

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 24/RP/2015

**in
Petition No.112/TT/2013**

Coram:

**Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member**

Date of Order : 16.2.2017

In the matter of:

Review petition under Section 94(1) (f) of the Electricity Act, 2003 read with Regulation 103 (1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, seeking review of order dated 7.10.2015 in Petition No. 112/TT/2013.

And in the matter of:

Power Grid Corporation of India Limited,
“Saudamini”, Plot No. 2,
Sector 29, Gurgaon-122001
Haryana

.....**Petitioner**

Vs

1. GMR Kamalanga Energy Limited,
Skip House, 25/1, Museum Road,
Bangalore, Karnataka-560 025
2. Monnet Power Company Limited,
Monnet Marg, Mandir Hasaud,
Raipur, Chattisgarh-492 101
3. Lanco Babandh Power Limited,
Plot No. 397, Phase-III, 2nd Floor,
Udyog Vihar, Gurgaon,
Haryana-120 016



4. IND Barath Energy (Utkal) Limited,
Plot No. 30-A, Road No. 1,
Film Nagar, Jubilee Hills,
Hyderabad, Andhra Pradesh-500 033
5. Navbharat Power Private Limited,
Navbharat Chambers, 6-3-1109/1,
3rd Floor, Left Wing, Raj Bhawan Road,
Somajiguda, Hyderabad,
Andhra Pradesh-500 082
6. Jindal India Thermal Power Limited,
Plot No. 12, Sector-B, Pocket-1
Local Shopping Complex,
Vasant Kunj, New Delhi-110 070
7. Sterlite Energy Limited,
Sipcot Industrial Complex,
Tuticorin, Tamil Nadu-628 002
8. Bihar State Electricity Board,
Vidyut Bhawan, Bailey Road,
Patna-800 001
9. West Bengal State Electricity Distribution Company Limited,
Bidyut Bhawan, Bidhan Nagar,
Block DJ, Sector-II, Salt Lake City,
Kolkata-700 091
10. Grid Corporation of Orissa Limited,
Shahid Nagar,
Bhubaneswar-751 007
11. Damodar Valley Corporation,
DVC Tower, Maniktala
Civil Centre, VIP Road,
Kolkata-700 054
12. Power Department,
Government of Sikkim, Gangtok-737 101
13. Jharkhand State Electricity Board,
In front of Main Secretariat,
Doranda, Ranchi-834 002

....Respondents



For petitioner : Shri Sanjay Sen, Senior Advocate for PGCIL
Ms. Swapna Seshadri, Advocate for PGCIL
Shri Ruth Elwin, PGCIL
Ms Manju Gupta, PGCIL
Shri Ashok Pal, PGCIL
Shri Rakesh Prasad, PGCIL
Shri M.M. Mondal, PGCIL
Shri Aryaman Saxena, PGCIL

For respondent : Shri Matrugupta Mishra, JITPL/SEL
Shri Hemant Singh, JITPL/SEL

ORDER

This review petition has been filed by Power Grid Corporation of India Limited (PGCIL) seeking review of the order dated 7.10.2015 in Petition No.112/TT/2013.

Brief Facts of the Case

2. PGCIL filed Petition No.112/TT/2013 for determination of the transmission tariff for the following assets under Transmission System for Phase-I Generation Projects in Orissa-Part-A in Eastern Region for 2009-14 period under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as "2009 Tariff Regulations"):

- (a) Asset-I: LILO of Meramundali-Jeypore 400 kV S/C line at Angul Sub-station;
- (b) Asset-II: one 125 MVAR Reactor (1st) and associated bays at Angul Sub-station;
- (c) Asset-III: one 125 MVAR Reactor (2nd) and associated bays at Angul Sub-station;
- (d) Asset-IV: one 125 MVAR Reactor (3rd) and associated bays at Angul Sub-station;



- (e) Asset-V: LILO of one Ckt. Talcher-Meramundali 400 kV D/C line at Angul Sub-station;
- (f) Asset-VI: LILO-I (Ckt.-III) of Rourkela-Raigarh 400 kV D/C line at Jharsuguda Sub-station;
- (g) Asset-VII: LILO-II (Ckt.-I) of Rourkela-Raigarh 400 kV D/C line at Jharsuguda Sub-station;
- (h) Asset-VIII: one 125 MVAR Reactor (1st) and associated bays at Jharsuguda Sub-station; and
- (i) Asset-IX: one 125 MVAR Reactor (2nd) and associated bays at Jharsuguda Sub-station.

All assets, except Asset-V, were commissioned during the 2009-14 period and Asset-V was commissioned during the 2014-19 tariff period. Tariff for all assets, except Asset-V, was allowed in the order dated 7.10.2015.

3. The transmission project was scheduled to be commissioned by 1.4.2013 as per the Investment Approval. Assets-I and VI were commissioned on 1.4.2013. There was time over-run in commissioning of Assets-II, III, IV V, VII, VIII and IX by 1 to 7 months. As the reasons for time over-run in respect of these assets were found to be attributable to the generators and beyond the control of the Petitioner, the same was condoned in the impugned order. Taking into consideration the provisions of BPTAs between PGCIL and the concerned generators and the provisions of Central Electricity Regulatory Commission (Sharing of Transmission Charges and Losses) Regulations, 2010 (2010 Sharing Regulations), the Commission held that the transmission charges for the instant assets would be borne by the generators from the date of their respective dates of



commercial operation till operationalisation of the LTA and transmission charges for these periods shall not be included in the PoC charges. The relevant portions of the impugned order are extracted hereunder:-

“60. We have gone through the above mentioned provisions of the BPTA and the generators and the 2010 Sharing Regulations. As per the provisions of BPTA, a long term transmission customer shall share and pay the transmission charges fixed as per the Regulations specified by this Commission from the date of commissioning of the transmission system. The BPTA provides for preponement of the commissioning of the transmission system only with the mutual consent of the concerned parties. Further as per the BPTA, if there is any delay in commissioning of the transmission system, the petitioner shall pay the proportionate transmission charges to the LTA customer and similarly if the generator fails to construct the generating station or makes an exit or abandons its project, the petitioner shall be eligible to collect the transmission charges from the generator. In the instant case, the petitioner has commissioned the transmission system and the generator has not performed its part of the BPTA and hence the generator has to bear the transmission charges as provided in clause 2.0(a) and 2.0 (c) of the BPTA. Further, as per Regulation 8(5) and 8(6) of the 2010 Sharing Regulations, the generators having long term access are liable to bear the charges for the transmission system till they achieve "commercial operation". However, the generators under the instant petition do not have an arrangement with identified beneficiaries for long term supply of power. Taking into consideration the provisions of the BPTA signed by generators and the 2010 Sharing Regulations, we are of the considered view that the generators are liable to bear the Yearly Transmission Charges (YTC) of transmission system till the date their LTA is operationalised post which generators shall be charged as per prevailing Regulations. The tariff for such lines shall be excluded from PoC, till LTA for the generators are operationalised. However, the transmission assets shall be considered in base case for calculation of PoC rates at “Zero Cost”. On operationalisation of LTA for the generators covered under the instant petition, the transmission assets covered under the petition shall be considered under PoC pool. We also direct the petitioner to take necessary action to operationalise LTA for the projects as per the capacity available as provided in Regulation 8(5) of the 2010 Sharing Regulations.

61. Thereafter, the transmission charges will be shared by the long term customers/beneficiaries in accordance with the 2010 Sharing Regulations.

62. It is observed that in the Standing Committee meeting on Power System Planning in Eastern Region held on 14.9.2009, it was decided that the associated transmission systems upto the pooling stations of Jharsuguda and Angul would be under the scope of the generation developers as per the details given below:-

- (a) Sterlite: Sterlite-Jharsuguda pool 400 kV D/C line with associated bays.
- (b) Ind-Bharat: Ind Bharat-Jharsuguda Pool 400 kV D/C line with associated line bays.
- (c) GMR: GMR-Angul Pool 400 kV D/C line along with 3X1500 MVA 765/400 kV ICTs.
- (d) Jindal: Jindal-Angul Pool 400 kV D/C line with associated bays.



63. xxxxxxxxxxxxxxxxxxxxx

64. xxxxxxxxxxxxxxxxxxxxx

65. The associated transmission lines were to be constructed by the generation developer matching with the transmission system to be developed by the petitioner and the LILOs constructed by generation developers which were temporary arrangement were to be replaced by the associated transmission system. It is noticed that some of the generation developers have not commissioned the dedicated lines and are continuing to evacuate power through the temporary LILO arrangements. We direct the petitioner to discuss the issue in the Standing Committee Meeting on Transmission and finalize the timeline for replacement of the LILOs of generation developer by dedicated transmission lines within a period of six months from the date of connection of LILO of the petitioner.

66. Since the generation developers have failed to construct the dedicated transmission lines due to which assets created by the petitioner covered under the present petition are not serving the intended purpose, we are of the view, that the tariff for these assets shall be borne by the generators till operationalisation of their LTA as required under Regulation 8(5) of the 2010 Sharing Regulations as stated in para 60 herein. Till such time, the tariff for the assets shall be excluded from PoC pool.”

4. Aggrieved by the above said order, PGCIL has filed the instant review petition. The Review Petitioner has submitted that the subject transmission system was developed by PGCIL pursuant to the grant of regulatory approval vide order dated 31.5.2010 in Petition No. 233/2009, after assessing the status of the generating companies setting up projects in the Orissa Corridor and the need of establishing the subject transmission system. PGCIL was also directed to ensure that the transmission systems are executed within the timeframes matching with the commissioning schedule of the IPPs. Accordingly, the instant assets were commissioned. The detailed transmission system was agreed to be executed with the consent of all the respondents in the 30th Review Meeting of the Central Electricity Authority dated 9.8.2010. Thereafter, the subject transmission scheme was once again ratified for execution in the 15th TCC and ERPC Meeting of all constituents held on 2.11.2010. Therefore, based on the above understanding that the transmission charges will be shared by all constituents



as per the applicable Regulations, it developed the subject transmission system. However, vide order dated 7.10.2015 in Petition No. 112/TT/2013, the recovery of transmission charges has been linked to the operationalisation of the LTA for the following reasons:

(a) Regulation 8 (5) and 8 (6) of the 2010 Sharing Regulations permit part operationalisation of LTA;

(b) Dedicated transmission lines have not been constructed by some of the generators; and

(c) Generators are continuing to evacuate power on LILLO arrangements.

5. The Review Petitioner has made the following submissions in support of the review petition:-

(a) Regulation 8(5) of the 2010 Sharing Regulations was notified by way of an amendment on 3.4.2015 to the 2010 Sharing Regulations. The Statement of Objects and Reasons for the same were issued only on 26.10.2015. The assets covered under the subject transmission system were commissioned much before the conceptualization of the said amendment and the amendment cannot be applied retrospectively. Even after the amendment, operationalisation of part LTA requires system studies, their discussion in the LTA meeting/Standing Committee meeting etc. which takes at least about 2 to 3 months. Linking the recovery of the transmission charges and rather postponing the recovery till the operationalisation of LTA is not envisaged either in the order dated 31.5.2010 in Petition No. 233/2009 or in the of the 2010 Regulations and cannot be made at this stage when the subject transmission system is ready and commissioned.



(b)The Commission in the impugned order held that the generators have not constructed the dedicated transmission lines. However, two of the generators, namely GMR Kamalanga Energy Ltd. (GMR) and Jindal India Thermal Power Limited (JITPL) were already connected to the pooling stations through the dedicated transmission lines and the dedicated lines of remaining two IPPs namely, Ind-Bharath and Sterlite are in advanced stages of implementation. The assets covered under the subject transmission system were commissioned from 1.4.2013 onwards and by then, four units of Sterlite Energy and one unit of GMR Kamalanga were already commissioned. Since some of the generators had achieved commercial operation, Regulation 8(6) of the 2010 Sharing Regulations is not applicable in the instant case;

(c)There are apparent errors in the impugned order dated 7.10.2015 which requires to be rectified. the above facts are not considered, PGCIL would be put to great loss and prejudice, since it acted in a bonafide manner and proceeded with the construction of the subject transmission system with meager Construction Bank Guarantee, as per the terms of the order dated 31.5.2010 in Petition No. 233/2009. The investment made by PGCIL has been put to great risk despite having made the best efforts to commission the instant transmission systems as per schedule. If the recovery of the investment made by the review petitioner is put to risk or deferred, it would seriously prejudice the financial health of the Review Petitioner and would set a bad and incorrect example to the other transmission licensees and also jeopardize the investment in the transmission sector.



6. The review petition was admitted on 10.12.2015 and the respondents were directed to file their replies to the review petition. None of the respondents have filed any reply.

7. During the hearing on 1.3.2016, the learned counsel for PGCIL submitted the following:-

(a) When the asset achieves COD and tariff is allowed, then the asset has to be included in the POC;

(b) It was held in the impugned order that as per the provisions of the BPTA and the 2010 Sharing Regulations, the generators are liable to bear the YTC of transmission system till the date their LTA is operationalised, post which generators shall be charged as per prevailing 2009 Tariff Regulations and 2010 Sharing Regulations. Further, tariff for such lines shall be excluded from POC, till LTA for the generators are operationalised. However, the transmission assets shall be considered in base case for calculation of POC rates at “Zero Cost”;

(c) It was observed in the impugned order that the petitioner has commissioned the transmission system and the generator has not performed its part of the BPTA and hence the generator has to bear the transmission charges. So the review petitioner will have to recover the cost from generator even without the asset being included in POC. PGCIL will recover transmission charges from generators but the asset cannot be withheld from becoming part of PoC as on approval of tariff, it automatically becomes the part of PoC. Further, many generators are surrendering LTA and the matter is under adjudication and PGCIL will be unable to



recover transmission charges if the assets are not included in the POC mechanism;

(d) The 2010 Sharing Regulations were amended on 1.4.2015 and came into effect from 1.5.2015. As per Regulation 8(2)(5) of the 2010 Sharing Regulations, in case the “Approved Withdrawal” or “Approved Injection” in case of a DIC is not materializing either partly or fully for any reason, the concerned DIC shall be obliged to pay the transmission charges allocated under the regulations. It also provides 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 LTA from the date the LTA granted by CTU becomes effective. Further, where operationalisation of LTA is contingent upon commissioning of several transmission lines or elements and only some of the transmission lines or elements have been declared commercial, the generator shall pay the transmission charges for LTA operationalised corresponding to the transmission system commissioned; and

(e) There cannot be any charges other than through POC mechanism; otherwise a separate mechanism has to be devised for recovery of charges.

8. Learned counsel for the review petitioner also submitted that in the instant case, operationalisation of LTA is contingent upon commissioning of several transmission lines or elements i.e. the commissioning of whole corridor. There is no provision in BPTA for part operationalisation of LTA. For part LTA operationalisation corresponding to the commissioned transmission system, PGCIL has to take it to the LTA committee. It



cannot be decided on ad-hoc basis. Two generators namely, Jindal India Thermal Power Ltd. (JITPL) and Sterlite Energy Limited (SEL) have been commissioned and PGCIL is ready to operationalise full LTA in Orissa corridor.

9. The learned counsels for JITPL and Sterlite stated that JITPL and Sterlite have already relinquished their respective LTAs granted to them, subject to the outcome of the Committee formed by the Commission to determine the stranded capacity.

10. We have considered the submissions made by PGCIL and the respondents. The Review Petitioner has sought review of the impugned order under the following grounds:

(a) Regulations 8(5) and 8(6) of the 2010 Sharing Regulations are not applicable in the instant case.

(b) The 2010 Sharing Regulations do not provide for part operationalisation of the LTA.

(c) There is no other mechanism except the PoC mechanism to recover the transmission charges in respect of inter-State transmission system.

11. As regards the first ground, the Review Petitioner has contended that Regulations 8(5) and (6) of the 2010 Regulations were notified by way of an amendment on 3.4.2015, much after the commissioning of the instant assets and hence the said Regulations cannot be applied retrospectively. For considering this aspect, it is necessary to examine the BPTAs between the Review Petitioner and the generators. As per Clause 6.0 (a) of the BPTA dated 24.2.2010 between PGCIL and GMR, Monnet, Lanco and Ind-Bharat, the generators are required to pay the transmission charges in



accordance with the regulations issued by the Commission from time to time. Clause 6.0 (a) of the BPTA as follows:-

“In case any of the developers fails to construct the generating station/dedicated transmission system or makes an exit or abandon its project, POWERGRID shall have the right to collect the transmission charges and/or damages as the case may be in accordance with the notification/regulation issued by CERC from time to time. The developer shall furnish a Bank guarantee from a nationalized bank for an amount which shall be equivalent to Rs.5(five). Lakhs/MW to compensate such damages. The Bank guarantee format is enclosed as Annexure-Y. The details and categories of bank would be in accordance with clause 2 (h) above. The Bank guarantee would be furnished in favour of POWERGRID in accordance with the time frame agreed during the meeting held at CEA on 1.2.2010.”

As per the above said provision in the BPTA, the regulations as notified by the Commission from time to time shall govern the relationship between the PGCIL and the generators in the matter of payment of transmission charges. Therefore, the regulations in force as on the date of determination of the transmission charges will be applicable. Regulation 8 of the 2010 Sharing Regulations had already come into force on the date of determination of the transmission charges through the impugned order. Accordingly, in terms of the said regulations, the Review Petitioner was directed to recover the transmission charges from the generators under BPTA. We therefore find no error in the impugned order and the ground urged by the Review Petitioner is rejected.

12. The second ground of review is that the 2010 Sharing Regulations do not provide for part operationalisation of the LTA. Regulation 8(5) of the 2010 Sharing Regulations provides 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:

Provided further that where the operationalization of LTA is contingent upon commissioning of several transmission lines or elements and only some of the transmission lines or elements have been declared commercial, the generator shall pay the transmission charges for LTA operationalised corresponding to the transmission system commissioned:

Provided also that where the construction of dedicated transmission line has been taken up by the CTU or the transmission licensee, the transmission charges for such dedicated transmission line shall be payable by the generator as provided in the Regulation 8 (8) of the Connectivity Regulations:

Provided also that during the period when a generating station draws start-up power or injects infirm power before commencement of LTA, withdrawal or injection charges corresponding to the actual injection or withdrawal shall be payable by the generating station and such amount shall be adjusted in the next quarter, from the ISTS transmission charges to be recovered through PoC mechanism from all DICs:

Provided also that CTU shall maintain a separate account for the above amount received in a quarter and deduct the same from the transmission charges of ISTS considered in PoC calculation for the next application period.”

As per the second proviso to Regulation 8(5) of the 2010 Sharing Regulations, when operationalisation of the LTA is contingent upon commissioning of several transmission lines and only some of the lines have been commissioned, the generator is required to pay the transmission charges for LTAs operationalised corresponding to the transmission lines commissioned. Accordingly, the petitioner's contention that the 2010 Sharing Regulations do not provide for part operationalisation of LTA is rejected. Further, CTU/PGCIL was specifically directed, in the impugned order, to take all necessary steps to operationalise LTA of all the generators under Regulation 8 of the 2010 Sharing Regulations and submit a report to the Commission within six months of issue of the impugned order.



13. The third ground of review is that 2010 Sharing Regulations does not provide any other mechanism except PoC mechanism to recover the transmission charges. The Review Petitioner has contended that the tariff in respect of assets commissioned must be included in PoC and there can be no mechanism other than PoC charges for recovery of the transmission charges. While dealing with the difficulties in giving effect to the 2010 Sharing Regulations, it was held in order dated 2.6.2011 for removal of difficulty that the transmission assets like Kayamkulam Transmission System of NTPC and Faridabad-Palla Line owned by PGCIL should not be included in the PoC charges. The relevant portion of the order dated 2.6.2011 is as under:-

“(B) Sharing of transmission charges for dedicated lines owned by CTU

6. CTU has pointed out that certain assets of POWERGRID such as Faridabad-Palla, Kayamkulam transmission system etc., are used for evacuation of power from Central Generating Station for consumption within the State. Even though these transmission lines are dedicated to a particular State, nevertheless they should be included in the Inter-State Transmission System (ISTS) for the purpose of calculation of PoC charges as they are part of the ISTS in accordance with Section 2(36)(iii) of the Electricity Act 2003 (the Act). It has been submitted that any asset owned by the CTU shall be a part of the ISTS and their charges should be considered for the purpose of computation of PoC charges. However, the Implementing Agency has not included the same for the calculation of the PoC charges.

7. We have examined the suggestion of the CTU. Though the definition of “Inter-State Transmission System” in Section 2(36)(iii) of the Electricity Act, 2003 includes “the transmission of electricity within the territory of a State on a system built, owned, operated maintained or controlled by Central Transmission Utility”. The tariff of such lines owned by POWERGRID for evacuation of power from a power station dedicated to any particular state is presently being borne only by the State concerned. These transmission lines are akin to the state lines except that it is owned, controlled and operated by POWERGRID. Since the transmission charges of these lines are not shared by any other State, we are of the view that the existing arrangement should continue under the 2010 Sharing Regulations also.”

In the order dated 27.6.2016 in Petition No.236/MP/2015, NTPC and PGCIL could not develop the generation assets and the transmission assets under their respective scope matching with the transmission systems developed by Kudgi Transmission Company.



In that case, the Commission directed that the transmission charges shall be paid to KTL by NTPC and PGCIL till their assets are commissioned. The relevant portion of the order dated 27.6.2016 is extracted below:-

“42.

(a) It is noted that the petitioner completed its entire scope of the work on 27.3.2015. However, due to non-availability of inter-connection facility required to be developed by NTPC and PGCIL at each end, it could not commission the transmission line. Therefore, the transmission charges for the period from 4.8.2015 to 23.8.2015 shall be shared by both NTPC and PGCIL in the ratio of 50:50.....”

The review petitioner is well aware of these two orders. Therefore, the contention of the review petitioner that there cannot be any other mechanism other than PoC mechanism to recover the transmission charges is not correct. We therefore find no error in the impugned order. The review petitioner shall recover the transmission charges directly from the generators till the LTA is operationalised.

14. In the impugned order, it was observed that since the generators connected to the Angul and Jharsuguda Pooling Stations have not commissioned dedicated lines due to which assets created by the petitioner are not serving their intended purpose and hence the transmission charges would be borne by the generators. From the review petition, it is observed that as on the date of issue of the impugned order, dedicated lines of some of the generators have been commissioned during the course of hearing of the main petition and the information in this regard was not made available to the Commission. This is an important factor affecting the liability of the parties for payment of transmission charges. Accordingly, we direct the review petitioner to file an application within one month from the date of issue of this order giving the following information:-



- a. Details of the generators whose dedicated transmission lines in the corridor have been commissioned.
- b. Details of the generators whose dedicated transmission lines have not been commissioned and the timeline for commissioning of the same.
- c. Details of the generators whose LTA has been operationalised.
- d. Whether all LILOs by the generators have been replaced as per the directions in order dated 7.10.2015 in Petition No.112/TT/2013 and if so, the details and if not, the timeline finalized for replacement of these LILOs.
- e. The supporting documents in the form of minutes of Standing Committee Meetings and RPC meetings.

The review petitioner shall implead all the concerned generators and the constituents of the Eastern Region as the parties to the application/petition.

15. The Review Petition No.24/RP/2015 is disposed of in terms of the above. All other decisions contained in order dated 7.10.2015 in Petition No. 112/TT/2013 shall remain unchanged.

sd/-
(M.K. Iyer)
Member

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson

