

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**PETITION NO. 32/RP/2016**

**in**

**Petition No.99/TT/2014**

**Coram:**

**Shri A. S. Bakshi, Member  
Dr. M. K. Iyer, Member**

**Date of Order : 27.1.2017**

**In the matter of:**

Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for Review of order dated 29.4.2016 in Petition No.99/TT/2014.

**And in the Matter of:**

Power Grid Corporation of India Ltd,  
SAUDAMINI, Plot No. 2,  
Sector-29, Gurgaon-122001 (Haryana)

**.....Petitioner**

**Versus**

1. Rajasthan Rajya Vidyut Prasan Nigam Limited  
Vidyut Bhawan, Vidyut Marg, Jaipur - 302005
2. Ajmer Vidyut Vitran Nigam Ltd  
400 kV GSS Building (Ground Floor), Ajmer Road,  
Heerapura, Jaipur
3. Jaipur Vidyut Vitran Nigam Ltd  
400 kV GSS Building (Ground Floor), Ajmer Road,  
Heerapura, Jaipur.
4. Jodhpur Vidyut Vitran Nigam Ltd  
400 kV GSS Building (Ground Floor), Ajmer Road,  
Heerapura, Jaipur
5. Himachal Pradesh State Electricity Board  
Vidyut Bhawan Kumar House Complex Building II  
Shimla-171004



6. Punjab State Power Corporation Limited  
Thermal Shedtia, Near 22 Phatak  
Patiala-147001
7. Haryana Power Purchase Centre  
Shakti Bhawan, Sector-6  
Panchkula (Haryana) 134 109
8. Power Development Department  
Government of Jammu & Kashmir  
Mini Secretariat, Jammu
9. Uttar Pradesh Power Corporation Ltd.  
(Formerly Uttar Pradesh State Electricity Board)  
Shakti Bhawan, 14, Ashok Marg  
Lucknow - 226 001
10. Delhi Transco Ltd  
Shakti Sadan, Kotla Road,  
New Delhi-110002
11. BSES Yamuna Power Ltd,  
BSES Bhawan, Nehru Place ,  
New Delhi.
12. BSES Rajdhani Power Ltd,  
BSES Bhawan, Nehru Place,  
New Delhi
13. North Delhi Power Limited  
Power Trading & Load Dispatch Group  
CENNET Building, Adjacent to 66/11 kV  
Pitampura-3 Grid Building Near PP Jewellers,  
Pitampura New Delhi - 110034
14. Chandigarh Administration  
Sector -9, Chandigarh.
15. Uttarakhand Power Corporation Ltd.  
Urja Bhawan, Kanwali Road, Dehradun.
16. North Central Railway, Allahabad.
17. New Delhi Municipal Council  
Palika Kendra, Sansad Marg,  
New Delhi-110002

....Respondent(s)



The following were present:

For Petitioner: Shri Matrugupta Mishra, Advocate, PGCIL  
Shri Piyush Singh, Advocate, PGCIL  
Ms. Suparna Srivastava, Advocate, PGCIL  
Shri M. M. Mondal, PGCIL  
Shri S. S. Raju, PGCIL  
Shri S. K. Venkatesan, PGCIL  
Shri Rakesh Prasad, PGCIL  
Shri Piyush Awasthi, PGCIL  
Shri R. P. Padhi, PGCIL

For Respondents: None

### **ORDER**

This review petition has been filed by Power Grid Corporation of India (PGCIL) seeking review of the order dated 29.4.2016 in Petition No. 99/TT/2014, particularly the direction of the Commission in para 53 of the order, which is extracted below:-

"53. The transmission charges for the instant assets shall be borne by the beneficiary Discom till the commissioning of the downstream system. Once the downstream system is commissioned the billing, collection and disbursement of the transmission charges approved shall be governed by the provisions of Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010, as amended from time to time, as provided in Regulation 43 of the 2014 Tariff Regulations."

2. The 400/220 kV, 315 MVA ICT II along with associated bays at Hamirpur Sub-station in Northern Region (hereinafter referred to as 'asset'), which was granted tariff for 2014-19 period in impugned order, was scheduled to be commissioned on 21.1.2013. However, the asset was commissioned on 1.4.2014 after a delay of 14 months and 10 days. The petitioner attributed the time over-run to delay in land acquisition and ROW issues. Out of time over-run of 14 months and 10 days, time over-run of 3 months and 14 days was not condoned as there was delay in reporting the RoW issues with respect to the approach road. The remaining period of time over-run was condoned. The petitioner claimed that the instant assets were



commissioned on 1.4.2014 however it was not put to use due to non-readiness/commissioning of downstream system of HPSEB. Accordingly, the Commission vide order dated 29.4.2016 directed that the transmission charges of the instant assets would be borne by the beneficiary Discom from 1.4.2014 till the commissioning of the downstream assets by the beneficiary Discom.

3. The review petitioner has submitted that NRSS XX project consists of LILO of one circuit of Parbati Pooling Station-Amritsar 400 kV D/C at Hamirpur Sub-station and 2 X 315 MVA, 400/220 kV Hamirpur 400/220 kV Gas Insulated Sub-station. Petition No.36/TT/2013 covers 400/220 kV ICT-I at Hamirpur alongwith 2 nos. 220 kV line bays and Petition No.99/TT/2014 covers 400/220 kV ICT-II at Hamirpur along with 4 no. 220 kV line bays. The review petitioner has submitted that out of the 4 no. 220 kV line bays covered in Petition No.99/TT/2014, 2 bays are connected to the 220 kV lines executed by the review petitioner and the remaining 2 bays are connected to the 220 kV lines executed by HPSEB. The review petitioner has submitted that 400/220 kV ICT-II at Hamirpur and 4 nos. 220 kV line bays were commissioned by the review petitioner on 1.4.2014.

4. The review petitioner has submitted that the four line bays covered in Petition No. 99/TT/2014 were made ready and commissioned by 1.4.2014. For 2 Nos. of 220 bays, the downstream 220 kV lines to Hamirpur and Jalandhar were in the scope of POWERGRID and were commissioned on 2.3.2015 (covered in Petition No. 110/TT/2015). The other two bays were commissioned by POWERGRID on 1.4.2014, the corresponding 220 kV downstream lines are in the scope of HPPTCL. These lines are yet to be commissioned.



5. The Commission, in order dated 29.4.2016, directed to bill the beneficiary DISCOM till the commissioning of the downstream assets and held that once the downstream asset is commissioned, the billing, collection and disbursement of the transmission charges approved shall be governed by PoC charges. Aggrieved by the order dated 29.4.2016, the review petitioner has filed the instant review petition contending that the Commission's directions are not in line with the 2010 Sharing Regulation and requesting to include the tariff allowed for the instant assets in the PoC charges from date of commissioning of the assets, i.e. 1.4.2014.

6. The review petitioner has submitted that linking of recovery of the transmission charges and postponing the recovery through the 2010 Sharing Regulations till the availability of the downstream assets is neither envisaged in the 2014 Tariff Regulations nor in the 2010 Sharing Regulations. There is no contractual liability on the State Transmission Utility or Discoms to pay the transmission charges till the commissioning of the downstream system. Such a mode of recovery has not been envisaged in the 2010 Sharing Regulations or can be made a subject matter of contract at this stage when the transmission system is ready and has achieved COD. The 2010 Sharing Regulations is a deviation from the earlier principle of recovery of costs from the beneficiaries of a particular region who required a transmission project. There is only one pool through which all the transmission charges will be recovered, and there cannot be any sub-pools within this one pool. Even the transmission charges of different ISTS licensees are recovered through one pool.

7. The review petitioner has submitted that it took all due measures within its scope to complete the subject transmission system and hence is not at fault and acted in bonafide manner and the Commission has notified proviso (ii) of Regulation



4(3) of 2014 Tariff Regulations which ensures that the transmission licensee is not penalized if such licensee or contractor or supplier is not at fault. Any charge or levy of any nature by the stakeholder of the sector shall have to be in compliance with the provisions of the Act and the relevant regulations. After the introduction of the PoC regime by virtue of 2010 Sharing Regulations read with Billing Collection and Disbursement Procedure laid down under the 2010 Sharing Regulations, the Transmission Licensee is authorized to levy charges in the manner enumerated in the above regulatory fabric, hence, any aberration to the provisions of the statute or the regulations made there under is an error apparent on the face of the record, which is required to be cured or corrected. The observations of the Commission in para 53 of the said order is violative of the provisions of the said regulations and statute and also against the very ethos on the basis of which the entire principle of PoC mechanism is based. It is settled principle of law that no levy or charge can stand the test of legality, unless and until the same is specifically and unequivocally prescribed under the statute or regulations, as the case may be.

8. The matter was heard on 10.8.2016. The learned counsel for the review petitioner submitted that there is no contractual liability of a state transmission utility or Discoms to pay the transmission charges till the commissioning of the downstream system. Learned counsel further submitted that 2010 Sharing Regulations does not allow recovery of charges in the manner directed by the Commission in the impugned order and requested to include the tariff allowed in the PoC charges from 1.4.2014.

9. We have considered the submissions of the petitioner. It is observed that out of 6 no. of bays covered in the instant petition, 2 are ICT bays and 4 are line bays.



However, at Hamirpur Sub-Station there were a total of 6 no. line bays, 2 nos. are connected with 220 kV Hamirpur (HPSEB) Sub-Station (covered in Petition No. 36/TT/2013), 2 nos. line bays are connected to Jalandhar and the remaining 2 nos. line bays are future bays for exclusive use of the STU in accordance with the planning criteria. Out of the 4 line bays covered in the instant petition, 2 line bays were under the purview of the downstream system. As the review petitioner has completed his portion of the work, the Commission had approved the COD and tariff for the instant assets vide order dated 29.4.2016 and directed the petitioner to recover the transmission charges from beneficiary Discom till the commissioning of the downstream system.

10. The review petitioner has contended that there is no provision in the Sharing Regulations or Tariff Regulations that transmission charges shall be borne by the Discom till the downstream assets are commissioned. We are of the view that absence of clear provisions in the Regulations does not prevent the Commission to issue appropriate directions considering the facts of the case. In the instant case, it was held that the transmission charges for the instant assets shall be borne by the beneficiary Discom till it commissions its downstream assets. The directions in the impugned order are in line with the order dated 5.8.2015 in Petition No. 11/SM/2014 wherein the Commission had directed that till the downstream assets are commissioned, the STUs shall pay the transmission charges. The relevant portion of the order is extracted as under:-

“17. PGCIL has already completed its work covered under scope of work. However, the concerned STUs have not completed their work as provided under scope of work. Since, PGCIL undertook erection of 220 kV downstream bays as per norms agreed in 23rd Standing Committee meeting of Northern Region held on 16.2.2008 and these bays were for exclusive use of concerned STUs, we are of the view that till commissioning of associated assets, the concerned STUs shall bear the transmission charges of these bays which have been built exclusively for them.”



11. The directions issued in the impugned order is consistent with the order of the Commission in order dated 5.8.2015 in Petition No.11/SM/2014. The petitioner should have approached the beneficiary Discom in terms of our order dated 29.4.2016 instead of seeking review of the said directions. In case of difficulty in implementation of the order, the petitioner could have approached the Commission under appropriate provisions of the Electricity Act, 2003 to ensure compliance of the directions issued by the Commission. However, the petitioner instead of approaching beneficiary Discom has approached the Commission for review of the said direction. In our view, the direction to recover the transmission charges from beneficiary Discom does not suffer from any infirmity in terms of Rule 1 Order 47 of the CPC requiring review.

12. Further, the billing modalities have been specified at para 17 of the order dated 4.1.2017 in Petition No.155/MP/2016, which is as follows:-

“The petitioner is directed to provide YTC details of its assets to NLDC and CTU. NLDC shall provide the same to RPC for inclusion in RTAs. The assets shall be billed along with bill 1 under the provisions of the Central Electricity Regulatory Commission (Sharing of inter-state Transmission Charges and Losses), Regulations, 2010)” as amended from time to time. ISTS licensees shall forward the details of YTC to be recovered as per formats provided under the Sharing Regulations to NLDC. ISTS licensees shall forward the details of entity along with YTC details from whom it needs to be recovered as per applicable order’s of the Commission to NLDC (only in cases of bilateral billing due to non-availability of upstream/downstream system). Based on the input received from respective licensees and the Commission’s interim order, NLDC shall provide details of billing pertaining to non-availability of upstream/downstream system to respective RPCs for incorporation in RTAs for all cases of bilateral billing. On this basis, CTU shall issue the bills. The process given in this para shall be applicable to all future cases of similar nature and all concerned shall duly comply with the same.”



13. Accordingly, the Review Petition No. 32/RP/2016 in Petition No. 99/TT/2014 is disposed of at the admission stage.

sd/-

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

sd/-

**(A.S. Bakshi)**  
**Member**

