018



certifying that the commissioning of 765kV Nagapattinam-Salem D/C transmission line is in the overall interest of development of power system in Southern Region.

22. The Review Petitioner has requested that the Commission may sanction the payment of transmission charges for 765kV Nagapattinam-Salem D/C transmission line with effect from 23.10.2016 viz. COD of the line & the date from which it was put to use and approve the apportionment of transmission charges between 765 kV Nagapattinam-Salem D/C transmission line and 765kV Salem-Madhugiri S/C transmission lines in the manner as prayed for to mitigate the financial difficulties of the Petitioner.

Submissions during hearing dated 12.12.2018

23. Review Petitioner reiterated the submissions filed in the Review Petition. Counsel of TANGEDCO submitted that the Commission in its letter dated 6.3.2018 directed PGCIL to make TANGEDCO party to the petition. In the instant Petition, TANGEDCO is the sole beneficiary of the transmission system. However, despite the Commission`s direction, the Review Petitioner has not impleaded the TANGEDCO as party to the Petition even though TANGEDCO is paying the transmission charges for this transmission system.

24. In response, Review Petitioner submitted that since TANGEDCO is not a signatory of the TSA, it has not been impleaded as party to Petition/ Review Petition. If TANGDCO wants to participate in the proceeding, TANGEDCO is required to file application for impleadment as party to the petition. After the hearing, order was reserved on the issue of impleadment of TANGEDCO in the Review Petition.



Additional Information by Review Petitioner vide affidavit dated 13.3.2019

25. The Review Petitioner has submitted that second transmission line under the project i.e. 765kV Salem-Madhugiri S/C has been commissioned and declared under commercial operation w.e.f. 00:00 hrs of 26.1.2019 after successful completion of trial operation. The Review Petitioner has submitted copy of the DOCO letter dated 25.1.2019 and submitted that with commissioning of this line, both lines to be implemented under the project by the Review Petitioner have been commissioned and the project achieved COD w.e.f. 26.01.2019. The Review Petitioner has submitted that it is entitled to payment of transmission charges as per the TSA dated 02.02.2012.

26. The Review Petitioner has, vide affidavit dated 09.04.2019, submitted the Amended Memo of parties in compliance with the Commission's Order dated 04.04.2019 to implead the TANGEDCO in the instant review petition.

Submission of TANGEDCO vide affidavit dated 15.4.2019

27. TANGEDCO has submitted that the instant review petition is not maintainable and that the Commission has dismissed a number of such review petitions due to the fact that the review cannot be an appeal in disguise. The review petition has no grounds for review as mandated under law. The Commission vide its recent order dated 05.04.2019 has dismissed the Review petition No. 30/RP/2018. The relevant portion of the order is extracted below:

"9. Moreover, as per Order 47 Rule 1 of Code of Civil Procedure, 1908, a review is maintainable on (i) discovery of new and important matter or evidence which was not within knowledge of the Review Petitioner or could not be produced after the exercise of due diligence, (ii) Mistake or error apparent on the face of the record; (iii) Any other sufficient reason. The case of the Review Petitioner does not fall under any of the three categories mentioned above to qualify for review and the Review Petitioner is rearguing the matter on



merits which is not allowed in a review petition. The Hon'ble Supreme Court in *Parison Devi vs Sumitri Devi* (1997 (8) SCC 715) observed that a review cannot be an appeal in disguise. The relevant portion of the observations of the Hon'ble Court in the said judgement is extracted hereunder:-

"A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."

10. Further, the Hon'ble Supreme Court in *Kamlesh Verma vs. Mayawati and others*, ((2013) 8 SCC 320), while examining the scope of review has observed as under:-

"8. Again, in Meera Bhanja v. Nirmla Kumari Choudhury, 1995 (1) SCC 170, while quoting with approval a passage from Aribam Tuleswar Sharma v. Aribam Pishak Sharma, 1979 (4) SCC 389, this Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. 9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be 'reheard and corrected'. A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise'."

Accordingly, a Review Petition cannot be an appeal in disguise as held by the Hon'ble Supreme Court."

TANGEDCO has submitted that there is no patent error in the impugned order and hence this review petition is not maintainable.

28. The Respondent has submitted that the Review Petitioner being the Transmission Service Provider selected under TBCB route, shall have to follow the provisions of the terms and conditions of the Transmission Service Agreement (TSA). The TSA does not have any provision for apportionment of the transmission tariff among the different elements of the project. The Empowered Committee had clearly apportioned the tariff in respect of other transmission assets approved in the 25th meeting held on 1.2.2011, but did not do so in respect of the instant assets considering that both elements were required for putting the assets into beneficial use. TANGEDCO has submitted that in the



absence of any apportionment of tariff among the elements of the project in the RfQ and RfP as well as in the TSA, no tariff can be granted for elements separately and hence, there is no error apparent in the impugned order.

29. TANGEDCO has submitted that it has entered into Power Purchase Agreement with IL&FS Tamil Nadu Power Co. Ltd. for 540 MW. LTA was granted to the IPPs (including IL&FS) based on target Region and LTA has been partially operationalized with effect from 23.09.2015 on commissioning of the interim and contingency schemes for evacuation of power from IL&FS. There is no constraint in evacuation of 540 MW tied up with TANGEDCO. The instant assets are essential only for transfer of power from the IPPs to the target regions outside Tamil Nadu. In the absence of any firm beneficiary and firming up of generation, the nodal agency should have taken up the work only after firming up the target beneficiary as per the provisions under Regulation 27(1) of the CERC (Grant of Connectivity, long Term Access and Medium term Open Access in Interstate Transmission and Related matters) Regulations, 2009, the relevant provisions are extracted below:

“For the balance capacity (not exceeding 50% of LTA sought for) for which exact source of supply or destination could not be firmed up on long-term basis, the Augmentation /system strengthening further from the target region shall be taken up only after identification of exact source/destination. CTU shall be allowed up to 3 years time for such augmentation/system strengthening from the target region to the exact source / destination. During such period the applicant shall be liable to pay the transmission charges up to the target region.”

30. TANGEDCO has submitted that the Empowered Committee vide minutes of the 25th meeting held on 1st February, 2011 while approving the schemes associated with IPPs to be executed under TBCB and on cost plus basis, has emphasized as below:

“Before awarding the scheme to the prospective Transmission service provider, it should



be ensured that the associated generation projects have made satisfactory progress in order to avoid creation of redundant transmission assets”

31. TANGEDCO has submitted that in the absence of both generation as well as target beneficiaries, the intended transmission system will not serve its purpose and rather it will increase the financial burden on existing DICs. There is no upstream connectivity at 765 kV level and no target beneficiary at Salem Pooling station or beyond. This condition makes the instant asset redundant and uneconomical.

32. TANGEDCO has submitted that the amended Clause (5) of Regulation 8 of the Sharing Regulations stipulates as under:-

“(5) Where the Approved Withdrawal or Approved Injection in case of a DIC is not materializing either partly or fully for any reason whatsoever the concerned DIC shall be obliged to pay the transmission charges allocated under these regulations:

Provided that in case the commissioning of a generating station or unit thereof is delayed, the generator shall be liable to pay Withdrawal Charges corresponding to its Long term Access from the date the Long Term Access granted by CTU becomes effective. The Withdrawal Charges shall be at the average withdrawal rate of the target region.”

33. TANGEDCO has submitted that M/s PELPL has abandoned the generation project and M/s IL&FS has applied for relinquishment of 610 MW. The petitioner has declared COD of the 765kV Nagapattinam PS - Salem PS D/C line on 23.10.2016. Hence, the IPPs are liable to pay the transmission charges from the date of COD till the target beneficiaries are firmed up/ commissioning of the generating units.

34. The Commission in the matter of determination of relinquishment charges, vide its order dated 8th March, 2019 in petition No.92/MP/2015 had directed as below:

“(G) Manner of recovery and utilization of relinquishment charges collected

158. Regulation 18 (3) of the Connectivity Regulations provides as under
“The compensation paid by the long-term customer for the stranded transmission capacity



shall be used for reducing transmission charges payable by other long-term customers and medium-term customers in the year in which such compensation payment is due in the ratio of transmission charges payable for that year by such long-term customers and medium-term customers.”

159. As per the above provision, the relinquishment charges paid by LTA customers shall be used for reducing transmission charges payable by other long term and medium term customers in the year in which such compensation is due in the ratio of transmission charges payable for that year by such long term customers and medium term customers. Therefore, Yearly Transmission Charges (YTC) shall be reduced by actual charges received towards relinquishment by relinquishing long term customers in terms of the above Regulation. Accordingly, the Petitioner is directed to keep the charges collected towards relinquishment in a separate account and utilize the same as directed above. Any interest accrued on this amount shall be credited in the account itself.”

35. TANGEDCO has submitted that as per the above directions, the nodal agency (CTU) is liable to quantify the stranded transmission capacity and assess the relinquishment charges and place on record the total anticipated reduction in the YTC. Hence, TANGEDCO has submitted that the nodal agency should complete the exercise as per the direction of the Commission.

Rejoinder of the Review Petitioner vide affidavit dated 25.04.2019

36. The Review Petitioner has additionally submitted as under:

a) The CEA vide its letter dated 07.12.2018 had communicated that the said commissioning “is in overall interest of development of power system in Southern Region”. This key piece of evidence was filed in the captioned proceedings vide Review Petitioner’s Affidavit dated 10.12.2018. Evidently, the said key piece of evidence could not have been produced before the Commission in the Petition No. 62/MP/2017 proceedings since it did not exist at that time. Since producing this key piece of evidence was impossible earlier, despite Review Petitioner’s due diligence, this is a fit case for review. The CEA was always unequivocal of the view that the independent commissioning of the subject elements of the Project was in the interest of the power system. A perusal of the CEA’s letter dated 7.12.2018 clearly evidences the fact that the CEA’s opinion relates back to 23.10.2016 when the



Review Petitioner declared commercial operations of the 765kV Nagapattinam-Salem D/C line. In fact, CEA vide its letter dated 26.12.2016 has already given its consent for independent commissioning of two elements under the project, which effectively addressed the issue of pre-requisite commissioning of the elements. The said letter of CEA was submitted to the Commission as part of the Petition No. 62/MP/2017.

b) CEA's letter dated 07.12.2018 is, in and of itself, sufficient to merit a review of the Impugned Order. This is borne out clearly by Order XLVII Rule 1 of the Code of Civil Procedure, 1908 ("CPC"), as excerpted hereunder (with underlining for emphasis):

i. "1. *Application for review of judgement*

(2) *Any person considering himself aggrieved-*

(a) *by a decree or order from which an appeal is allowed, but from no appeal has been preferred,*

(b) *by a decree or order from which no appeal is allowed, or*

(c) *by a decision on a reference from a Court of Small Causes,*

ii. *and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgement to the Court which passed the decree or made the order.*

iii. ..."

c) It is evident from the foregoing that the discovery of new and important evidence such as the said CEA letter dated 07.12.2018 is a fit ground for review, which despite due diligence, the Review Petitioner could not have produced before the Commission in Petition No. 62/MP/2017. It is settled law that nothing in Order XLVII Rule 1 of the Code of Civil Procedure, 1908 prevents a court from taking into account subsequent events/ material.



37. It is submitted by Review Petitioner that in reply to the Commission's letter dated 06.03.2018 seeking reasons for not impleading TANGEDCO, the Review Petitioner had promptly submitted a letter dated 15.03.2018 to the Commission that TANGEDCO has not been identified as a LTTC in the TSA furnished by the BPC and accordingly has not been impleaded in the Petition. In response to the Petitioner's explanation vide letter dated 15.03.2018, there was neither any direction provided by CERC nor was there any submission made by TANGEDCO on the matter any further. As such, the statement that the Petitioner was directed by the Commission to implead TANGEDCO and despite this the Petitioner did not implead TANGEDCO is factually wrong. Although it is not appropriate to implead TANGEDCO, however, in order to comply with the directions of Commission and expedite the process & ensure receipt of transmission charges, TANGEDCO has also been impleaded as party to the Review Petition.

38. The Review Petitioner has submitted that contention of TANGEDCO that it is the sole beneficiary of the Project, is factually not correct. Transmission charges for the subject Project are to be paid under the PoC mechanism as has been stated in the CERC order in 154/MP/2011, IA No. 17/2011 dated 13.12.2011. Further, PFCL as the BPC as part of its clarifications in the bidding document has also stated the same. Beneficiaries are identified against generators but consequent to PoC mechanism, beneficiaries are not identified against the Project but all the DICs are identified against transmission systems. As a generator, IL&FS may enter into PPAs with various entities from time to time. Accordingly, the sequitur to the Commission's Order dated 04.04.2019 would mean that every transmission licensee must implead all entities who may in future potentially



use a transmission line. It has submitted that such an approach is impractical and would lead to significant delays in adjudication.

39. The Review Petitioner has submitted that the statement that “TANGEDCO is paying the transmission charges for this transmission system” is also factually incorrect. As a matter of fact, no entity has paid transmission charges for 765kV Nagapattinam – Madhugiri D/C transmission line despite it being used since October 2016.

40. In the Commission’s Order dated 04.04.2019, Para 2.8.1(a) of Annexure 1 to the Sharing Regulations was referred to which states that PoC rates for billing towards LTA shall be calculated only at withdrawal nodes. In case of generators who have LTA to target region, the PoC rates shall be worked out corresponding to untied power by the generator. PoC rates worked out in this manner no way ascribes the charges of any project exclusively only on one beneficiary of a generator. The transmission system charges are dispersed across the DICs in the country under the PoC mechanism. As such, the statement that billing is done to the beneficiary of a generating station alone is not correct under PoC regime. Further, the statement that TANGEDCO alone becomes a deemed signatory to the TSA requires close examination since all the DICs under PoC regime pay the charges for the entire ISTS and there is no exclusivity under PoC regime.

41. Review Petitioner has submitted that the Transmission Assets forming part of the project “Transmission System Associated with IPPs of Nagapattinam/ Cuddalore Area – Part-A of Tamil Nadu” under HCPTC-XI has been granted Regulatory Approval by the Commission vide order dated 13.12.2011 in Petition No.154/MP/2011 & IA No. 17/2011



for implementation of the scheme. TANGEDCO was a party in the said proceedings and should have highlighted any issues it had in those proceedings, which was prior to the implementation of instant transmission assets. Further public notice had also been issued in the said Petition for comments/ objections. This Commission vide its Order dated 13.12.2011 had after considering all the facts and circumstances as well as the objections, held that there is a necessity to implement the Project and granted regulatory approval for execution of the Project. Once the Commission has unequivocally granted its regulatory approval for execution of the Project, including the Review Petitioner's Project, the same becomes part of the ISTS network and the transmission charges and losses of the transmission assets/system are to be shared in accordance with the Sharing Regulations. While granting regulatory approval, the Commission made the following observations: -

"21. It is observed that the work of IL&FS (1200MW) is under progress and there is possibility of implementation of PPN Power (1080MW). Total LTA granted in this corridor is 3297MW. Keeping in view the petitioner's submission that this transmission system would be required even if one generation project is materialized and the RFQ process for one of the trunk lines has already been started, the implementation of HCPTC-XI be taken up by the petitioner."

42. The Review Petitioner has submitted that 2nd Amendment dated 21.03.2012 to the Connectivity Regulations, has removed the requirement of firming up of the source of supply or destination by an LTA applicant 3 years before it intends to avail LTA. It is, therefore, not open to TANGEDCO to argue contrary to the Connectivity Regulations by submitting that a firm beneficiary should have been identified before work was taken up. TANGEDCO's submission is in ignorance of the 2nd Amendment to the Connectivity Regulations.



43. The Review Petitioner has submitted that relinquishment/ abandonment by generating companies and implementation of directions of the Commission in its order dated 08.03.2019 in Petition No. 92/MP/2015 is not relevant for adjudication of the relief sought by the Review Petitioner. The Review Petitioner has no control over the actions of other utilities and it cannot be made to suffer despite completing its obligations under the TSA.

TANGEDCO reply vide affidavit dated 21.5.2019 on Rejoinder dated 25.4.2019

44. TANGEDCO has submitted that the Commission has thoroughly examined all the records placed before it and taken a proactive step in obtaining a report from CEA regarding essentiality of the instant elements (independent of each other) and beneficial use to the system. The CEA vide their letter dated 4/5.9.2017 has not specifically certified that commercial operation of the said transmission line is in the interest of power system and safety and security of the grid even without commissioning of the 765kV Salem - Madhugiri S/C line. The relevant portion under paragraph 26 of the impugned order in petition No. 62/MP/2017 is reproduced below:

“It is noted that in case of transmission system covered under Petition No.122/MP/2015, CEA certified that commissioning of the specified element without the prerequisite element being commissioned were in the interest of safety and security of the grid. Further, element-wise breakup of tariff in percentage terms has been provided for in the TSA. The case of the Petitioner is distinguishable from this case, as CEA has not certified that the commissioning of the Nagapattinam-Salem transmission line is in the interest of the power system and safety and security of the grid and there is no breakup of element-wise tariff in the TSA.”

45. TANGEDCO has submitted that it is evident from the above findings of the Commission that it was apparent from the report of the CEA that the elements of the instant assets independent of each other could not serve the intended purpose and was



not essential from the point of view of grid safety and security. The impugned order was issued on 26th March, 2018 and the Review Petitioner had miserably failed to produce any documental proof required by the Commission during the course of disposal of the petition.

46. TANGEDCO has submitted that the petitioner has obtained a letter from CEA after a lapse of eleven months from the date of issue of the impugned order. CEA has stated that the 765kV Nagapattinam – Salem D/c line is being used to evacuate power from IL&FS since its commissioning and it is in the overall interest of the power system. This letter is obtained only after issue of the order, which is contradicting with the original stand of CEA. In the letter dated 26.12.2016, CEA had given conditional consent that the 765kV Nagapattinam-Salem D/C may be considered in regular service from the date when LTA for both the units of IL&FS are operationalized. Since CTU has part operationalized the LTA based on COD of the first unit of IL&FS and commissioning of interim arrangement of LILO of 400kV Neyveli – Trichy line at Nagapattinam Pooling Station, the condition mandated by CEA was not fulfilled by the petitioner.

47. TANGEDCO has submitted that the order cannot be reviewed based on a new document which is contradicting the earlier statements of the same authority.

48. TANGEDCO has submitted that its contentions during hearing was misquoted as “TANGEDCO is the sole beneficiary of a Project”; “TANGEDCO is paying the transmission charges for this transmission system”; and “the concerned beneficiary TANGEDCO alone becomes a deemed signatory to the TSA”. TANGEDCO has



submitted that it is the only beneficiary having PPA tie-up with the IPP M/s. IL&FS and no other firm beneficiary was identified by the IPPs and that TANGEDCO has been reimbursing the transmission charges for the LTA quantum of 540 MW to IL&FS since the COD of the generation project. The total transmission charges reimbursed by TANGEDCO from the COD of the plant to till March 2019 is Rs. 348,05,27,318/-. Neither CTU nor the TSPs have acted as per the provisions of Regulations to recover the transmission charges from the IPPs for the untied quantum of LTA and instead imposed the financial burden on the existing DICs. The YTC of the associated transmission system will have a huge impact on the PoC slab rates and the sensitivity to the proximate DICs will be impacted.

49. TANGEDCO has submitted that the instant assets are redundant since interim and contingency arrangements at Nagapattinam Pooling Station at 400 kV level were adequate to evacuate the power from IL&FS without the instant transmission assets. The 765kV Nagapattinam PS – Salem PS D/C line charged at 400kV and 765kV Salem – Madhugiri S/C line without any intended generators and beneficiaries outside Tamil Nadu periphery are not going to serve any purpose except safeguarding the commercial interest of the petitioner.

50. With respect to removal of requirement of firming up of the source of supply or destination by an LTA applicant 3 years before it intends to avail LTA, TANGEDCO has submitted that even though the third proviso under Regulation 12 has been amended, the detailed procedure approved under Regulation 27 of the Connectivity Regulation is not



amended. In the detailed procedure, Para 22.7 deals with the procedure to be followed in case of generator or beneficiary are not firmed up. Further, the provisos under amended Regulation 12(1) also mandate the LTA applicant (generator) to bear the transmission charges and mandate the CTU/ TSP to take up the work in phases corresponding to the capacity requirement. The relevant provisos are extracted below:

“Provided further that in case augmentation of transmission system is required, the applicant shall have to bear the transmission charges for the same as per these regulations, even if the source of supply or off take is not identified:

Provided also that the construction of such augmentation of the transmission system may be taken up by the CTU or the transmission licensee in phases corresponding to the capacity which is likely to be commissioned in a given time frame after ensuring that the generating company has released the advance for the main plant package i.e. Turbine island and steam generator island or the EPC contract in case of thermal generating station and major civil work packages or the EPC contract in case of hydro generating stations for the corresponding capacity of the phase or the phases to be commissioned, subject to a minimum of 10% of the sum of such contract values.”

51. With regard to implementation of directions of the Commission in its order dated 08.03.2019 in Petition No. 92/MP/2015, TANGEDCO has submitted that it is pertinent to ensure that the transmission charges are fully and correctly recovered from all the DICs and liable parties. This could be ensured only on implementation of the direction of the Commission in Petition No. 92/MP/2015.

Analysis and Decision

52. The Review Petitioner has filed the instant Petition to review the Commission's Order dated 26.03.2018 in Petition No. 62/MP/2017 filed by the PNMTL (Review Petitioner), in which the Commission refused to approve apportionment of transmission charges between 765kV Nagapattinam-Salem D/C transmission line and 765kV Salem-



Madhugiri S/C transmission line and the payment of transmission charges for 765kV Nagapattinam - Salem D/C transmission line with effect from 23.10.2016.

53. The Review Petitioner was selected as a successful bidder through the process of competitive bidding under Section 63 of the Electricity Act, 2003 to establish transmission system comprising of the following elements:

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

54. The Review Petitioner entered into the Transmission Service Agreement (TSA) dated 2.2.2012 with Long Term Transmission Customer (LTTC), namely IL&FS Tamil Nadu Power Company Ltd.

55. Petitioner approached CEA vide letter dated 23.3.2016, 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 meeting held on 15.9.2016 on "Transmission System associated with IPPs of Nagapattinam/Cuddalore Area, Package A" 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. Nagapattinam - Salem D/C 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 demand for compensation by landowners.

56. The Review Petitioner approached the Commission through Petition No. 62/MP/2017 praying to approve apportionment of transmission charges between 765kV D/C Nagapattinam-Salem transmission line and Salem-Madhugiri transmission lines; and allow payment of transmission charges for 765kV D/C Nagapattinam-Salem transmission line with effect from 23rd October 2016 i.e. the date of claimed CoD and claimed date the line was also put to use.

57. Vide Order dated 26.3.2018 in the abovesaid petition, the prayers were rejected in the absence of any provision in the RfQ/ RfP and TSA regarding apportionment of transmission charges between different elements, and that Review Petitioner did not enclose the certificate of CEA to the effect that commissioning of 765kV Nagapattinam-Salem D/C transmission line is in the interest of the power system and safety and security of the grid.

58. The Review Petitioner, vide affidavit dated 10.12.2018, has submitted that CEA issued letter dated 07.12.2018 certifying that the commissioning of 765kV Nagapattinam-Salem D/C transmission line is in the overall interest of development of power system in Southern Region and that the Commission may sanction the payment of transmission charges for 765kV D/C Nagapattinam-Salem transmission line with effect from 23.10.2016 viz. COD of the line and approve the apportionment of transmission charges



between 765kV Nagapattinam-Salem D/C and 765kV Salem-Madhugiri S/C transmission lines in the manner as prayed for to mitigate the financial difficulties of the Review Petitioner.

59. Review Petitioner vide its affidavit dated 13.3.2019 has submitted the status of declaration of date of commercial operation of 765kV Salem – Madhugiri S/C transmission line w.e.f. 00:00 hrs of 26.1.2019. With this, both lines to be implemented under the project by PNMTL have been commissioned and the project achieved COD w.e.f. 26.01.2019 and PNMTL is entitled to payment of transmission charges as per the TSA dated 02.02.2012.

60. The Respondent No.5, TANGEDCO vide affidavit dated 15.4.2019 has submitted that there is no patent error in the direction of the Commission and that the instant review petition is not maintainable under law and hence liable to be dismissed with cost.

61. TANGEDCO has submitted that the TSA relevant to the instant assets does not have any provision for apportionment of the transmission tariff among the different elements of the project. It has submitted that the Empowered Committee has clearly demarcated the tariff apportionment in respect of other transmission assets approved in the 25th meeting held on 1.2.2011, whereas there is no such apportionment of tariff in respect of the two elements of the instant project. It has submitted that in the absence of any apportionment of tariff among the elements of the project in the RfQ and RfP as well as in the TSA, there is no error in the Commission's order.



62. Further, TANGEDCO has submitted that it has entered into Power Purchase Agreement with IL&FS Tamil Nadu Power Co. Ltd. for 540 MW. LTA was granted to the IPPs based on target Region and LTA has been partially operationalized with effect from 23.09.2015 on commissioning of the interim and contingency schemes for evacuation of power from IL&FS. There is no upstream connectivity at 765 kV level and no target beneficiary at Salem Pooling station or beyond. This condition makes the instant asset redundant and uneconomical. TANGEDCO has submitted that the interim and contingency arrangements at Nagapattinam Pooling Station at 400 kV level were adequate to evacuate the power from IL&FS without the instant transmission assets. The 765kV Nagapattinam PS – Salem PS D/C line charged at 400kV and 765kV Salem – Madhugiri S/C line without any intended generators and beneficiaries outside Tamil Nadu periphery are not going to serve any purpose except safeguarding the commercial interest of the petitioner.

63. Review Petitioner vide rejoinder dated 25.4.2019 has submitted that the CEA vide its letter dated 07.12.2018 had communicated that the said commissioning “is in overall interest of development of power system in Southern Region”, and the said evidence could not have been produced before the Commission in the Petition No. 62/MP/2017 proceedings since it did not exist at that time. It has submitted that CEA vide its letter dated 26.12.2016 has already given its consent for independent commissioning of two elements under the project.

64. Review Petitioner has submitted that the discovery of new and important evidence such as the said CEA letter dated 07.12.2018 is a fit ground for review. On the other



hand, TANGEDCO has submitted that Commission has thoroughly examined all the records placed before it and taken a proactive step in obtaining a report from CEA regarding essentiality of the instant elements (independent of each other) and beneficial use to the system. The CEA vide their letter dated 4/5.9.2017 has not specifically certified that commercial operation of the said transmission line is in the interest of power system and safety and security of the grid even without commissioning of the 765kV Salem - Madhugiri S/C line.

65. TANGEDCO has submitted that the petitioner had failed to produce any documentary proof required by the Commission during the course of disposal of the petition. It has submitted that the Review Petitioner has obtained a letter from CEA after a lapse of eleven months from the date of issue of the impugned order. Therefore, such letter cannot form a basis for review of the impugned order. It has also submitted that this letter is conflicting with the original stand of CEA that was communicated vide letter dated 26.12.2016 wherein CEA had given conditional consent that the 765kV Nagapattinam-Salem D/C may be considered in regular service from the date when LTA for both the units of IL&FS are operationalized. Since CTU has part operationalized the LTA based on COD of the first unit of IL&FS and commissioning of interim arrangement of LILO of 400kV Neyveli – Trichy line at Nagapattinam Pooling Station, the condition mandated by CEA was not fulfilled by the petitioner.

66. We have considered the submission of the Review Petitioner and Respondents. The Commission in the impugned order had considered the submission of the Review Petitioner with regard to apportionment of transmission charges between two elements of



the transmission system executed by the Review Petitioner. The relevant paras are extracted as under:

“26. The Commission in order dated 26.11.2015 in Petition No. 122/MP/2015 dealt with the specific case of commercial operation of the transmission asset prior to the commissioning of a pre-requisite asset. The relevant observations of the Commission are as under:

“17. Clause 6.2 of the TSA provides as under:

“6.2 Commercial Operation: 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.

6.2.2 Once any Element of the Project has been declared to have achieved deemed COD as per Article 6.2.1 above, such Element of the Project shall be deemed to have Availability equal to the Target Availability till the actual charging of the Element and to this extent, shall be eligible for payment of the Monthly Transmission Charges applicable for such Element.”

Perusal of the above provision of the TSA reveals that an element can be declared to have achieved COD only after all the elements which are prerequisite have achieved their respective COD. As the execution work was delayed, the petitioner was advised by CEA in its meeting dated 24.9.2013 to work on all the elements independently, since each element under the project was critical for evacuation of power. Accordingly, the petitioner commissioned each element independently.”

21. All the elements of the scheme awarded to the petitioner have been commissioned. Therefore, the purpose of prescribing the pre-requisites has been achieved. Moreover, the elements have been put into service on the basis of the recommendation of the CEA that the elements can be put into regular service after successful trial operation irrespective of the prerequisites specified in the TSA. Keeping these factors in view, we direct that the petitioner shall be entitled for transmission charges from the date each element was put into regular service without linking to the pre-requisites prescribed in the Schedule 3 of the TSA. It is clarified that in respect of the other aspects including contract year for payment of transmission charges, the provisions of the TSA shall be strictly followed.”

It is noted that in case of transmission system covered under Petition No. 122/MP/2015, CEA certified that commissioning of the specified element without the prerequisite element



being commissioned were in the interest of safety and security of the grid. Further, element-wise breakup of tariff in percentage terms has been provided for in the TSA. The case of the Petitioner is distinguishable from this case, as CEA has not certified that the commissioning of the Nagapattinam-Salem transmission line is in the interest of the power system and safety and security of the grid and there is no breakup of element-wise tariff in the TSA.

27. In our view, since there is no 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 no certificate of CEA is available 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. Moreover, the orders of the Commission dated 26.11.2015 and 28.1.2016 in Petition Nos. 122/MP/2015 and 284/ADP/2015 respectively are not applicable to the instant petition. Further, as per the Petitioner, the Madhugiri-Salem transmission line is expected to be commissioned in July, 2018. We are of the considered view that the Petitioner shall be entitled for tariff for the entire transmission system after the Madhugiri-Salem transmission line is put under commercial operation.”

67. Thus, in the impugned order, the Commission had, after due consideration of the submissions of the Review Petitioner, declined approval of transmission charges for the 765kV Nagapattinam-Salem D/C transmission line. Subsequently, the Review Petitioner has placed on record the CEA's letter dated 7.12.2018 stating that the COD of 765kV Nagapattinam-Salem D/C transmission line is in the overall interest of development of power system in Southern Region

68. CEA letter dated 26.12.2016, as filed on Petition No. 62/MP/2017, provided as follows:

“This has reference to M/s. PNMTL letter dated 23.2.2016, wherein they had requested CEA for requisite certification for taking up the work to complete the Nagapattinam Pooling Station, Salem “765 KV D/C line and Salem-Madhugiri 765 KV S/C transmission lines independently.

*In this regard various discussions and meetings were held involving officials from POSOCO, SRPC, SRLDC, CTU and CEA. In the meeting held on 25.12.2016. Following was decided:-
a) Consent may be given to M/s. PNMTL for completion of both the transmission lines independently.*



b) The Nagapattinum Pooling Station-Salem 765 KV D/C (Operated at 400 KV) line of M/s. PNMTL may be considered in regular service from the date when LTA for both the units of IL&FS i.e. 1080 MW, is operationalized.

Accordingly, it is informed that M/s. PNMTL may complete the two transmission lines independently.”

We note that CEA stated that the instant transmission line shall be considered in regular service only when LTA of 1080 MW of IL&FS will be operationalized. We further note that the same was not operationalized as on date of claimed COD for instant transmission line i.e. 26.10.2016.

69. Further in Order dated 26.3.2018 in Petition No. 62/MP/2017, the Commission observed as follows with regard to discussions in Empowered Committee meeting regarding the subject transmission system:

“10. CEA was requested to clarify whether the commissioning of the asset will be in the interest of safety and security of the grid and whether the asset can be put to useful service after its commissioning. The Empowered Committee on Transmission was requested to consider whether a transmission project which was approved as an integrated system to be executed through TBCB can be segregated time-wise for execution and the tariff can be proportionately apportioned.

11. CEA, vide its letter dated 4/5.9.2017, has submitted as under with regard to the methodology for apportionment and utilization of 765 kV D/C Nagapattinam- Salem transmission line:

(a) With regard to methodology of apportionment of transmission charge, CEA has stated that TSA between the Petitioner and IL&FS do not contain element-wise tariff of Nagapattinam-Salem transmission line and Salem Madhugiri transmission line. However, the estimated cost of the individual element was recorded by the Empowered Committee of Nagapattinam-Salem transmission line and Salem-Madhugiri transmission line as Rs. 650 crore and Rs. 375 crore respectively. The cost was estimated on the basis of the prevailing cost assuming the length of transmission lines as 250 km each.

Therefore, total cost of each element prevailing at that time can be calculated as under which works out to 61:39:



Elements	Line length (in km) as per Empowered Committee	Empowered Committee cost (Rs.in crore)	Cost Per km (Rs. crore/km)	Actual length in kms	Total cost as per actual length (Rs. in crore)	Proportion considered for bifurcation of transmission charges
Nagapattinam-Salem 765 kV D/C	250	650	2.6	203	528	61%
Salem-Madhugiri 765 kV D/C	250	375	1.5	221	332	39%
					860	100%

Accordingly, the transmission charges between the two lines could be considered in the ratio of 60:40.

(b) With regard to utilization of 765 Nagapattinam-Salem transmission line, CEA has submitted that new 765/400 kV Pooling station at Nagapattinam (GIS) was completed in April, 2015 and the LILO of 2nd circuit of Neyveli- Trichy 400 kV D/C line at Nagapattinam Pooling station was completed in September, 2015. Accordingly, part LTA (540 MW) of IL&FS was operationalised from 29.9.2015 for the beneficiary TANGEDCO. 765 kV Nagapattinam-Salem D/C line was declared under commercial operation on 23.10.2016. However, 765 kV Salem Madhugiri S/C line has been delayed due to RoW issues. Power is being evacuated over Nagapattinam-Salem D/C line from the date of its commissioning.”

We thus note that CEA did not give any recommendation that the 765 kV Nagapattinam –Salem D/C line was required in interest of power system and safety and security of the grid.

70. CEA vide letter dated 10.12.2018, as filed in the instant Review Petition has submitted as follows:

“This has reference to your letter dated 4.5.2018 on the above subject requesting CEA to confirm that commissioning of Nagapattinam-Salem transmission line is in the interest of the power system and safety & security of the grid as per required under IEGC and direction of CERC in Petition No.284/ADP/2015.

Nagapattinam Pooling Station-Salem 765 kV D/C line and Salem-Madhugiri 765 kV S/C line was planned as per a part of evacuation system for (2x600 MW) Inter State generation project of IL&FS Tamilnadu Power Company Limited (ITPCL) and the evacuation of above



line was awarded to PNMTL through TBCB route. The Commercial operation 765 KV Nagapattinam-Salem D/C line (presently operating at 400 KV level) was declared w.e.f.23.10.2016. However, Salem-Madhugiri 765 KV S/C line has been delayed due to the severe RoW issues.

Power of ITPCL is being evacuated over Nagapattinam-Salem 765 D/C line since the commissioning. As this line serves the purpose of evacuation of power from a generation project, it is in overall interest of development of power system in Southern Region.

Regarding safety aspect, it may be noted that the line has been charged in due compliance of Central Electricity Authority (Measures relating to Safety and Electricity Supply) Regulations, 2010.”

71. It is noticed that CEA has reiterated its earlier recommendations that the transmission line was being used for evacuation of power from the generating station of IL&FS. Further, CEA noted that the transmission line has been charged as per the CEA (Measures relating to Safety and Electricity Supply) Regulations, 2010. There is no recommendation as to whether the commissioning of the line was in the interest of the safety and security of the grid.

72. In our view , the Review Petitioner has failed to make out a case for review under any grounds mentioned in Order 47 Rule 1 of the CPC i.e. error apparent on the face of record or discovery of new evidence or for sufficient reason. Accordingly, the Review Petition is dismissed as being devoid of merit.

73. Review Petition No. 19/RP/2018 is disposed of in terms of above.

Sd/-

**(Dr. M.K Iyer)
Member**

Sd/-

**(P.K.Pujari)
Chairperson**

