**CENTRAL ELECTRICITY REGULATORY COMMISSION**
**NEW DELHI**

**Petition No. 8/RP/2018**
**in**
**Petition No. 55/TT/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 : 12.6.2018**

**In the matter of:**

Petition for review and modification of the order dated 30.11.2017 in Petition No. 55/TT/2017 under section 94(1)(f) of the Electricity Act, 2003.

**And in the matter of:**

Power Grid Corporation of India Limited,
"Soudamini", Plot No. 2, Sector 29,
Gurgaon -122001. …**Petitioner**

**Vs**

1. Rajasthan Rajya Vidyut Prasaran Nigam Limited,
Vidyut Bhawan, Vidyut Marg,
Jaipur – 302005.

2. Ajmer Vidyut Vitran Nigam Limited,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur.

3. Jaipur Vidyut Vitran Nigam Limited,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur.

4. Jodhpur Vidyut Vitran Nigam Limited,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur.

5. Himachal Pradesh State Electricity Board,
Vidyut Bhawan Shimla-171004.

6. Punjab State Electricity Board,
The Mall, 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 Limited,
(Formerly Uttar Pradesh State Electricity Board)
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 Ltd.,
Power Trading & Load Dispatch Group,
Pitampura, New Delhi.

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 **.....Respondents**

**For petitioner:** Shri Sitesh Mukherjee, Advocate, PGCIL
Shri Deep Rao, Advocate, PGCIL
Shri S.S. Raju, PGCIL
Shri V.P. Rastogi, PGCIL
Shri Rakesh Prasad, PGCIL

**For respondents:** None

**ORDER**

Power Grid Corporation of India Limited (PGCIL) has filed the instant Petition No. 8/RP/2018 seeking review and modification of order dated 30.11.2017 in Petition No. 55/TT/2017.

**Background**

2. In Petition No. 55/TT/2017, PGCIL prayed for approval of transmission tariff for **Asset-I:** Combined Assets (a) One circuit of 400 kV D/C Dehradun-Bagpat line alongwith associated bays at both ends, part of second circuit of 400 kV D/C Dehradun-Bagpat Transmission Line as 400 kV S/C Roorkee-Dehradun line from Dehradun end and partly as 400 kV S/C Saharanpur-Bagpat line from Bagpat end using part of one circuit of 400 kV D/C Roorkee-Saharanpur line (under NRSS XXI) at inter-section point along with associated bays at Dehradun and Bagpat end, (b) 400/220 kV, 315 MVA ICT-I at Dehradun and associated bays with 1 no. 220 kV line bays, (c) 400/220 kV, 315 MVA ICT-II at Dehradun and associated bays with 1 no. 220 kV line bays and (d) 80 MVAR Bus reactor at Dehradun and associated bays; and **Asset-II**: 4 nos. 220 kV bays at Dehradun (hereinafter referred as “transmission assets”) for 2014-19 tariff period in

Northern Region under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (2014 Tariff Regulations). However, COD of Asset-II was disallowed and tariff was also not granted as Asset-II was not put under regular service owing to the non-commissioning of the associated downstream assets under the scope of Power Transmission Corporation of Uttarakhand Limited ("PTCUL"). The Review Petitioner was directed to file a fresh petition matching with the associated downstream transmission system. The Review Petitioner's prayer regarding the annuity payment to be made by the Review Petitioner to the Forest Department for 35 years as per the Relief and Rehabilitation Policy of the Government of Uttar Pradesh was not considered in the impugned order.

3. Accordingly, the Review Petitioner has filed the instant review petition seeking review and modification of order dated 30.11.2017 in Petition No.55/TT/2017 on the following two grounds (a) approve the COD and tariff for Asset-II and (b) allow annuity paid by the Review Petitioner to the Forest Department apart from the tariff.

4. On the issue of refusal to sanction COD for Asset-II, the Review Petitioner has made the following submissions:-

a. The Commission's observations are contrary to the intent of proviso (ii) to Regulation 4(3) of the 2014 Tariff Regulations.
b. The Commission in Petition No. 155/MP/2016 has held that in cases where a transmission licensee is unable to declare the COD of any transmission asset due to non-availability of an inter-connecting upstream/downstream network, such transmission licensee should approach the Commission under

Regulation 3(12)(c) or 4(3) of the 2009-14 or 2014-19 Tariff Regulations respectively, as the case may be, alongwith the RLDC charging certificate and CMD certificate of test-charging for approval of COD. In such cases, the transmission charges for the period of delay in commencing regular service shall be borne by the party who delays the implementation of the connecting upstream/downstream network.

c. The Review Petitioner had already tendered the requisite documents in support of commercial operation RLDC charging certificate on no-load for Asset-II.

d. The Commission in its order dated 5.8.2015 in Petition No. 11/SM/2014 has held that in view of the mismatch between commissioning of transmission system by an ISTS licensee and upstream/downstream system of STU, the ISTS transmission licensees and STUs should also sign such Implementation Agreement for development of ISTS and downstream system in coordinated way to avoid any mismatch and granted PGCIL liberty to approach the Commission invoking Regulation 3(12)(c) of the 2009 Tariff Regulations or proviso (ii) of Regulation 4(3) of 2014 Tariff Regulations, as the case may be, for COD of the completed assets and held that the concerned STU, who had requested for provision of downstream line bays shall bear the transmission charges till completion of downstream system.

e. Fourth Amendment to Regulation 4 (vi) of the Commission's (Indian Electricity Grid Code) Regulations, 2016 regarding declaration of commercial operation date, inter alia, postulates that the transmission licensee shall submit a certificate from the CMD/CEO/MD of the Company that the transmission line, sub-station and communication system confirm to the relevant Grid Standard and Grid Code, and are capable of operation to their full capacity. Accordingly, the Review Petitioner submitted its CMD certificate for no load charging of Asset-II vide affidavit dated 2.11.2017 and also made all possible efforts to liaison with PTCUL for timely commissioning of the downstream assets in accordance with the provisions of Section 38(2)(b)(i) of the Electricity Act, 2003. In November, 2013 the Review Petitioner informed PTCUL about the commissioning timeline for 400/220 kV sub-station alongwith associated bays including letters dated 5.7.2014, 22.1.2015, 16.1.2016, 20.4.2016, 25.4.2016, 1.3.2017, 20.3.2017, 3.5.2017, 19.6.2017 and 22.12.2017. However, PTCUL vide its letter dated 30.6.2017 in response to the Review Petitioner's letter dated 19.6.2017 nowhere mentioned about the timeline for commissioning of its inter-connecting downstream transmission elements but it merely mentioned about the schematic arrangement for the utilization of Asset II. PTCUL failed in discharging its statutory responsibility under Section 39(2)(b)(i) and chose to remain silent on the expected date of commercial operation for their connecting downstream network. Hence, the Review Petitioner was constrained to declare the commercial operation of the said bays.

4. We have considered the submissions of the Review Petitioner on the issue of disallowance of COD for Asset-II in terms of proviso (ii) to Regulation 4 (3) of the 2014 Tariff Regulations in the impugned order. The Review Petitioner has submitted that the

Commission in orders dated 4.1.2017 and 5.8.2015 in Petition Nos. 155/MP/2016 and 11/SM2014 held that in case a transmission licensee is unable to declare the COD of any transmission asset due to non-availability of an inter-connecting upstream/downstream network, such transmission licensee should approach the Commission under Regulation 3(12)(c) or 4(3) of the 2009-14 or 2014-19 Tariff Regulations, as the case may be, alongwith the RLDC charging certificate and CMD certificate regarding test-charging and readiness of the transmission asset for approval of COD. The basic contention of the Review Petitioner is that the Commission ignored the proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations and the findings of the Commission in orders dated 4.1.2017 and 5.8.2015 while considering the approval of COD of Asset-II. The Review Petitioner has submitted that it was not able to put Asset-II into commercial operation as the downstream assets under the scope of PTCUL were not ready and hence approval of COD was sought under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations. As pointed out by the Review Petitioner, the Commission in orders dated 4.1.2017 and 5.8.2015 observed that a transmission licensee can approach the Commission for approval of COD of the transmission assets under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations if the licensee is not able to put the assets within its scope into commercial operation for reasons not attributable to the licensee alongwith the RLDC certificate and CMD certificate. However, taking into consideration the findings of the Hon'ble Appellate Tribunal for Electricity (APTEL) in Barh-Balia case, which was upheld by the Hon'ble Supreme Court, wherein it was held that COD of a transmission asset can be declared only on charging after successful trial operation and putting into regular use, the Commission has consistently held that COD can be declared only when the transmission assets are put into regular use.

5. The Commission in order dated 16.1.2017 in Petition No.384/TT/2014 in a similar situation, approved the COD of the Ckt.-I and II of Parbati-Koldam line only when they were put to use and made NTPC liable for the IDC and IEDC of Ckt-II of Parbati-Koldam line from its deemed COD to the date when it was put to use as the assets under the scope of NTPC were not put into commercial operation. The relevant portion of the order dated 16.1.2017 is extracted hereunder:-

> "35. It is observed that Ckt.-I of Parbati-Koldam line was put into service on 10.10.2014, therefore we allow the COD of Asset-I as 10.10.2014. However, we are not inclined to approve the petitioner's prayer for approval of COD of Ckt-II of Parbati-Koldam line as 4.10.2014 under Regulation 4(3) of the 2014 Tariff Regulations, as Ckt-II of Koldam-Ludhiana line though was idle charged on 4.10.2014 it was not put into service. The Ckt.-II was put into use only on 21.3.2015 on account of the delay in commissioning of the 400 kV bays in Koldam switchyard of NTPC.
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> 36. Accordingly, the COD of the Ckt.-I and Ckt.-II of Parbati-Koldam line shall be reckoned as 10.10.2014 and 21.3.2015 respectively. However, IDC and IEDC for Ckt-II of Parbati-Koldam line from 4.10.2014 to the date of usage of the Parbati-Koldam Line i.e. 20.3.2015 would be borne by NTPC. The IDC and IEDC borne by NTPC shall not be capitalized in its book of accounts for the purpose of claiming tariff for its generation from Koldam HEP NTPC as well as for transmission services by the petitioner."

In a similar case, the Commission in order dated 29.12.2016 in Petition No.156/TT/2016 observed that it was not inclined to approve the COD of the ckt.-I and ckt.-II of Parbati-III-Koldam line as 30.6.2015 under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations as both the circuits were not put into use . The COD of both Ckt.-I and Ckt.-II of Parbati-III Koldam line was reckoned as 3.11.2015 when they were put into use and NHPC was made liable for the IDC and IEDC from 30.6.2015 to 2.11.2015 and from 3.11.2015, the transmission charges are to be serviced in accordance with 2010 Sharing Regulations. The relevant portion of the order dated 29.12.2016 is reproduced below:-

> “23. In the light of the above statutory provisions, we have considered the submissions of the petitioner and NHPC and the documents available on record. It is observed that the petitioner was ready with the circuit-I and circuit-II of Parbati-III-Koldam line for charging after receiving the „Approval for Energization‟ certificate from CEA under Regulation 43 of CEA (Measures relating to safety and Electric Supply) Regulations, 2010 on 30.6.2015. The upstream 400 kV bays for the Parbati-III-Koldam line were within the scope of NHPC and were required to be matched with the commissioning of Parbati-III Koldam line for regular service of the transmission line. These upstream 400 kV bays for the Parbati-III-Koldam line at Parbati-II pot head yard of NHPC was not ready on 30.6.2015, but ckt.-I and ckt.-II of Parbati-III-Koldam line were commissioned on 30.6.2015. However, actual power flow started on Parbati-III Koldam line on 3.11.2015 and Parbati-III-Koldam line is being put to use only with effect from 3.11.2015. Since Parbati-III-Koldam line did not fulfill the condition of successful trial operation on 30.6.2015, the said line could not be said to be ready for declaration of commercial operation. Accordingly, we are not inclined to approve the petitioner’s prayer for approval of COD of the ckt.-I and ckt.-II of Parbati-III-Koldam line as 30.6.2015 under Regulation 4(3)(ii) of the 2014 Tariff Regulations. The COD of both Ckt.-I and Ckt.-II of Parbati-III Koldam line shall be reckoned as 3.11.2015.
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> 24. It is observed that Ckt.-I and Ckt.-II of Parbati-III-Koldam line were originally envisaged to be commissioned with the 400 kV bays in Parbati-II switchyard of NHPC. On account of delay in commissioning of 400 kV bays in Parbati-II switchyard of NHPC, the Ckt.-I and Ckt.-II of Parbati-III-Koldam line were put into use only on 3.11.2015 through an alternate arrangement. Since the delay is attributable to the non-commissioning of 400 kV bays by NHPC, we are of the view that the IDC and IEDC from 30.6.2015 for instant assets till 2.11.2015 shall be borne by NHPC. With effect from 3.11.2015, the transmission charges for the instant assets shall be serviced in accordance with Sharing Regulations. The IDC and IEDC borne by NHPC shall not be capitalized by NHPC in its book of accounts for the purpose of claiming tariff for its generation from Parbati HEPs as well as for transmission services by the petitioner.”

Similarly, the Commission in order dated 1.9.2017 in Petition No.209/TT/2017 held that the bays under the scope of PGCIL at Muzaffarpur Sub-station were ready in all aspects by 31.8.2016 but were not put into use because of the non-commissioning of the associated transmission line by DMTCL. Accordingly, the Commission held that DMTCL will be liable for the payment of IDC and IEDC for the period from 31.8.2016 to

21.4.2017. Further, in order dated 19.9.2017 in Petition No.233/TT/2016 the bays under the scope of PGCIL were not put into use because the downstream assets under the scope of BSPTCL were not ready and hence it was held that the IDC and IEDC for the two bays will be borne by BSPTCL from the deemed COD to the date when they were actually put into use. We are of the constant view that if the assets of a transmission service provider are not put to use due to delay in COD of the upstream or downstream assets, the IDC and IEDC for the period of delay has to be borne by the party executing the upstream or downstream assets. Accordingly, the Commission in orders dated 22.6.2015 and 30.6.2015 in Petition Nos. 42/TT/2013 and 99/TT/2013 respectively postponed the COD of the transmission assets of the PGCIL as the downstream assets under the scope of the Sterlite (Transmission Service Provider under TBCB) were not ready on the date of COD claimed by the PGCIL. PGCIL preferred Appeals against the aforesaid orders of the Commission before the Hon'ble Appellate Tribunal in Appeal Nos. 198 of 2018 and 6 of 2016 wherein the Hon'ble Appellate Tribunal vide its judgment dated 18.1.2018 concluded that some parts of the transmission system viz. bays and line reactors cannot be considered as commissioned and claimed to be put in commercial operation without commissioning of the associated transmission line(s). The completeness/intended use of the transmission system should be viewed in its entirety. The relevant portion of the Hon'ble Appellate Tribunal's judgement dated 18.1.2018 is as under:-

> "In the light of the above, it may be concluded that some parts of the transmission system viz. bays and line reactors cannot be considered as commissioned and claimed to be put in commercial operation without commissioning of the associated transmission line(s). The completeness / intended use of the transmission system should be viewed in its entirety.

<u>ORDER</u>

> We are of the considered opinion that the issues raised in both the appeals are devoid of merit. The impugned orders dated 22.06.2015 & 30.06.2015 passed by the Central Electricity Regulatory Commission are hereby confirmed. Both the appeals being Appeal Nos. 198 of 2015 and 06 of 2016 are dismissed. No order as to costs."

6. In the instant case, the Asset-II could not put into use as the downstream assets under the scope of PTCUL were not ready. Hence COD of Asset II was not approved and the Review Petitioner was directed to file a fresh petition matching with the commissioning of the downstream assets of PTCUL. The relevant portion of the impugned order is extracted hereunder:-

> "23. It is observed that Asset-II is not in regular service due to non-availability of associated downstream transmission system under the scope of PTCUL and therefore, the COD of Asset-II is not considered in the instant order. The petitioner is directed to file fresh petition matching with the associated downstream transmission system"

7. Therefore, the Commission has made a conscious decision while disallowing the deemed CoD of Asset II. The main plank of the arguments of the Review Petitioner is that the interpretation of the proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations in the impugned order is not correct and it should be interpreted in a different manner. In our view, this falls within the scope of appeal. It has been held by the Hon'ble Supreme Court in a catena of judgements that review cannot be treated as an appeal in disguise. We are of the view that there is no error apparent in the order on account of not allowing CoD of the Asset II and accordingly, review on this account is rejected.

8. On the issue of disallowance of annuity payment to land owners, the Review Petitioner has submitted that the Forest Authorities issued demand notices dated 1.4.2014, 12.1.2015 and 27.6.2016 requiring the Review Petitioner to pay an annual

lease rent of ₹88,92,456/- to the State Forest Authorities in respect of the forest land through which the 400 kV D/C Dehradun-Bagpat line has passed. The Review Petitioner has submitted that the annual rent paid towards annuity during the construction period and upto COD has been booked in the capital cost and the balance annuity for the remaining 32 years was not booked in the capital cost and as such the Review Petitioner is entitled to recover the same from the beneficiaries in the annual transmission charges. The Review Petitioner has submitted that the annual lease rent of ₹88,92,456/- plus service tax as per the prevailing rate for the respective years was paid to the Forest Department and accordingly the Review Petitioner, vide affidavit dated 8.5.2017 requested the Commission to allow the same in addition to the transmission tariff claimed. However, the Commission did not return any finding in its order dated 24.3.2015 despite specific prayer made for the same. The Review Petitioner has submitted that the Commission in a similar case in order dated 16.7.2007 in Review Petition No.73/2007 allowed annuity payment for Dhauliganga Transmission System.

9. We have considered the above submissions of the Review Petitioner on the issue of annuity payment and have also scrutinized the documents on record. We find that the Review Petitioner vide affidavit dated 8.5.2017 in Petition No.55/TT/2018 submitted that an additional amount of annual lease rent of ₹88,92,456/- plus service tax as per the prevailing rate has been paid to the Forest Department for three years and the same lease rent has to be paid for another 32 years. Relevant documentary evidence to this effect was also filed on record by the Review Petitioner but the same could not be considered inadvertently in the impugned order. Since we have not approved the CoD and the annual transmission charges, the Review Petitioner is

directed to raise the issue of annuity at the time of filing of the tariff petition for Asset II matching with the COD of the PTCUL system.

10. The Review Petition is disposed of in terms of the above.

| sd/- | sd/- | sd/- | sd/- |
|---|---|---|---|
| **(Dr. M.K. Iyer)** | **(A.S. Bakshi)** | **(A.K. Singhal)** | **(P.K. Pujari)** |
| **Member** | **Member** | **Member** | **Chairperson** |