

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.182/MP/2017

Coram:

**Shri P.K.Pujari, Chairperson
Shri A.K. Singhal, Member
Shri A.S Bakshi, Member
Dr. M.K.Iyer, Member**

Date of Order: 25th April, 2018

In the matter of

Petition for revision of tariff under Section 79(1)(c) of the Electricity Act, 2003 read with Regulations 92 & 94 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 in the matter of Transmission Tariff of 500 MVA, 400/220 kV ICT at Moga (COD 1.7.2013) under Augmentation of transformation capacity in Northern Region-Part A in Northern Region for Tariff Block 2009-14

And

In the matter of

Power Grid Corporation of India Limited
Corporate Office: "Saudamini",
Plot No.2, Sector - 29,
Gurgaon - 122001, Haryana

....Petitioner

Vs

1. Himachal Pradesh State Electricity Board
Vidyut Bhawan, Shimla- 171004 (H.P)

2. Punjab State Power Corporation Limited
Thermal Shed Tia, Near 22 Phatak,
Patiala- 147001

3. Haryana Ppower Purchase Centre
2nd Floor, Shakti Bhawan, Sector- 6,
Panchkula- 134109

4. Power Development Department,
Jainpura Grid Station,
Jammu (Tawi)- 180007

5. Uttar Pradesh Power Corporation Limited
10th Floor, Shakti Bhawan Extn,
14 Ashok Marg, Lucknow- 226001



6. Delhi Transco Ltd.
Shakti Sadan, Kotla Road (Near ITO)
New Delhi- 110002
7. Chandigarh Administration
Sector- 9, Chandigarh- 160009
8. Uttarakhand Power Corporation Limited
Urja Bhawan, Kanwali Road,
Dehradun- 248001
9. Rajasthan Power Procurement Centre
Vidyut Bhawan, Janpath,
Jaipur- 302005
10. Ajmer Vidyut Vitran Nigam Limited
400 KV GSS Building, Ajmer Road, Heerapura,
Jaipur- 302024
11. Jodhpur Vidyut Vitran Nigam Limited
400 KV GSS Building, Ajmer Road, Heerapura,
Jaipur- 302024
12. Jaipur Vidyut Vitran Nigam Limited
400 KV GSS Building, Ajmer Road, Heerapura,
Jaipur- 302024
13. Northern Central Railway
Allahabad- 211011
14. BSES Yamuna Power Limited
Shakti Kiran Building, Karkardooma
Delhi- 110092
15. BSES Rajdhani Power Limited
BSES Bhawan, Nehru Place, New Delhi- 110019
16. Tata Power Delhi Distribution Limited
333 Kv Substation Building,
Hudson Lane, Kingsway Camp
New Delhi- 110009
17. New Delhi Municipal Council
Palika Kendra, Sansad Marg
New Delhi- 110002

.....Respondents

Parties Present:

Ms. Swapna Seshadri, Advocate, PGCIL
Ms. Rhea Luthra, Advocate, PGCIL
Ms. Parichita Chowdhary, Advocate, PGCIL
Shri P. P. Padhi, PGCIL



ORDER

Petition No. 26/TT/2014 was filed by PGCIL for approval of the transmission tariff for Asset-I: 500 MVA, 400/220/33 kV ICT along with associated bays at Moga Sub-station; Asset- II: 500 MVA, 400/220/33 kV ICT along with associated bays at Ludhiana Sub-station under Augmentation of Transformation capacity in Northern Region-Part A (hereinafter collectively referred to as “transmission assets”) for the tariff block 2009-14, and the Commission by order dated 27.11.2015 determined the transmission tariff of the said transmission assets in terms of the CERC (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter “the 2009 Tariff Regulations”). Against the said order dated 27.11.2015, PGCIL has filed Appeal No. 47 of 2016 before the Appellate Tribunal for Electricity (‘the Tribunal’).

2. During the pendency of the said appeal, PGCIL has filed the present Petition seeking modification of the tariff determined for Moga ICT II by order dated 27.11.2015. The Petitioner has submitted that the Commission in Order dated 22.8.2016 in Petition No. 69/TT/2016 and Order dated 17.12.2015 in Petition No. 232/TT/2015 had accepted the principle that since the costs of the old assets have not been fully recovered and the Petitioner had to replace the said assets due to demand from the beneficiaries, the Petitioner would continue to get recovery of the original capital cost. According to the Petitioner, the cost of original assets was not removed from the capital cost in the said cases. The Petitioner has submitted that the transmission assets which has been the subject matter in Petition No. 26/TT/2014 was an identical case as the Petitioner would not have undertaken the replacement of ICT-II at Moga, had it not been due to the request of the beneficiaries who had agreed to



keep the replaced ICTs as spare after refurbishment and kept for use anywhere in the northern region. The Petitioner had further submitted the following:

(a) The only alternative option for meeting the additional load at the respective locations is either through (i) installation of additional new ICTs in the existing substation if there is space for such installation, (ii) construct new substation nearby the existing substation or (iii) augmentation of transformer with higher capacity.

(b) There are severe challenges being faced due to non-availability of space in the existing substation for accommodating additional ICTs as well as for procurement of land for setting up a new station nearby the existing station. In such events, the transmission utilities can meet the additional load demand through replacement of existing ICTs with higher capacity ICTs.

(b) The total cost of new substation along with ICTs is approx. Rs 80 to 100 crore and tariff is Rs 16-20 crore. In case the additional load is met through replacement of the existing ICTs with higher capacity and the replaced ICTs are kept spare without de-capitalization, the tariff would be Rs 4 crore for the new ICT and tariff of the replaced spare transformer would be Rs 1 crore.

(c) Failure of some of the ICTs in the grid cannot be ruled out during operation and in such cases, the spare ICTs are utilized to restore the power supply to the affected beneficiary. The spare ICTs are either repaired/ replaced by old ICTs or new ICTs are procured as spares. The spare ICTs, after necessary testing are kept as standby unit to facilitate replacement of the faulty unit in the earliest possible time. The tariff of the new ICT is Rs 2 crore as compared to Rs 0.6 crore for the replaced ICT. Therefore, the consumers are benefited substantially in meeting additional load requirement through replacement of existing ICTs with new ICTs of higher capacity and simultaneously keeping the removed transformers as spares to take care of any contingency in the grid.

(d) With the augmentation of the 250 MVA ICTs with 500 MVA, the replaced 250 MVA ICTs which are in healthy condition, were planned and have been kept as spares on the request of the Northern Region beneficiaries.

3. The Petitioner has submitted that keeping in view the salient aspects mentioned above and the contemporaneous orders passed by the Commission, it has been constrained to file this petition for revision in tariff. Referring to the judgment of the Hon'ble Supreme Court in UPPCL V NTPC Ltd (2009) 6 SCC 235, the Petitioner has submitted that revision in tariff is separate from review of a tariff order. Accordingly, the Petitioner has prayed that the Commission may allow transmission tariff as per



original Petition in which the old ICT of 250 MVA at Moga was not de-capitalised and used as spare ICT and in terms of this, to modify/alter the tariff determined by order dated 27.11.2015 in Petition No. 26/TT/2014.

4. Thereafter, the Petitioner vide affidavit dated 14.8.2017 has submitted that it had filed IA No. 110/2017 before the Tribunal for directions to keep the appeal (Appeal No. 47/2016) pending till the consideration of the present Petition. It has further submitted that the Tribunal, based on the request of the Petitioner, by order dated 20.2.2017 had dismissed the said appeal as withdrawn, with liberty to approach the Tribunal. The relevant portion of the order is extracted hereunder:

“Counsel for the Appellant submits that the Appellant has, therefore, filed a petition for revision of tariff before the Central Commission. Counsel submits that the Appellant wishes to withdraw the present appeal as the Appellant wants to pursue the petition for revision of tariff, which it has filed before the Central Commission.

In the afore-stated circumstances, we permit the Appellant to withdraw the instant Appeal. Accordingly, the appeal is dismissed as withdrawn. The Appellant may prosecute the petition for revision of tariff which it has filed before the Central Commission, if it so desires. The Central Commission shall deal with the said petition independently and in accordance with law. We make it clear that we have not expressed any opinion on the merits of the case. Needless to say that the Appellant will be at liberty to come back to this Tribunal if the need so arises. If the Appellant files any such proceedings, it will be appropriately dealt with on all aspects.

IA No.110 of 2017 is disposed of in the aforestated terms”

5. Based on the above, the Petitioner has amended the prayer in the Petition and has prayed for the following reliefs:

(a) Admit the present petition for modification in the tariff fixed for Moga ICT-I in the order dated 20.7.2015 and allow the Petitioner to submit the revised tariff of 500 MVA ICT-I at Moga without de-capitalization of old ICT of 250 MVA AT Moga S/s;

(b) Follow the orders of this Hon'ble Commission dated 22.8.2016 in Petition No. 66/TT/2016 and 23.3.2016 in Petition No. 232/TT/2015 with regard to the treatment given to a de-capitalized ICT whose costs have not been fully recovered and apply the same principle to the present case of Moga by giving parity;

(c) Rework and alter the tariff fixed by allowing the Petitioner to retain the capital cost of the original ICTs at Moga as part of the capital cost;

(d) Pass such further orders as deemed fit and proper.



6. During the hearing of the Petition on 6.3.2018, the learned counsel for the Petitioner reiterated the above submissions and prayed that the Petition may be allowed and the transmission tariff determined vide order dated 27.11.2015 may be revised. The Commission however reserved its order on 'maintainability' of the Petition. Based on the submissions of the learned counsel for the Petitioner and the documents available on record, we proceed to examine the prayers of the Petitioner in the subsequent paragraphs.

7. The issue which emerge for consideration is whether the prayer of the Petitioner for modification/revision of the transmission tariff determined by order dated 27.11.2015 in Petition No. 26/TT/2014 is 'maintainable'?

Maintainability

8. The Commission vide order dated 27.11.2015 in Petition No. 26/TT/2014 had determined the tariff of the 'transmission assets' of the Petitioner for the period 2009-14. It was noticed that out of the four numbers of ICTs installed in Moga substation, two existing 250 MVA ICTs have been removed and two new 500 MVA ICTs with higher capacity have been installed. Accordingly, the Commission while determining the transmission tariff reduced the net value of the replaced 250 MVA ICTs, from the capital cost of new asset. The relevant portion of the order is extracted under:

"17. We have considered the submissions of the petitioner. The instant asset replaces the old assets under the augmentation of transformation capacity in Northern Region-Part A. The proviso to Regulation 7(1) of 2009 Tariff Regulations provides as follows:- "Provided that the assets forming part of the project, but not in use shall be taken out of the capital cost." As per proviso to Regulation 7(1) of 2009 Tariff Regulations, the assets forming part of the project, but not in use should be taken out of the capital cost. Therefore, the cost of the existing 250 MVA ICTs at Moga Sub-station which is being replaced has to be de-capitalized by reducing the net value of replaced asset from the capital cost of new asset.

18. As regards the petitioner's contention that the Commission had allowed tariff of spare ICTs in Petition Nos. 39/TT/2013 and 113/TT/2012, we would like to clarify that the facts in the instant case are different from the two situations quoted by the



petitioner. In the instant case, the 500 MVA ICT at Moga Sub-station replaces the 220 kV MVA ICT and in Petition Nos. 39/TT/2013 spare ICTs are provided afresh in Hissar and Lucknow Sub-stations under the scheme Spare ICTs and Reactors for North, East, South and Western Region and similarly in Petition No. 113/TT/2012 spare ICTs are provided in Mandola and Ludhiana afresh and there is no replacement of the ICTs in both the petitions quoted by the petitioner. Accordingly, the instant case cannot be compared to the situations in Petition Nos. 39/TT/2013 and 113/TT/2012. Therefore, the contention of the petitioner is rejected. 19. As the petitioner has not submitted the date of de-capitalization, the date of commissioning of new asset (i.e. 1.3.2014) has been considered as date of de-capitalization of old asset. The net value of de-capitalized asset has been worked out as Rs. 273.76 lakh (gross block of Rs. 737.56 lakhs less cumulative depreciation up to the date of de-capitalization of Rs. 463.80 lakh) and the same has been reduced from capital cost claimed by the petitioner for the instant asset (i.e. new 500 MVA, 400/220kV ICT-II at Moga Sub-station). The cumulative depreciation of de-capitalized asset up to the date of de-cap (i.e. Rs. 463.80 lakhs) has been computed based on the details submitted by the petitioner (i.e. depreciation upto 31.3.2009 Rs. 393.97 lakhs plus pro-rata depreciation from 1.4.2009 to 28.2.2014 Rs. 69.83 lakhs).”

9. The Petitioner has contended that the Commission in its order dated 22.8.2016 in Petition No. 69/TT/2016 and order dated 17.12.2015 in Petition No. 232/TT/2015 had decided the principle that old assets which have been replaced by the Petitioner due to demand from beneficiaries and whose costs have not been fully recovered will continue to get the recovery of the original cost and shall not be removed from the capital cost of the new asset. This principle, according to the Petitioner, should be made applicable in Petition No. 26/TT/2014 as the subject matter is identical, as the replacement of ICT II at Moga substation was due to the request of the beneficiaries who had agreed to keep the replaced ICTs as spares after refurbishment. Accordingly, the Petitioner has submitted that the transmission tariff allowed vide order dated 27.11.2015 in Petition No. 26/TT/2014 may be revised without reduction of the net value of the old ICT of 250 MVA at Moga station from the capital cost of the new asset.

10. The submissions of the Petitioner have been considered. The transmission tariff determined vide order dated 27.11.2015 was based on the pleadings, submissions of the parties and the applicable provisions of the 2009 Tariff Regulations. In the said order, the net value of the replaced 250 MVA ICT was reduced from the capital cost



of the new asset in terms of Regulation 7(1) of the 2009 Tariff Regulations, which provides that “*assets forming part of the project but not in use shall be taken out of the capital cost*”. Admittedly, against the order dated 27.11.2015, no Review Petition was filed by the Petitioner in accordance with the provisions of Section 94 of the Electricity Act, 2003 (2003 Act) read with Regulation 103 of the CERC (Conduct of Business) Regulations, 1999 (hereinafter called ‘the Conduct of Business Regulations’), as amended from time to time. However, the Petitioner filed Appeal No. 46/2016 before the Tribunal. During the pendency of the said appeal, the Petitioner has filed the present Petition under Section 79(1)(c) of the 2003 Act read with Regulation 92 and 94 of the Conduct of Business Regulations. After filing the present Petition, the Petitioner moved IA 110/2017 to keep the Appeal pending till disposal of the present Petition. On 20.2.2017, the Petitioner withdrew the appeal in order to pursue the present Petition before the Commission.

11. Regulation 92 and 94 of the Conduct of Business Regulations provides as under:

92. The Commission on its own on being satisfied that there is need to review the tariff of any utility shall initiate the process of revision in accordance with the procedure as may be prescribed. The proceedings for suo moto review of the tariff shall be the same as set out in Chapter II of these Regulations.

93. XXX

94. The utilities shall submit periodic returns as may be prescribed containing operational and cost data to enable the Commission to monitor the implementation of its order and reassess the bases on which Tariff was approved."

12. The Petitioner has relied on the judgment of the Hon'ble Supreme Court in Uttar Pradesh Power Corporation Limited vs. National Thermal Power Corporation Limited and Others [(2009) 6 SCC 235] in support of its prayer for revision of tariff order dated 27.11.2015. The relevant portions of the judgment of the Hon'ble Supreme Court are extracted hereunder:

“34. While exercising its power of review so far as alterations or amendment of a tariff is concerned, the Central Commission *stricto sensu* does not exercise a power akin to Section



114 of the Code of Civil Procedure or Order XLVII, Rule 1 thereof. Its jurisdiction, in that sense, as submitted by Mr. Gupta, for the aforementioned purposes would not be barred in terms of Order II, Rule 2 of the Code of Civil Procedure or the principles analogous thereto.

35. Revision of a tariff must be distinguished from a review of a tariff order. Whereas Regulation 92 of the 1999 Regulations provides for revision of tariff, Regulations 110 to 117 also provide for extensive power to be exercised by the Central Commission in regard to the proceedings before it.

36. Having regard to the nature of jurisdiction of the Central Commission in a case of this nature, we are of the opinion that even principles of res judicata will have no application.

37. xxxxxx

38. The Central Commission, as indicated hereinbefore, has a plenary power. Its inherent jurisdiction is saved. Having regard to the diverse nature of jurisdiction, it may for one purpose entertain an application so as to correct its own mistake but in relation to another function its jurisdiction may be limited. The provisions of the 1998 Act do not put any restriction on the Central Commission in the matter of exercise of such a jurisdiction. It is empowered to lay down its own procedure.

39. Regulations 92, 94, 103 and 110 of the 1999 Regulations confer a wide power upon the Central Commission. They are to be exercised in different circumstances. Whereas Regulations 92 and 94 are to be exercised in regard to Chapter V, Regulations 103 and 110 apply in regard to cases where Regulations 92 and 94 would not have any application.

40. Regulations 92 and 94, in our opinion, do not restrict the power of the Central Commission to make additions or alterations in the tariff. Making of a tariff is a continuous process. It can be amended or altered by the Central Commission, if any occasion arises therefor. The said power can be exercised not only on an application filed by the generating companies but by the Commission also on its own motion.”

13. The following can be inferred from the above judgment:

- (a) Revision of a tariff must be distinguished from review of the tariff order.
- (b) Regulations 92 & 94 do not restrict the powers of the Central Commission to make additions or alterations in the tariff. Making of tariff is a continuous process and it can be amended or altered by the Commission, if the occasion arises, either on an application by the parties or the Commission on its own motion.
- (c) Regulation 103 & 110 apply in regard to cases where Regulation 92 and 94 would not have any application.

14. The Petitioner has sought revision of tariff in the light of the subsequent decision of the Commission in order dated 22.8.2016 in Petition No. 69/TT/2016 and order dated 17.12.2015 in Petition No. 232/TT/2015. The question arises as to whether such prayer will be covered under Regulation 92 of the Conduct of Business Regulations. As



per Regulation 92 as interpreted by the Hon'ble Supreme Court, making of tariff is a continuous process and can be amended or altered by the Commission on its own motion or by application by a party. In the present case, the Petitioner has filed the Petition for revision of tariff already determined by the Commission in which the claim of the Petitioner for continuation of the replaced assets in the capital cost was rejected. In our view, the Petitioner cannot seek relief under Regulation 92 in respect of a claim which has already been rejected, on account of the following reasons:

- (i) As per the judgment, tariff determination is a continuous process and can be revised by the Commission on its own motion or by an application by a party. In our view, the expenditure to be allowed through revision of tariff should be in accordance with the provisions of the Tariff Regulations and cannot be de hors the Tariff Regulations. For example, the regulation provides for interim truing-up or final truing-up or there may be a Court direction which needs to be implemented. In these cases, there will be revision of tariff.
- (ii) Where the expenditure claimed has been disallowed being not provided under the Regulation, the same cannot be sought to be restored through a revision Petition. The disallowance of any element of tariff can be only considered in Review Petition, subject to fulfillment of the conditions of review or in appeal before the Appellate Tribunal. The Petitioner cannot be allowed to seek relief under review Petition for a claim which is otherwise subject to Review Petition or appeal. As observed by the Hon'ble Supreme court, Petition under Regulation 92 & 94 will not lie when it is covered under Regulation 103 of the Conduct of Business Regulations.
- (iii) The Appellate Tribunal has also dealt with the issue in its judgment dated 25.4.2016 in Appeal No. 98 of 2015. The relevant portion is extracted as under:

“18. The Appellant has argued that when the transformers are used as spare transformers, it cannot be said that they are not in use and therefore, its claim for retention of capital cost of the replaced 3x50 MVA transformers with the consent of the beneficiaries does not violate the Regulations of the Central Commission as these replaced assets are to be considered as ‘asset in use’. This submission of the Appellant does not have any merit in light of the fact that these 3x50 MVA transformers stand replaced and till the time they are requisitioned by any beneficiary State, they would remain as spare transformers and hence, it could be treated as spare transformers but ‘asset not in use’. This Tribunal in its earlier judgment dated 08.05.2014 in Appeal No. 173/2013 (NTPC Ltd. Vs. Central Electricity Regulatory Commission & Ors.) and judgment dated 01.05.2015 in Appeal No. 97/2013 (NTPC Ltd. Vs. Central Electricity Regulatory Commission & Ors.) disallowed capitalization of spare/additional transformers. In judgment dated 01.05.2015, this Tribunal observed that unless there is a specific provision in the Regulations permitting



capitalization of the cost of spare assets, such assets cannot be included in the capital base.”

- (iv) The cases in Petition No. 69/TT/2016 and Petition No. 232/TT/2015 is also distinguishable from the present case, as in those cases, no de-capitalization of the assets was involved and the new transformers were allowed as spare transformers at Purnea sub-station. The said decision cannot be considered as a principle to be followed when the new transformer replaces an old transformer.

15. Based on the above discussions, we hold that the Petition is not maintainable under Regulation 92 of the Conduct of Business Regulations and accordingly, the Petition is dismissed at the admission stage.

**Sd/-
(Dr. M.K.Iyer)
Member**

**Sd/-
(A.S. Bakshi)
Member**

**Sd/-
(A. K. Singhal)
Member**

**Sd/-
(P. K. Pujari)
Chairperson**

