

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 91/TT/2012

- Subject** : Petition for determination of transmission tariff from COD to 31.3.2014 for combined assets for transmission system associated with Parbati-III in Northern Region for the tariff period 2009-14.
- Date of Hearing** : 20.9.2018
- Coram** : Shri P.K. Pujari, Chairperson
Dr. M. K. Iyer, Member
- Petitioner** : Power Grid Corporation of India Ltd. (PGCIL)
- Respondents** : Rajasthan Rajya Vidyut Prasaran Nigam Limited 16 Others

And in the matter of:

Petition No. 136/TT/2017

- Subject** : Approval of transmission tariff from COD to 31.3.2019 for transmission assets associated with Parbati-III HEP in Northern Region for 2014-19 tariff period.
- Petitioner** : Power Grid Corporation of India Ltd. (PGCIL)
- Respondents** : Rajasthan Rajya Vidyut Prasaran Nigam Limited and 18 others.

And in the matter of:

Petition No. 107/TT/2017

- Subject** : Petition for truing up of transmission tariff for 2009-14 period and determination of tariff for 2014-19 period in respect of four assets under transmission system association with Parbati-III HEP in Northern Region.
- Parties present** : Ms. Ranjitha Ramachandran, PGCIL
Shri S.K. Niranjan, PGCIL



Shri V.P. Rastogi, PGCIL
Shri S. K. Venkatesan, PGCIL
Shri S. S. Raju, PGCIL
Shri B. Dash, PGCIL
Shri Sachin Datta, Sr. Advocate, NHPC
Shri Piyush Kumar, Advocate, NHPC
Shri S.K. Sarkar, Advocate, NHPC
Shri Jitendra Kumar, Advocate, NHPC
Shri A.K. Pandey, NHPC
Shri Amit Kapur, Advocate, PKTCL
Ms. Abiha Zaidi, Advocate, PKTCL
Ms. Aparajita Upadhyay, Advocate, PKTCL
Shri R.B. Sharma, Advocate, BRPL & BYPL
Shri Mohit Mudgal, Advocate, BRPL & BYPL

Record of Proceedings

The Hon'ble Appellate Tribunal for Electricity vide its judgment dated 16.7.2018 allowed Appeal Nos. 281 of 2016 and 81 of 2017 dated 16.7.2018 filed by NHPC and set aside the Commission's orders dated 21.7.2016 and 7.9.2016 in Petition Nos.91/TT/2012 and 19/RP/2015 respectively and remitted back the said matters to the Commission for reconsideration after giving opportunity to the parties. Accordingly, Petition Nos.91/TT/2012, 19/RP/2015, 107/TT/2017 and related review petitions numbered Petition No.4/RP/2017 (filed by PKTCL) and 15/RP/2017 (filed by NHPC) against order dated 29.12.2016 in Petition No.156/TT/2015 were listed together as per the directions of APTEL. Petition No.136/TT/2017 filed by PGCIL seeking determination of tariff for related assets and Petition No. 107/TT2017 for truing up the transmission tariff for 2009-14 period determined in Petition No. 91/TT/2012 and determination of tariff for 2014-19 period were also listed.

2. Learned counsel for BRPL and BYPL submitted that Regulation 4(1) of 2009 Tariff Regulations and Regulation 6(1) of 2014 Tariff Regulations do not provide for determination of part of the transmission line and as such the tariff of part of the line can be included in the PoC charges only when the line is completed. He further submitted that charges for any interim arrangement between the transmission licensee and any utility have to be settled between themselves and the charges should not be included in the PoC charges.

3. Learned senior counsel for NHPC has submitted that there is an Indemnification Agreement dated 22.7.2005 between NHPC and PGCIL and as per the said Agreement, NHPC is liable to pay IDC and IEDC for a period of six months for delay in commissioning of generation and not transmission charges and this aspect was not considered by the Commission. He submitted that the communication system related to the concerned transmission asset was not ready on the date when the transmission



system was allegedly put into commercial operation. Letters dated 8.8.2013 and 7.10.2013 written by NHPC to PGCIL show that the asset in question could not have been put into commercial operation on 1.8.2013. He submitted that different dates of commercial operation have been approved for different portions of the same asset in order dated 29.12.2016 in Petition No. 156/TT/2015. The Commission in order dated 29.12.2016 took cognizance of similar Indemnification Agreement and fixed the liability of payment in accordance with the provisions contained in the Indemnification Agreement and similar approach should have been adopted in case of instant assets. Learned counsel further submitted that Parbati-III HEP Transmission System is being used by other generators also, including PKTCL and hence they should be asked to make their submissions and be made liable to pay the transmission charges.

4. Learned counsel for PGCIL submitted that APTEL has upheld the Commission's order by holding that the instant assets were developed exclusively for the use of NHPC and other generators have their own evacuation system and hence need not share the transmission charges of the instant assets. As regards payment of transmission charges, she submitted that NHPC is liable to pay transmission charges in the present case in terms of 2010 Sharing Regulations. The Indemnity Agreement relates to construction period and does not apply after COD of the assets and as such the indemnity clause relates to payment of IDC and IEDC charges during construction in case of delays. On the issue of Communication System, learned counsel submitted that APTEL has in its judgment dated 16.7.2018 concluded that there is no concept of COD of Communication System in 2009 Tariff Regulations and the concept of the same was introduced in 2014 Tariff Regulations. As such NHPC's contention that vide its letter dated 8.8.2013 it conveyed to PGCIL to commission the associated PLCC system at both ends and install the SEMs have nothing to do in the present case as 2009 Tariff Regulations had no provision of commissioning of PLCC system. On the contrary, PGCIL in its tariff petition provided the costs incurred on PLCC System on the date of commissioning of the asset as per the COD since at the relevant time there was no requirement to produce any certificate whether PLCC has been installed or not. PGCIL had installed PLCC equipment at the site prior to the COD and therefore the transmission line of PGCIL was complete in all respects. Coordination activities for PLCC were to be done once NHPC was ready. After declaration of COD by the petitioner, NHPC sought re-location of the wave traps at the petitioner's end which was not possible and it was made clear that the modification would have to be done at NHPC's end. Owing to deferment of equipment by NHPC, the COD of the petitioner's transmission line cannot be delayed.

5. Learned counsel for PKTCL submitted that the detailed written submissions filed on 19.9.2018 in Petition No. 4/RP/2017 may be considered for the present case as well. Learned counsel further submitted that out of the four issues framed by the Tribunal in its aforementioned judgment, three issues are specifically between NHPC and PGCIL. He denied the submissions of NHPC that PKTCL and PGCIL being joint venture partners inter-se agreed certain things regarding which NHPC is not aware of. He



further submitted that each and every amendment was made and approved by the Standing Committee. He also submitted that PKTCL was granted licence for two elements and tariff was allowed for them in order dated 29.12.2016 in Petition No. 156/TT/2015 against which two review petitions are filed by PKTCL and NHPC and they are pending adjudication. He submitted that keeping in mind the judgment of APTEL it has to be heard together. He, however, submitted that PKTCL's case is distinct from the present case and it has to be heard and decided separately.

6. Learned Senior Advocate for NHPC submitted that two weeks' time may be granted to file written submissions. Learned counsel for PKTCL submitted that he may also be given one week's time to file written submissions. The Commission directed NHPC and PKTCL to file their written submissions by 8.10.2018 and response thereto, if any, by PGCIL 15.10.2018. The Commission directed the parties to file their written submissions within the specified time and made it clear that there shall be no extension of time.

7. The Commission directed to list the related Petition Nos. 136/TT/2017 and 107/TT/2017 for final hearing after disposal of Petition No. 91/TT/2012.

8. The Commission reserved order in Petition No. 91/TT/2012.

By order of the Commission

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(T. Rout)
Chief (Law)

