

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 5/RP/2017 in Petition No. 68/TT/2016

Coram:

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

Date of Order : 20.03.2018

In the matter of:

Review 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 the Order dated 30.7.2016 issued in Petition no. 68/TT/2016.

And in the matter of:

LANCO Teesta Hydro Power Limited (LTHPL)
Plot No. 397, 2nd floor, Udyog Vihar,
Phase-III, Gurgaon, Haryana-122016.

.....**Review Petitioner**

Vs

1. Power Grid Corporation of India
"Saudamini", Plot No.2,
Sector-29, Gurgaon -122 001
2. Gati Infrastructure Chuzachen Limited
1-7-293, MG Road, 268,
Udyog Vihar, Phase-IV, Secunderabad,
Andhra Pradesh- 500003
3. Gati Infrastructure Bhasmay Power Limited
1-7-293, MG Road, 268,
Udyog Vihar, Phase-IV, Secunderabad,
Andhra Pradesh - 500003
4. PTC INDIA Limited
2nd Floor, NBCC Tower 15,
Bhikaji Cama Palace, New Delhi



5. DANS Energy Private Limited
5th Floor, DLF Building No. 8,
Tower C, DLF Cyber City Phase- II
Gurgaon, Haryana- 122002
 6. JAL Power Corporation Limited
405-406, Raja House, 30-31,
Nehru Place, New Delhi- 110019
 7. Madhya Bharat Power Corporation Limited
NH-31-A, Golitar, Singtam,
Gangtok -737134, Sikkim
 8. Bihar State Power (Holding) Company Limited
(formerly Bihar State Electricity Board -BSEB)
Vidyut Bhavan, Bailey Road,
Patna – 800001
 9. West Bengal State Electricity Distribution Company
Bidyut Bhawan, Bidhan Nagar Block DJ,
Sector-II, Salt Lake City
Calcutta - 700091
 10. Grid Corporation of Orissa Limited
Shahid Nagar,
Bhubaneswar - 751007
 11. Damodar Valley Corporation DVC Tower
Maniktala Civic Centre, VIP Road,
Calcutta - 700054
 12. Power department Government of Sikkim
Gangtok - 737 101
 13. Jharkhand State Electricity Board
In Front of Main Secretariat Doranda,
Ranchi – 834002
- ...Respondents

For Review Petitioner : Shri Saahil Kaul, Advocate, LANCO
Ms. Mazag Andrabi, Advocate, LANCO
Shri Jatinder Singh, LANCO
Shri Shashant Agarwal, LANCO



For Respondents : Shri Mridul Chakravarty, Advocate, PGCIL
Shri Pallav Mongia, Advocate, PGCIL
Shri Rakesh Prasad, PGCIL
Shri S.S. Raju, PGCIL
Shri B. Dash, PGCIL
Shri Vivek Kumar Singh, PGCIL
Shri V. P. Rastogi, PGCIL
Ms. Vaishali Goyal, PGCIL

ORDER

The instant review petition has been filed by LANCO Teesta Hydro Power Limited under Section 94(1)(f) of the Electricity Act, 2003 ("the Act") seeking review of the order dated 29.7.2016 in Petition No. 68/TT/2016, wherein the tariff for 2014-19 period was determined for **Asset 1:**(i) Termination of Gangtok-Rangpo/Chujachen and Melli Rangpo/Chujachen line at Rangpo and associated bays at Rangpo Sub-station, (ii) LILO of 400 kV D/C Teesta V-Siliguri line (Ckt-I) at Rangpo and associated bays alongwith 1x400 kV Bus Coupler bay at Rangpo Sub-station, (iii) 3x105 MVA Single Phase 400/220 kV transformer (1st) and associated bays alongwith 1x105 MVA Single Phase, 400/220 kV Spare transformer at Rangpo Sub-station, (iv) 1x100 MVA 220/132 kV transformer (1st) and associated bays alongwith 1x132 kV Bus Coupler Bay and 1x132 kV Bus Sectionaliser bay at Rangpo Sub-station. **Asset 2:** LILO of 132 kV S/C Gangtok-Rangit line Rangpo and associated bays at Rangpo sub-station. **Asset 3:** 3x105 MVA Single Phase 400/220 kV Transformer (2nd) and associated bays at Rangpo sub-station and **Asset 4:** 1x80 MVAR Bus Reactor (1st) & associated bays at Rangpo substation under Transmission System for "Transfer of power from Generation Projects in Sikkim to NR/WR Part B" in Eastern Region (hereinafter referred to as the



“instant asset”) under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2014 (hereinafter referred to as "2014 Tariff Regulations").

Background

2. The Review Petitioner was granted connectivity and LTOA for evacuation of power from its Hydro Electric Power Project of 500 (4X125 MW) and it was formalized by way of BPTA dated 24.2.2010 between the Review Petitioner and CTU. PGCIL undertook the implementation of transmission system for transfer of power from generation project in Sikkim to Northern Region/Western Region Part B in the Eastern Region. On 31.5.2010, the Commission granted regulatory approval of certain identified transmission systems for transfer of power from the Eastern Region. In the review meeting held on 20.10.2010, for reviewing the status of the transmission corridors, the progress of the Review Petitioner’s generation project was also discussed. The Review Petitioner had conveyed that due to poor geological conditions, the Review Petitioner is facing delay in construction of the hydro generation project.

3. PGCIL filed Petition No. 68/TT/2016, seeking tariff for the said transmission assets from the COD to 31.3.2019 and tariff was granted vide order dated 29.7.2016 as per the 2014 Tariff Regulations. The Commission after taking into consideration the submissions made by PGCIL and the Review Petitioner observed that the instant assets are being utilized and should be included in the Yearly Transmission Charges (“YTC”) and directed PGCIL to operationalize LTA of the generating stations from the actual COD of the instant transmission assets. The relevant portion of the order dated 29.7.2016 is extracted hereunder:-



“12 We have considered the submissions of the petitioner and LTHPL. The asset is being utilized and hence we are of the view that the transmission tariff of subject assets should be included in the Yearly Transmission Charges (YTC) and the petitioner should operationalize the LTA of the generating stations from the actual date of commissioning of the instant assets.”

4. The Review Petitioner has submitted that the Commission in Order dated 30.7.2016 has erred in holding that the transmission charges granted for the instant assets should be included in the POC charges and shared by the beneficiaries including the Review Petitioner.

5. The delay in filing the review petition was condoned and the review petition was admitted and notice was issued to the respondents. PGCIL filed its reply, vide affidavit dated 5.7.2017, and the Review Petitioner filed its rejoinder vide affidavit dated 1.9.2017. PGCIL has also filed its Written Submissions vide affidavit dated 13.2.2018.

6. The Review Petitioner has submitted that the objections raised by the Review Petitioner were not considered in the impugned order and the reasons for rejecting the Review Petitioner's objections were given in the impugned order. The grounds submitted by the Review Petitioner for seeking review of order dated 30.7.2016 are summarised herein below:-

(a) The transmission charges levied on the Review Petitioner are without determining utilization of transmission asset by the Review Petitioner for transmission of electricity from its generation project, the utilization of the asset by other respondents cannot be a determining criterion for levying transmission charges on the Review Petitioner.



(b) There is a delay in commissioning of its generation project which was due to the reasons beyond the Review Petitioner's control. Therefore, the Review Petitioner cannot be held liable for payment of transmission charges till such time these events continue to affect the progress of the generation project. The said facts were also brought to the notice of the Commission but were not considered in the impugned order. The reasons for rejecting the Review Petitioner's objections were not recorded in the impugned order.

(c) The petition for the transmission assets cannot be considered as ready and complete for the purpose of tariff determination, as the entire identified transmission network under the BPTA has not been operationalized. PGCIL has achieved commercial operation of four transmission assets which form a part of the entire Transmission System for transfer of power in the Eastern Region. Declaration of commercial operation date of four isolated assets cannot be considered as the basis for undertaking the tariff determination process of transmission lines.

(d) The submissions made by PGCIL were considered but the objections raised by the Review Petitioner were ignored. The factual and substantive contentions raised by the Review Petitioner were not considered and discussed while determining the transmission tariff. Grave prejudice and continuing loss would be caused to the Review Petitioner if the errors which have crept into the determination of tariff are not corrected.



(e) PGCIL wrongly declared the COD of the transmission assets identified for the Review Petitioner's generation project. PGCIL has erroneously relied on the commissioning of certain assets to contend that the entire transmission system, as envisaged under the BPTA, has been completed and commissioned. The Teesta V project and utilization of the transmission assets have absolutely no connection or relevance with the Review Petitioner's generation project. The Review Petitioner was not given an opportunity of being heard in the said petition,

(f) The Hon'ble Supreme Court in judgment dated 3.3.2016 in case of PGCIL vs Punjab State Power Corporation Limited and others ("NTPC Barh-Balia judgment") held that commercial operation date of an element of transmission system can be declared only if it has been charged successfully, after a successful trial operation and is in regular service. Accordingly, the Review Petitioner and other beneficiaries and generators can be made liable for payment of utilization of element of a transmission system, only if there is flow of power through such element. PGCIL has not demonstrated the utilization of the instant transmission assets by the Review Petitioner's project and the transmission lines connected to present Review Petitioner's generation project cannot be said to be operationalized as per the Supreme Court's judgment dated 3.3.2016.

(g) Under Regulation 4(3) of 2014 Tariff Regulations, a transmission system or an element thereof shall have achieved COD, when the element of a transmission system is in regular service after there has been successful trial operation for



transmitting electricity and successful trial operation for communication signal from sending end to receiving end. In the present case, none of the above requirements have been fulfilled in respect of the instant transmission assets of PGCIL. Further, the CEA and RLDC has not issued certificate in respect of the transmission assets. Therefore, there is no documentary proof for any trial operation or the transmission system being in regular service. Hence, the Review Petitioner cannot be held liable for payment of transmission charges.

(h) There is delay in commissioning of the Review Petitioner's generation project due to *force majeure* events and thus, there is no 'transmission' of electricity between the instant transmission assets of PGCIL and the present Review Petitioner's generation project.

(i) Non-consideration of the relevant submissions made by the Review Petitioner constitute an error apparent on the face of record.

7. PGCIL has filed its reply to the review petition vide affidavit dated 5.7.2017 and has also filed "Written Submissions" vide affidavit dated 13.2.2018. The submissions made by PGCIL in its reply and "Written Submissions" are similar and the gist of the submissions made are as under:-

(a) The submissions made by the Review Petitioner were considered in the impugned order and it is a reasoned and speaking order.



(b) No bills were raised on the Review Petitioner towards transmission charges for the instant assets and no adverse observations were made in the impugned order against the Review Petitioner. The Review Petitioner has failed to show any reasonable reason leading to a presumption of such a loading of transmission charges. Further, the Review Petitioner could have approached CTU for addressing its grievances arising from the communication and correspondences with CTU.

(c) The allegation that the Review Petitioner was not provided with a copy of the rejoinder filed by PGCIL is baseless as the same was also uploaded on the e-portal of the Commission. Further, no new averment was pleaded by PGCIL in its rejoinder to which the Review Petitioner alleges that it had no opportunity to rebut.

(d) The transmission assets were completed in all respects, meaningfully commissioned and there is continuous flow of power. The certificates issued by RLDC and CEA form part of record of the main petition and this aspect has already been stated in the impugned order.

(e) There is no cause of action which has arisen in favour of the Review Petitioner to approach the Commission. The Review Petitioner has not shown the actual adverse impact of the impugned order on it and the consequential liability to pay any amount or any bill being raised on it due to the operation and effect of the impugned order.



(f) The Review Petitioner's allegation that its generation project is not associated with the subject transmission assets is completely a fresh contention and hence is not permitted under law to be raised in a review petition.

(g) The Hon'ble Supreme Court's judgment in Barh-Balia case regarding COD is not applicable in the present case. In Barh-Balia case, there was the issue of protection and metering which were to be installed by NTPC (the generator) whereas in the present case the transmission assets have been completed in all respects by PGCIL including the switchgear at both ends and there is continuous power flow.

8. The Review Petitioner, in its rejoinder dated 1.9.2017, has submitted the following clarifications to the reply filed by PGCIL:-

(a) The review petition is maintainable in circumstances where settled principles of law are not followed or where the reasons for not following the law are not recorded.

(b) Grave prejudice has been caused to the Review Petitioner as the Review Petitioner has been made liable for payment of transmission charges on account of an erroneous decision of the Commission, which failed to take into consideration the material evidence and averments made by the Review Petitioner. The Review Petitioner did not get an opportunity of hearing to rebut the submissions of PGCIL especially regarding its liability to pay the transmission charges and COD of the transmission assets.



(c) The subject transmission assets of PGCIL are not related to the generation project of the Review Petitioner. Further, the non-readiness of the concerned transmission line, being the Teesta-III Kishanganj line, was already acknowledged by the Commission in order dated 22.6.2017 in Petition No. 10/SM/2017. The Review Petitioner is not liable to make payment of any transmission charges to PGCIL.

(d) Beneficiaries/generators are liable to pay the transmission charges for utilization of the transmission assets, only if there is flow of power through such element. PGCIL has not demonstrated the utilization of the instant transmission assets by the Review Petitioner's project and the transmission lines connected to present Review Petitioner's generation project cannot said to be operationalized.

(e) The Review Petitioner was not granted an opportunity of hearing and if there was such an opportunity, the Review Petitioner would have been able to show that the subject transmission assets do not have relevance to the Review Petitioner's generation project.

(f) PGCIL is statutorily obliged under Sections 38(2)(b)(iv) and 38(2)(c) of the Electricity Act, 2003 to undertake development of transmission lines in a planned and coordinated manner. However, PGCIL did not consider the updates regarding the delay in commissioning of generation project while declaring the COD of the subject assets.



(g) A conjoint reading of Sections 2(72) and 2(74) of the Electricity Act, 2003 shows that there should be conveyance or transportation of electricity from the generating station to the sub-station through the physical transmission lines and equipment. In the instant case, the generation project of the Review Petitioner has not been commissioned due to force majeure conditions and there is no transmission of electricity through the subject transmission assets from the Review Petitioner's generation project.

9. The Review Petitioner was directed to file its Written Submissions by 29.1.2018 with a copy to PGCIL. However, no submissions have been made by the Review Petitioner.

Analysis and decision

10. We have considered the submissions of the Review Petitioner and PGCIL. The Review Petitioner has filed the instant review petition on the following grounds:-

- a. The instant assets were not put into commercial operation as per the principles laid down by the Hon'ble Appellate Tribunal for Electricity (APTEL) in the Barh-Balia case. Review Petitioner's submissions regarding the COD of the instant assets were not considered and there was no finding on its submission.
- b. The generation project of the Review Petitioner is not commissioned and PGCIL has not demonstrated the utilization of the instant transmission assets by the Review Petitioner. Hence, it is not liable to pay any charges. It was wrongly held



that the Review Petitioner is liable to pay the transmission charges of the instant assets.

c. The entire identified transmission network under the BPTA has not been operationalised.

d. PGCIL is statutorily obliged under Sections 38(2)(b)(iv) and 38(2)(c) of the Electricity Act, 2003 to undertake development of transmission lines in a planned and coordinated manner. However, PGCIL did not consider the updates regarding the delay in commissioning of generation project.

e. The Review Petitioner was not given an opportunity to present its views on the rejoinder filed by PGCIL which is against the principles of natural justice.

11. The Review Petitioner has contended that a transmission system can be declared to be under commercial operation only if it has been charged successfully, after a successful trial operation and is in regular service. PGCIL has submitted that the instant transmission assets were complete in all aspects and were put into commercial operation and there is continuous flow of power. PGCIL has also submitted the certificates issued by the RLDC and CEA regarding the commercial operation of the instant assets. Power is being evacuated through the instant assets and the assets are put to use. The instant assets were charged after successful trial operation and put into regular use as per the principles laid down by the APTEL and specified in the 2014 Tariff Regulations. This aspect was considered by us in our order 30.7.2016 and a clear finding to this effect was given in the impugned order and hence there is no merit in the



Review Petitioner's contention that the instant assets were not put into commercial operation as per the principle laid down in Barh-Balia case.

12. The Review Petitioner has submitted that its generation project was not commissioned and the related Teesta-III-Kishanganj line was not commissioned. PGCIL has not demonstrated the utilization of the instant transmission assets by the present Review Petitioner. The subject transmission assets of PGCIL are not related to the generation project of the Review Petitioner. The Review Petitioner's main contention is that it is not liable to bear the transmission charges since there is no end to end connectivity of the instant transmission assets with associated transmission lines of its generation projects.

13. We have considered the submissions of the Review Petitioner. The Commission has dealt with the issue of utilization of the assets in para 8 and 9 of the impugned order. The instant assets are meant for the purpose of evacuation of power from generation projects in the region including the generation project of the Review Petitioner. Clause 2.2.2 of Annexure-4 of the Bulk Power Transmission Agreement (BPTA) dated 24.10.2010 between the Review Petitioner and PGCIL provides as under:-

"2.2.2 Transmission System to be developed by POWERGRID

33/36/39 months from the date of regulatory approval

- Establishment of 220/132kV, 3x100MVA Gas Insulated Substation at Rangpo- 36 months
- Establishment of 10x167MVA, 1 Phase, 400/220 kV Gas Insulated substation at New Melli-ICT:33 months, ICT-II: 39 months



- LILO of Teesta III-Kishanganj 400 kV D/C line (quad) at New Melli including associated bays-36 months
- Rangpo-New Melli 220 kV D/C line (with twin Moose conductor)-36 months
- LILO of Gangtok-Rangit 132 kV S/C line at Rangpo and termination of Gangtok-Rangpo/Chujachen and Melli-Rangpo/Chujachen 132 kV lines (constructed under Stage-I through LILO of Gangtok-Melli 132 kV S/C line upto Rangpo) at Rangpo substation including associated bays- 36 months.
- LILO of Teesta V-Siliguri 400 kV D/C line at New Melli including associated bays – 33 months
- Kishanganj-Patna 400 kV D/C (quad) line- 39 months

The above completion schedules are envisaged considering matching completion of associated transmission systems being implemented by the developers.

Sharing of Transmission Charges: The transmission charges are to be shared by PTC India Ltd., Lanco Energy Pvt. Ltd., DANS Energy Pvt. Ltd., Jal Power Corporation Ltd., Madhya Bharat Power Corporation Ltd., Gati Infrastructure Ltd, Gati Infrastructure Bhasmay Power Pvt. Ltd.

Note: POWERGRID would make its best efforts to advance the commissioning of above elements keeping in view the evacuation requirement as far as possible

Note: In case, in future, any other long-terms transmission customer(s) is/are granted open access through the transmission system detailed above (subject to technical feasibility), he/they would also share the applicable transmission charges.”

As regards the transmission charges, the Annexure-4 of the BPTA provides as follows:-

“ ...

- The charges for the transmission system (other than dedicated system) indicated at Annexure-3 would be borne by the generation developers in proportion to the capacity for which long term open access has been sought. The transmission charges will be corresponding to phased development of transmission system and in each time frame, charges should be shared by all the generation developer, whose generation projects are scheduled to come up in that time frame or earlier.

...”

14. It is observed that the instant transmission assets are very well within the scope agreed in the BPTA between the Review Petitioner and PGCIL. Therefore, to say that the said transmission system is not meant for evacuation of the power from the



generation project of the review petitioner merely on the ground that the generation project is yet to be commissioned is not maintainable. As per the said BPTA, the charges for the transmission system under the scope of PGCIL have to be borne by the generation developers in proportion to the capacity of the LTA sought. Further, the transmission system was envisaged to be developed in a phased manner and the charges are to be shared by all the generators who were scheduled to come up in that time frame. Accordingly, the Review Petitioner has to bear the transmission charges of the transmission system, which have been put into commercial operation and included in the PoC mechanism, in proportion to the LTA sought irrespective of whether its generation project has been commissioned or not.

15. As regards the Review Petitioner's contention that the instant transmission assets cannot be considered as ready and complete as the entire transmission network under the BPTA was not operationalised, we are of the view that the BPTA provides for phased development of the transmission assets. Further, Regulation 6(1) of the 2014 Tariff Regulations provides that tariff of a transmission system may be determined as a whole or individually of the transmission line or sub-station or communication system forming part of the transmission system based on the capital cost of the individual elements. The relevant portion of Regulation 6(1) of the 2014 Tariff Regulations is extracted below:-

"6. Tariff determination

- (1) Tariff in respect of a generating station may be determined for the whole of the generating station or stage or generating unit or block thereof, and tariff in respect of a transmission system may be determined for the whole of the transmission system or



transmission line or sub-station or communication system forming part of transmission system.”

Since certain assets of the transmission scheme were commissioned, transmission tariff for such assets have been granted. Moreover, part operation of the assets involved in a scheme is allowed under the BPTA. Therefore, we are unable to agree with the Review Petitioner that instant transmission assets cannot be considered as ready as the entire transmission network under the BPTA was not operationalised.

16. The Review Petitioner has submitted that it was not able to commission its generation project due to factors like poor geological conditions, earthquake and delay in statutory clearances and this fact was brought to the notice of PGCIL. However, PGCIL declared the COD of the instant assets without considering the updates regarding the delay in commissioning of generation project. The Review Petitioner has contended that these issues were not considered in the impugned order and they were summarily rejected without assigning any reason. We are not able to agree with the Review Petitioner’s contention. The contention of the Review Petitioner with regard to delay in the generation project was recorded. However, delay in COD of the generation project cannot be a ground for delaying the commercial operation of the transmission assets which are ready and can be put to commercial use. The COD of the instant assets was approved taking into consideration that the power started flowing through the instant assets.

17. The Review Petitioner has contended that it was not given an opportunity of hearing and to rebut the PGCIL’s rejoinder to the reply filed by the Review Petitioner in



the main petition. It is observed that a notice was issued to the Review Petitioner in the main petition and the Review Petitioner had filed reply vide affidavit dated 10.6.2016. Further, the Review Petitioner was represented by an advocate during the hearing of the main petition on 11.7.2016, who made submissions with regard to the commissioning of its generation project which have been recorded in the Record of Proceedings. The submissions made by the Review Petitioner in the main petition were considered in the impugned order dated 30.7.2016. As the Review Petitioner filed reply to the main petition and also presented its case during the hearing on 11.7.2016, we are not able to agree with the Review Petitioner's contention that it was not given sufficient opportunity to present its case in the main petition. As regards the Review Petitioner's contention that it did not get opportunity to rebut the clarifications given by PGCIL in its rejoinder, the petition was heard on 11.7.2016 and the order was issued only on 30.7.2016 and the Review Petitioner could have approached the Commission in the main petition if it felt that it was not given sufficient opportunity to present its case. In any case, the submissions made by the Review Petitioner in its reply and during the hearing were duly considered before the Commission approved the COD of the transmission assets and the transmission charges for these assets. The transmission assets met all the conditions for commercial operation as laid down by the Appellate Tribunal in Barh Balia case which has been upheld by the Hon'ble Supreme Court and therefore, the COD of the transmission assets were approved. In the present case, the generating station of the Review Petitioner was not ready and the transmission line within the scope of generation project was not ready resulting in the absence of end to



end connectivity. The transmission assets covered under Annexure 3 of the BPTA were developed for a number of generation projects including the Review Petitioner and non-readiness of one generator cannot be the reason for non-commissioning of the transmission system which otherwise meets the requirements of the regulations.

18. Accordingly, the Review Petition No.5/RP/2017 is disposed of.

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

sd/-
(A.S. Bakshi)
Member

