

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 46/RP/2017**

**Coram:**

Shri A. S. Bakshi, Member  
Dr. M. K. Iyer, Member  
Date of Order : 23.07.2018

**In the matter of:**

Petition for review and modification of the order dated 20.9.2017 in Petition No. 227/TT/2014 under section 94(1)(f) of the Electricity Act, 2003

**And in the matter of:**

Bhopal Dhule Transmission Company Limited,  
F-1, "The Mira Corporate Suites"  
1 & 2 Ishwar Narag,  
Mathura Road,  
New Delhi-110 065.

..... Review Petitioner

Vs

1. Power Grid Corporation of India Limited  
"Saudamini", Plot No.2, Sector-29,  
Gurgaon -122 0012.
2. Madhya Pradesh Power Management Company Limited,  
Shakti Bhawan,  
Rampur Jabalpur-482 008.
3. Maharashtra State Electricity Distribution Company Limited,  
Hongkong Bank Building,  
3rd Floor, Prakashgad,  
M. G. Road, Fort,  
Mumbai-400 001.
4. Gujarat Urja Vikas Nigam Limited,  
Sardar Patel Vidyut Bhawan,  
Race Course Road,  
Vadodara-390 007.
5. Electricity Department,



Government of Goa,  
Vidyut Bhawan,  
Panaji, Near Mandvi Hotel,  
Goa-403 001

6. Electricity Department,  
Administration of Daman and Diu,  
Daman-396 210
7. Electricity Department,  
Administration of Dadra Nagar Haveli,  
U.T., Silvassa-396 230
8. Chhattisgarh State Electricity Board,  
P.O. Sunder Nagar, Dangania,  
Raipur Chhattisgarh-492 013
9. Madhya Pradesh Audyogik Kendra Vikas Nigam (Indore) Ltd.  
3/54, Press Complex,  
Agra-Bombay Road, Indore-452 008

For Review Petitioner : Shri Jafar Alam, Advocate, BDTCL  
Shri Divyanshi Bhatt, Advocate, BDTCL  
Ms. Anisha Chopra, BDTCL  
Shri Vishal Vinod, BDTCL

For Respondents : Ms. Suparna Srivastav, Advocate, PGCIL  
Ms. Sanjna Dua, Advocate, PGCIL  
Shri Aryaman Saxena, PGCIL  
Shri S. S. Raju, PGCIL

### **ORDER**

Present review petition is preferred by Bhopal Dhule Transmission Company Limited (BDTCL) seeking review and modification of the order dated 20.9.2017 in Petition No. 227/TT/2014.



2. Power Grid Corporation of India Limited (PGCIL) filed Petition No. 227/TT/2014 for approval of transmission tariff of the following assets associated with system strengthening for WR for 2014-19 tariff period under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (“2014 Tariff Regulations”):-

- (a) Asset 1: 765 kV Line bays and 3X80 MVAR Switchable line reactor at 765 kV Jabalpur Pooling Sub-station (for 765 kV S/C Jabalpur-Bhopal line);
- (b) Asset 2: 765 kV Line bays & 3X80 MVAR line reactor at 765 kV Indore Sub-station (for 765 kV S/C Bhopal-Indore line); and
- (c) Asset-3: Extension of 765 kV Aurangabad Sub-station for 765 kV S/C line bay under Line bays and reactor provision at PGCIL Sub-station.

3. The Commission vide order dated 20.9.2017 in Petition No. 227/TT/2014 approved the COD of Assets-I, II and III as 20.10.2014, 5.10.2014 and 29.5.2014 respectively under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations, since the assets of PGCIL were ready but could not be put to use on account of non-readiness of the transmission lines of the Review Petitioner. Accordingly, the Review Petitioner was directed to pay the transmission charges for these assets from the dates of their approved COD till the actual COD of the downstream assets being executed by the Review Petitioner. Aggrieved by the decision of the Commission with regard to the liability of the Review Petitioner for payment of transmission charges, the Review Petitioner has filed the present petition with the following prayers:-

- “(a) Review and modify the Hon’ble Commission’s Order dated 20.09.2017 in Petition No. 227/TT/2014 under review in terms of the submissions made in this Review Petition;



- (b) Declare that Asset I, Asset II and Asset III achieved Commercial Operations only after they were put into regular service after commissioning of the respective transmission elements of the Review Petitioner's Project;
- (c) Direct that the Review Petitioner is only liable to pay PGCIL Interest during Construction and Incidental Expenditure during Construction for Asset I, Asset II and Asset III for the period from the date on which each of the aforesaid transmission elements was ready for commercial operations up to the date on which each such transmission element was put into regular service;
- (d) Direct PGCIL to revise its Bilateral Bills of Supply Nos. NI2700000003 and NI2300000005 dated 13.10.2017 to levy only Interest during Construction and Incidental Expenditure during Construction for Asset I, Asset II and Asset III, and not transmission charges; and
- (e) Pass such further order(s) or direction(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case."

#### **Grounds for review**

4. The Review Petitioner has sought review of the impugned order mainly on the following grounds:-

- a. The impugned order has been issued contrary to the earlier orders of the Commission and the judgment of the Hon'ble Supreme Court in the case of Power Grid Corporation of India Limited & Ors. [(2016) 4 SCC 797].
- b. The Commission has erroneously approved the COD of Assets-I, II and III despite the fact that the said transmission elements were not put into regular service. As per the decision of the Hon'ble Appellate Tribunal for Electricity ("APTEL") in Barh-Balia case, a transmission element can be declared to have achieved commercial operations only if it has been charged successfully and after successful trial operation, it is put into regular service. The Hon'ble



Supreme Court has upheld the said view of APTEL in the case of Power Grid Corporation of India Limited v. Punjab State Power Corporation Limited & Others [(2016) 4 SCC 797].

- c. In the instant case, the transmission assets were ready and certification thereof on no load basis was done by Regional Load Despatch Centre. However, the same could not have been charged for trial operation and put into regular service due to non-readiness of the downstream assets being executed by the Review Petitioner.
  - d. Since the CODs approved by the Commission are erroneous, the Review Petitioner is liable to pay only the Interest During Construction (“IDC”) and Incidental Expenditure During Construction (“IDEC”) in terms of Regulation 11 of the 2014 Tariff Regulations during the period when these transmission assets of PGCIL were ready for commercial operation upto the date on which the transmission assets were put into regular service after COD of the transmission lines of the Review Petitioner.
  - e. Pursuant to the impugned order, PGCIL raised bilateral bills dated 13.10.2017 on the Review Petitioner for ₹60024116/- in lieu of transmission charges for the transmission assets. The bill is required to be set aside, and only the IDC and IDEC for the relevant periods is required to be levied on the Review Petitioner.
5. The Review Petition was admitted vide order dated 25.4.2018 and the respondents were directed to file their reply. PGCIL, Respondent No.1 filed its reply to



the Review Petition.

6. PGCIL in its reply has submitted as under:-

- (a) The Review Petitioner has failed to appreciate the legal distinction between an erroneous decision and an error apparent on the face of the record.
- (b) The Commission approved the COD of the subject assets as prayed for after taking into account the fact that the subject assets were ready but were prevented from being put into regular service for reasons not attributable to PGCIL, its contractors or suppliers. Further, the Commission's order dated 5.8.2015 in Petition No. 11/SM/2014, order dated 4.1.2017 in Petition No. 155/MP/2016 and order dated 24.2.2017 in Petition No. 85/TT/2015 has settled the principle that if the downstream system of a transmission element is not commissioned by the scheduled date of commercial operation of the transmission asset, the owner of the downstream system is liable to pay transmission charges for the transmission system till the downstream system is commissioned. Therefore, the Commission's order is not contrary to the settled principles in earlier decisions.
- (c) The Hon'ble Supreme Court in its judgment in the case of Power Grid Corporation of India Limited v. Punjab State Power Corporation Limited & Others [(2016) 4 SCC 797] while deciding on the issue of liability of sharing of transmission charges for the period of mismatch between a generator and transmission licensee, has unequivocally held that the



liability arising out of default on the part of a generator or a transmission licensee, as the case may be, cannot be saddled upon the beneficiaries or the end consumers and the party committing such default should be held responsible in law for compensating the other party with such damages as have been incurred. Therefore, reliance of the Review Petitioner on the judgment of Hon'ble Supreme Court seeking review of the impugned order in the instant case is completely misplaced and untenable.

- (d) The transmission charges in respect of the assets of PGCIL have not been included in the PoC for the period of mismatch since the bays of PGCIL have been lying idle due to non-commissioning of the transmission lines of the Review Petitioner and as such, the liability for the transmission charges in terms of the impugned order has rightly been fixed on the Review Petitioner which is in line with the Commission's order in similar cases of mismatch of COD of different transmission element being implemented in a coordinated manner under combined scheme of implementation through tariff based competitive bidding and cost plus route.

7. The Review Petitioner vide its affidavit dated 18.5.2018 has submitted that in terms of Regulation 3 (53) of 2014 Tariff Regulations "regular service" means putting a transmission system or element to actual use after trial operation is certified. In the instant case, there was no actual flow of electricity through the transmission assets, the same could not be put into "regular service".



### **Analysis and Decision**

8. We have considered the submissions of the Review Petitioner and have also perused the documents on record.

9. Learned counsel for the Review Petitioner submitted during the hearing that the project of the Review Petitioner is a standalone project and fastening the liability for the transmission charges of the assets of PGCIL on the Review Petitioner till the COD of the transmission lines of the Review Petitioner would adversely affect the financials of the Review Petitioner. Learned counsel further submitted that the decision with regard to the COD of the transmission assets of PGCIL needs to be revisited as the said assets could not have been put into use in the absence of COD of its transmission line. The Review Petitioner is only liable to pay the IDC and IEDC during the intervening period. Learned counsel for PGCIL submitted that in terms of proviso (ii) of Regulation 4 (3) of the 2014 Tariff Regulations, the COD of the transmission assets of PGCIL has been approved by the Commission and, therefore, there is no error in the impugned order which warrants review. Learned counsel further submitted that it has filed Petition No. 216/MP/2015 for various force majeure and change in law claims before the Commission.

10. The main contention of the Review Petitioner is that the subject transmission assets of PGCIL were not put into regular service and therefore, the COD of the assets was erroneously declared by the Commission under proviso (ii) to Regulation 4 (3) of the 2014 Tariff Regulations. According to the Review Petitioner, the declaration of COD is contrary to the directions given in similar cases by the Commission and the





judgment of the Hon'ble Supreme Court in the case of Power Grid Corporation of India Limited v. Punjab State Power Corporation Limited & Ors [(2016) 4 SCC 797].

11. The Commission considered the case of PGCIL in the light of the provisions of 2014 Tariff Regulations and decided the issue of COD and transmission charges as under:-

“10. Regulation 4(3) of the 2014 Tariff Regulations provides as follows:-

“4. Date of Commercial Operation: The date of commercial operation of a generating station or unit or block thereof or a transmission system or element thereof shall be determined as under:

xxx

(3) Date of commercial operation in relation to a transmission system shall mean the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service after successful trial operation for transmitting electricity and communication signal from sending end to receiving end:

xxx

(ii) in case a transmission system or an element thereof is prevented from regular service for reasons not attributable to the transmission licensee or its supplier or its contractors but is on account of the delay in commissioning of the concerned generating station or in commissioning of the upstream or downstream transmission system, the transmission licensee shall approach the Commission through an appropriate application for approval of the date of commercial operation of such transmission system or an element thereof. xxx”

11. In support of its claim of COD for Asset-1, 2 and 3, 20.10.2014, 5.10.2014 and 29.5.2014 respectively, the petitioner has also submitted the RLDC trial run certificate for the instant assets vide affidavit dated 30.3.2017. It is noted that the COD of the downstream system for the Asset-1 is 9.6.2015 (Jabalpur- Bhopal 765 kV S/C transmission line), Asset-2 is 19.11.2014 (Bhopal-Indore 765 kV S/C transmission line) and Asset-3 is 5.12.2014 (Aurangabad- Dhule 765 kV S/C transmission line). In compliance with the ROP dated 9.10.2014, Bhopal Dhule Transmission Company Limited has filed its reply vide affidavit dated 11.11.2014 that the downstream lines corresponding to Asset 1, 2 and 3 were anticipated to be commissioned on 15.3.2015, 15.11.2014 and 20.11.2014 respectively.

12. We have considered the submissions of the petitioner. It is observed that the petitioner was ready with its assets and was not able to put them into service as the downstream assets were not ready. As such, the assets were not put into regular service for reasons not attributable to the petitioner, its contractors or suppliers. Accordingly, the COD of Assets 1, 2 and 3 is allowed as prayed by the petitioner.”

12. It is, therefore, clear from the impugned order that the Commission approved the COD of the subject transmission assets in terms of the proviso (ii) of Regulation 4(3) of



2014 Tariff Regulations as the assets of PGCIL were prevented from regular service on account of the delay in COD of the downstream system being executed by the Review Petitioner. Therefore, there is no error apparent on the face of record as the COD was declared as per the Regulation.

13. The Review Petitioner has relied on the judgment of Hon'ble Supreme Court in the case of Power Grid Corporation of India Limited v. Punjab State Power Corporation Limited & Ors [(2016) 4 SCC 797]. In the said judgment, the Hon'ble Supreme Court has observed as under:-

“11. From the above definition, it is clear that switchgear and other works are part of transmission lines. In our opinion, Regulation 3 (12) of the Regulations, 2009 cannot be interpreted against the spirit of the definition “transmission lines” given in the statute. It is evident from record that it is not a disputed fact that switchgear at Barh end of Barh-Balia line for protection and metering were to be installed by NTPC and the same was not done by it when transmission line was completed by the appellant. As such the appellant might have suffered due to delay on the part of NTPC in completing the transmission lines for some period. But beneficiaries, including respondent No. 1, cannot be made liable to pay for this delay w.e.f. 01.07.2010 as the energy supply line had not started on said date.

x                      x                      x                      x                      x

13. Since we are in agreement with the Tribunal that in the present case, respondent No. 1 and the beneficiaries could not have been made liable to pay the tariff before transmission line was operational, we find no infirmity in the impugned order. Therefore, the appeals are liable to be dismissed. Accordingly, both the appeals are dismissed without prejudice to the right of the appellant, if any, available to it under law, against NTPC. There shall be no order as to costs.”

14. In view of above judgment, Hon'ble Supreme Court decided that when the transmission line of PGCIL was ready, the switchgear at Barh end of Barh-Balia line to be installed by NTPC were not ready and therefore, the beneficiaries will not be liable to pay the tariff before the transmission line was operational. In the light of the said judgment, the DICs shall not be liable to pay the transmission charges for the delay on



account of the non-commissioning of the transmission line of the Review Petitioner. However, PGCIL has a right to recover the charges from the Review Petitioner in accordance with law. As per this judgment, the liability of transmission charges cannot be fastened on the DICs before the transmission line is operational. However, this judgment does not bar the Commission to declare the deemed COD of transmission asset when it is ready and fulfills the conditions of the Regulation. The Commission after being satisfied that the assets of PGCIL fulfilled the conditions of proviso (ii) of Regulation 4 (3) of 2014 Tariff Regulations has approved the COD of the Assets-I, II and III as 20.10.2014, 5.10.2014 and 29.5.2014 respectively. We are of the view that the impugned order is not in violation of the principles laid down by the Hon'ble Supreme Court in the case of Power Grid Corporation of India Limited v. Punjab State Power Corporation Limited & Ors [(2016) 4 SCC 797].

15. As regards the Petition No. 216/MP/2015, order in the said petition has been issued by the Commission on 25.6.2016.

16. In the light of the above discussions, we find no error in the impugned order and accordingly the Review Petition is dismissed.

17. In our order dated 10.5.2018, we had issued the interim directions as under:-

“7. During the course of the hearing, it was brought to our notice that CTU has withheld Rs. 60024116/- from the transmission charges payable to the Review Petitioner. In our view, in case of bilateral settlement of claims, the CTU has been authorized as the agency to raise the bill, collect and disburse the transmission charges. In case of failure on the part of the Review Petitioner, it should have intimated PGCIL to take necessary action in accordance with law for recovery of the transmission charges. CTU on its own should not have withheld the transmission charges due to the Review Petitioner pending the decision on review petition. The Review Petitioner is agreeable to pay the IDC and IEDC. If the review petition is decided in favor of the Review Petitioner, the Review Petitioner shall be liable to pay the IDC and IEDC and if the review petition is decided against the Review



Petitioner, it shall be liable to pay the transmission charges. In other words, the Review Petitioner in any case will be liable to pay the IDC and IEDC. We direct that pending decision in the review petition, CTU shall release the withheld amount less the IDC and IEDC for the period from the date of approved COD till the assets were put into regular service. PGCIL is directed to work out the IDC and IEDC for the said period within one week to CTU who shall release the balance amount over and above the IDC and IEDC to the Review Petitioner within a period of 2 days thereafter.”

18. Since we have rejected the Review Petition, the Review Petitioner is liable to pay the transmission charges to PGCIL in terms of our order dated 10.5.2018. Accordingly, necessary refund may be made by the Review Petitioner.

19. Review Petition 46/RP/2017 is disposed of.

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

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

