

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 20/RP/2018 along with I.A. Nos. 46/IA/2019, 48/IA/2019 and
49/IA/2019 and Review Petition No.3/RP/2019**

Coram:

**Shri P.K. Pujari, Chairperson
Dr. M. K. Iyer, Member**

Date of order: 31.07.2019

In the matter of:

Petition for review and modification of the order dated 22.2.2018 passed in Petition No. 13/TT/2017 under section 94(1)(f) of the Electricity Act, 2003.

And in the matter of:

Power Grid Corporation of India Limited,
'SAUDAMINI', Plot No-2,
Sector-29, Gurgaon – 122001 (Haryana).

....Review Petitioner

Vs

1. Rajasthan Rajya Vidyut Prasaran Nigam Limited,
Vidyut Bhawan, Vidyut Marg,
Jaipur - 302 005.
2. Ajmer Vidyut Vitran Nigam Ltd.,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur.
3. Jaipur Vidyut Vitran Nigam Ltd.,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur.
4. Jodhpur Vidyut Vitran Nigam Ltd.,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur.
5. Himachal Pradesh State Electricity Board,
Vidyut Bhawan, Kumar House Complex Building II,
Shimla-171 004.
6. Punjab State Electricity Board,
Thermal Shed Tia,
Near 22 Phatak, Patiala-147001.



7. Haryana Power Purchase Centre,
Shakti Bhawan, Sector-6,
Panchkula (Haryana) 134109.
8. Power Development Department,
Government of Jammu & Kashmir,
Mini Secretariat, Jammu,
9. Uttar Pradesh Power Corporation Ltd.,
(Formerly Uttar Pradesh State Electricity Board),
Shakti Bhawan, 14, Ashok Marg,
Lucknow - 226001.
10. Delhi Transco Ltd.,
Shakti Sadan, Kotla Road,
New Delhi-110 002.
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,
Cennet Building, Adjacent to 66/11 kV Pitampura-3,
Grid Building, Near PP Jewellers,
Pitampura, New Delhi – 110034.
14. Chandigarh Administration,
Sector -9D, 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.
18. Madhya Pradesh Power Management Company Ltd.,
Shakti Bhawan, Rampur,
Jabalpur - 482 008.



19. Maharashtra State Electricity Distribution Co. Ltd.,
Prakashgad, 4thFloor,
Andheri (East), Mumbai - 400 052.
20. Gujarat Urja Vikas Nigam Ltd.,
Sardar Patel Vidyut Bhawan,
Race Course Road, Vadodara-390007.
21. Electricity Department,
Government of Goa,
Vidyut Bhawan, Panaji,
Near Mandvi Hotel, Goa-403001.
22. Electricity Department,
Administration of Daman & Diu,
Daman - 396 210,
23. Electricity Department,
Administration of Dadra Nagar Haveli,
U.T, Silvassa - 396230.
24. Chhattisgarh State Electricity Board,
P.O. Sunder Nagar, Dangania, Raipur,
Chhatisgaarh-492013.
25. Madhya Pradesh Audyogik Kendra,
Vikas Nigam (Indore) Ltd.,
3/54, Press Complex, Agra-Bombay Road,
Indore-452008.
26. Korba STPS, NTPC,
NTPC Ltd, Western Region Head,
Quarter-I, 2nd Floor,
Samruddhi Venture Park, Marol, Andheri East,
Mumbai, 400093, Maharashtra.
27. RKM Powergen Pvt. Ltd.,
No. 14, Dr. Giriappa Road,
T. Nagar, Chennai-600017.
28. Jindal Power Ltd.,
2nd Floor, DCM Building, Plot No. 94,
Sector-32, Gurgaon.
29. Athena Chattisgarh Power Ltd.,
#7-1-24/1/Rt, G-1, B Block
1st Floor, "Rexona Towers" , Greenlands,
Begumpet, Hyderabad-500016.



30. SKS Power Generation Ltd.,
2nd Floor, DCM Building, Plot No. 94,
Sector-32, Gurgaon.
31. Korba West Power Co. Ltd.,
6th & 7th Floor, Vatika City Point,
M.G. Road Gurgaon-122002.
32. KSK Mahanadi Power Co. Ltd.,
8-2/293/82/A/431/A, Road No.22,
Jubilee Hills, Hyderabad-500033.
33. D.B. Power Ltd.,
Opp Dena Bank, C-31, G-Block,
3rd Floor, Naman Corporate Link,
Bandar – Kurla Complex, Bandra (East)
Mumbai-400051, Maharashtra.
34. Lanco Amarkantak Power Pvt. Ltd.,
Plot No. 397, Udyog Vihar, Pahse-III,
Gurgaon-122016.
35. Vandana Vidyut Ltd.,
Vandana Bhawan, M. G. Road,
Raipur–Chattisgarh.
36. Haryana Vidyut Prasaran Nigam Limited (HVPNL)
Shakti Bhawan, Sector-6, Panchkula-134109
37. Dhariwal Infrastructure Limited,
C-6, Tadali Growth Centre, M.I.D.C.T.,
District Chandrapur, Maharashtra,
Chandrapur-442406, Maharashtra
38. Maruti Clean Coal & Power Limited,
7th Floor, Ambience Office Block,
Ambience Mall, NH-8, Gurgaon-122001.
39. TRN Energy Private Limited,
7th Floor, Ambience Office Block,
Ambience Mall, NH-8,
Gurgaon-122002, Haryana.
40. MB Power (Madhya Pradesh) Limited,
MBPMPL, 239, Okhla Industrial Area,
Phase-III, New Delhi-1100020.
41. GMR Chhattisgarh Energy Limited,
Airport Building 302, 1st Floor,
New Shakti Bhawan, New Udaan Bhawan Complex,



Review Petition No. 3/RP/2019 in Petition No. 205/TT/2017

In the matter of:

Petition for review and modification of the order dated 6.11.2018 in Petition No. 205/TT/2017.

And in the matter of:

Powergrid Corporation of India Limited,
Saudamani, Plot No 2. Sector 29,
Gurgaon 122001,
Haryana.

.... Review Petitioner

Vs

1. Rajasthan Rajya Vidyut Prasaran Nigam Limited,
Vidyut Bhawan, Vidyut Marg,
Jaipur – 302005 (Rajasthan)
2. Ajmer Vidyut Vitran Nigam Ltd.,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur (Rajasthan)
3. Jaipur Vidyut Vitran Nigam Ltd.,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur (Rajasthan)
4. Jodhpur Vidyut Vitran Nigam Ltd.,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur (Rajasthan)
5. Himachal Pradesh State Electricity Board,
Vidyut Bhawan, Kumar House Complex Building II,
Shimla-171004 (Himachal Pradesh)
6. Punjab State Electricity Board,
Thermal Shed Tia,
Near 22 Phatak,
Patiala-147001 (Punjab)
7. Haryana Power Purchase Centre,
Shakti Bhawan, Sector-6,
Panchkula- 134109 (Haryana)



8. Power Development Department,
Government of Jammu & Kashmir,
Mini Secretariat, Jammu
9. Uttar Pradesh Power Corporation Ltd.,
(Formerly Uttar Pradesh State Electricity Board),
Shakti Bhawan, 14, Ashok Marg,
Lucknow - 226001 (Uttar Pradesh)
10. Delhi Transco Ltd.,
Shakti Sadan, Kotla Road,
New Delhi-110002.
11. BSES Yamuna Power Ltd.,
B-Block, Shakti Kiran, Bldg. (Near Karkadooma Courte),
Karkadooma 2nd Floor,
New Delhi-110092
12. BSES Rajdhani Power Ltd,
BSES Bhawan, Nehru Place,
New Delhi-110019
13. Tata Power Delhi Distribution Limited (TPDDL),
NDPL house, Hudson Lines Kingsway Camp
Delhi – 110009
14. Chandigarh Administration,
Sector -9, Chandigarh
15. Uttarakhand Power Corporation Ltd.,
Urja Bhawan,
Kanwali Road, Dehradun (Uttarakhand)
16. North Central Railway,
Allahabad (Uttar Pradesh)
17. New Delhi Municipal Council,
Palika Kendra, Sansad Marg,
New Delhi-110002
18. Madhya Pradesh Power Management Company Ltd.,
Shakti Bhawan, Rampur,
Jabalpur - 482008 (Madhya Pradesh)
19. Maharashtra State Electricity Distribution Co. Ltd.,
Prakashgad, 4th Floor,
Andheri (East), Mumbai – 400052 (Maharashtra)
20. Gujarat Urja Vikas Nigam Ltd.,
Sardar Patel Vidyut Bhawan,
Race Course Road, Vadodara – 390007 (Gujarat)



21. Electricity Department,
Government of Goa,
Vidyut Bhawan, Panaji,
Near Mandvi Hotel, Goa - 403 001.
22. Electricity Department,
Administration of Daman & Diu,
Daman – 396210.
23. Electricity Department,
Administration of Dadra Nagar Haveli,
U.T., Silvassa – 396230.
24. Chhattisgarh State Electricity Board,
P.O. Sunder Nagar, Dangania, Raipur,
Chhatisgaarh-492013.
25. Madhyapradesh Audyogik Kendra,
Vikas Nigam (Indore) Ltd.,
3/54, Press Complex, Agra-Bombay Road,
Indore-452 008 (Madhya Pradesh).
26. Korba STPS, NTPC,
NTPC Ltd, Western Region Head,
Quarter-I, 2ndFloor,
Samruddhi Venture Park, Marol, Andheri East,
Mumbai-400093 (Maharashtra)
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30. SKS Power Generation Ltd.,
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Chhattisgarh -49661.
31. Korba West Power Co. Ltd.,
6th& 7th Floor, Vatika City Point,
M.G. Road Gurgaon-122002 (Haryana)



32. KSK Mahanadi Power Co. Ltd.,
8-2/293/82/A/431/A, Road No.22,
Jubilee Hills, Hyderabad-500033 (Andhra Pradesh)
33. D.B. Power Ltd.,
Opp Dena Bank, C-31, G-Block,
3rd Floor, Naman Corporate Link,
Bandar – Kurla Complex, Bandra (East),
Mumbai-400051 (Maharashtra)
34. Lanco Amarkantak Power Pvt. Ltd.,
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35. Vandana Vidyut Ltd.,
Vandana Bhawan, M. G. Road,
Raipur (Chhattisgarh)-492001.
36. TRN Energy Private Ltd
7th Floor, Ambience office Block, Ambience Mall, NH-8,
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37. MB Power (Madhya Pradesh) Ltd.
MBPMPL, 239, Okhla Industrial Area,
Phase-III, New Delhi-110020.
38. GMR Chhattisgarh Energy Limited,
Airport Building 302, 1st Floor, New Shakti Bhawan,
New Udaan Bhawan Complex, Near Terminal 3, IGI Airport,
New Delhi-110037.

....Respondents

For Review Petitioner:

Ms. Suparna Srivastava, Advocate, PGCIL
Shri V. Srinivas, PGCIL
Shri S. S. Raju, PGCIL
Ms. Jyoti Prasad, PGCIL

For Respondents:

Shri M. G. Ramachandran, Sr. Advocate, Dhariwal
Shri Sumeet Sharma, Advocate, Dhariwal
Shri Shreshth Sharma, Advocate, MB (MP) Ltd.
Ms. Molshree, Advocate, MB (MP) Ltd.
Shri Basava Prabhu S. Patil, Advocate, MB (MP) Ltd.
Shri Geet Ahuja, Advocate, MB (MP) Ltd.
Shri Buddy Ranganadhan, Advocate, TPDDL
Shri Sandeep Kumar, Advocate, TPDDL
Ms. Poorva Saigal, Advocate, RRVPNL
Ms. Tanya Sareen, Advocate, RRVPNL
Shri Ashwin Ramathan, Advocate, KSKMPL
Ms.Swapna Seshadri, Advocate, KSKMPL



Shri Anmol Nair, Advocate, KSKMPL
Shri Matrugupta Mishra, Advocate, MCCPL
Shri Shourya Malhotra, Advocate, MCCPL
Shri Samyak Mishra, Advocate MCCPL
Shri R.B. Sharma, Advocate, BRPL and BYPL
Shri Mohit Mudgal, Advocate, BRPL and BYPL
Ms. Shefali Sobti, TPDDL
Shri Sekhar Saklani, BYPL
Shri Sameer Singh, BYPL
Shri Manish Garg, CA, UPPCL
Shri Ashish Gupta, MB (MP) Ltd.

ORDER

The instant review petitions have been filed by Power Grid Corporation of India Limited (hereinafter referred to as the Review Petitioner), seeking review and modification of the orders dated 22.2.2018 and 6.11.2018 passed in Petition Nos. 13/TT/2017 and 205/TT/2017 respectively under Section 94 of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

Interlocutory Application Nos. 46/IA/2019

2. TRN Energy Limited (hereinafter referred to as "TRN") has filed Interlocutory Application No. 46/IA/2019 for its impleadment in Review Petition No. 20/RP/2018. TRN is a generating company and CTU operationalized 150 MW LTA for transfer of power from generating station of TRN to UP Discoms w.e.f. 31.10.2016. TRN filed an application for grant of LTA for 240 MW on 27.8.2015 to UP Discoms. TRN has submitted that its POC charges bill increased exorbitantly from ₹11.65 crore in April 2018 to ₹22.29 crore in November 2018 and it raised the issue of increased bill with PGCIL but the same remained unresolved. TRN has submitted that PGCIL has raised excess bill of ₹78 crore and has invoked the Central Electricity Regulatory Commission (Regulation of Power Supply) Regulations, 2010 for curtailment of



power supply through letter dated 7.1.2019 on account of non-payment of transmission charges. TRN has prayed that excess charges billed to it by PGCIL be refunded to it alongwith interest.

Interlocutory Application No. 48/IA/2019

3. MB Power (Madhya Pradesh) Limited (hereinafter referred to as “MB Power”) has filed Interlocutory Application No. 48/IA/2019 for impleadment in Review Petition No. 20/RP/2018 being aggrieved by the Commission’s order dated 22.2.2018 in Petition No. 13/TT/2017. MB Power, a generating company, is mainly aggrieved with the Commission’s finding that the sharing of the transmission charges for the HVDC line shall be in accordance with Regulation 11(4)(3)(iii) of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission System Charges and Losses) Regulations (hereinafter referred to as the “2010 Sharing Regulations”). MB Power has submitted that restricting the sharing of transmission charges of the HVDC transmission system to only 13 DICs who had requested for evacuation of power from their respective generating station to Northern Region is erroneous and it should be shared by all the beneficiaries in terms of Regulation 11(4)(3)(i) of the 2010 Sharing Regulations.

Interlocutory Application No. 49/IA/2019

4. Maruti Clean Coal & Power Limited (for short, “Maruti Power”), a generating Company which owns and operates 300 MW (1x300 MW) coal based thermal power project located at Korba, in Chhattisgarh, has filed the present Interlocutory Application No. 49/IA/2019 for impleadment as a respondent in Review Petition No. 20/RP/2018 in Petition No. 13/TT/2017.



5. Taking into consideration the submissions of TRN, MB Power and Maruti Power, the Commission allowed their prayer for impleadment as Respondents and directed the Review Petitioner to serve a copy of the Review Petitions on TRN, MB Power and Maruti Power and directed them to make their submissions. The submissions made by them are considered later in this order.

Background

6. The Review Petitioner had filed a Petition No. 13/TT/2017 for determination of transmission tariff of Asset-1: Pole-I of \pm 800 kV, 3000 MW Champa Pooling Station and Kurukshetra HVDC Terminals along with \pm 800 kV Champa Pooling Station – Kurukshetra HVDC transmission line, Asset-2: 2 Nos. 400/220 kV, 500 MVA ICTs along with associated bays at 400/220 kV GIS Sub-station at Kurukshetra and Asset-3: 8 Nos. 220 kV line bays at 400/220 kV GIS Sub-station at Kurukshetra under the “Western Region-Northern Region HVDC inter-connector for IPP Projects in Chhattisgarh” under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as “the 2014 Tariff Regulations”).

7. The Commission vide order dated 11.4.2017 allowed AFC (Annual Fixed Cost) under Regulation 7(7) of the 2014 Tariff Regulations for the assets covered in Petition No. 13/TT/2017 for inclusion in the PoC calculations and held that the transmission charges shall be shared by the DICs in the NR as provided under Regulation 11(4)(3)(i) of the 2010 Sharing Regulations.

8. The Commission disposed of Petition No. 13/TT/2017 vide order dated 22.2.2018 wherein it was observed that the Asset-2 was charged under no-load



condition and was being utilised for drawing auxiliary supply. Further, the COD of Asset-2 was not approved as almost entire capacity of the transformer remained unutilized and that it was not serving the intended purpose without the COD of associated downstream system under the scope of HVPNL. The Commission also did not approve the COD of Asset-3 as it was not put to use as the downstream assets under the scope of HVPNL were not ready. Accordingly, tariff for Assets-2 and 3 was not allowed in order dated 22.2.2018 and tariff only for Asset-1 was allowed. Further, the Commission observed that the transmission system was developed based on the request of 13 generating companies for the purpose of evacuation of the power from the IPP generation projects and deviating from the order dated 11.4.2017 (wherein AFC was granted on provisional basis under Regulation 7(7) of the 2014 Tariff Regulations), held that the transmission charges of Asset-1 will be shared in accordance with the Regulation 11(4)(3)(iii) of the 2010 Sharing Regulations.

9. The Review Petitioner also filed a Petition No. 205/TT/2017 seeking approval of transmission tariff of Pole-II of \pm 800 kV, 3000 MW Champa Pooling Station and Kurukshetra HVDC Terminals along with associated bays under the 2014 Tariff Regulations. The Commission while approving the tariff vide order dated 6.11.2018 for the said asset, adopted the same methodology of sharing of transmission charges as decided in order dated 22.2.2018 in Petition No. 13/TT/2017, and held that transmission charges of the assets covered in the petition shall be shared in accordance with the Regulation 11(4)(3)(iii) of the 2010 Sharing Regulations.



10. Aggrieved by the above decisions in orders dated 22.2.2018 and 6.11.2018, the Review Petitioner has sought the review and modification of these two orders on the following grounds:-

a. Non-approval of date of commercial operation of Assets 2 and 3 in Petition No.13/TT/2017 and tariff for the said assets.

b. Sharing of transmission charges for Champa-Kurukshetra HVDC line should be in accordance with Regulation 11(4)(3)(i) and not under Regulation 11(4)(3)(iii) of the 2010 Sharing Regulations.

11. The assets covered in Petition Nos. 13/TT/2017 and 205/TT/2017 are related and are covered under the same Investment Approval. Moreover, sharing of the transmission charges is the main issue in both the Review Petitions and hence they are taken up together.

12. The submissions made by the Review petitioner in support of the Review Petitions are as follows:-

(a) Assets-1, 2 and 3 in Petition No.13/TT/2017 are at the Kurukshetra end of Champa-Kurukshetra HVDC transmission line and the associated downstream system of Asset-3 is not within the scope of the Review Petitioner and is under the scope of HPVNL. Assets-2 and 3 were successfully charged and put into commercial operation by the Review Petitioner on 25.3.2017. Asset-2 was being used for drawing auxiliary supply for the project and Asset-3 was ready for regular service after successful charging from 25.3.2017 but was prevented from providing regular service due to delay in COD of 220 kV network of HVPNL.



- (b) Finding of the Commission that the Review Petitioner is not empowered to declare COD and recover tariff of Assets 2 and 3 until such time as the downstream infrastructure is ready, is erroneous and overlooks the provision of 2nd proviso to Regulation 4(3) of the 2014 Tariff Regulations, which clearly provides that the COD of a transmission system or an element thereof may be declared, if the said system has been prevented from being put to regular service for reasons not attributable to the transmission licensee.
- (c) The Review Petitioner has filed certificate of its CMD for Assets-2 and 3 in terms of Regulation 4(vi) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2016 (hereinafter referred to as “Grid Code”) to reiterate that the said Assets were capable of operation to their full capacity and have only been prevented from being put into regular use for reasons beyond the control of the Review Petitioner.
- (d) Decisions of the Commission directing recovery of HVDC charges under Regulation 11(4)(3)(iii) instead of Regulation 11(4)(3)(i) of the 2010 Sharing Regulations is based on the premise that the instant transmission assets are a part of HCPTC-V which is a scheme associated with IPPs and not identified for beneficiaries of a specific region. However, the Champa-Kurukshetra HVDC System was planned to provide import of power to NR from various generation projects proposed in WR along with parallel AC systems as a part of meshed network and not designed just for transfer of power from the IPPs in WR. A total of 1825 MW of LTA has been operationalized upon COD of Pole I of Champa-Kurushetra HVDC bi-pole line of 1500 MW which has resulted in the Total Transfer Capability (TTC) enhancement between WR and NR to the



tune of 2000 MW. The enhancement is more than the HVDC line capacity (1500 MW) as the TTC between two regions is the capability of all inter-regional links (AC and DC) as a whole. As such, no separate TTC on Champa-Kurukshetra HVDC has been declared explicitly and the HVDC power has been factored while working out WR-NR inter-regional TTC/ATC. Therefore, with the COD of Asset-1, the reliability of inter-area power transfer has been enhanced.

(e) The COD of Champa-Kurukshetra HVDC bi-pole line has led to stabilization of other existing WR-NR corridors such as Agra-Gwalior and Gwalior-Jaipur 765 kV lines and hence more power is being evacuated through the existing system of Champa-Kurukshetra HVDC bi-pole line including Agra-Gwalior and Gwalior-Jaipur 765 kV AC links. Further, 1825 MW LTA of various IPP generation projects in WR which are operationalized on COD of the 1500 MW HVDC link cannot be clearly segregated (IPP wise) as flowing on HVDC system or HVAC system. Moreover, in a meshed network, it is impossible to allocate dedicated transmission lines for generation projects. In the instant case, the HVDC corridor improves the reliability of power supply to all the beneficiaries in NR as a whole and does not just cater to the IPPs for which HCPTC-V system was planned.

(f) Further, toggling of Champa-Kurukshetra HVDC bi-pole is to be done by NLDC under real operation based upon the system condition (normally of AC lines angle variance etc.) including load generation scenarios in WR and NR.

(g) During the implementation of the instant transmission scheme, some of the original grantees of LTA under HCPTC-V, for transfer of power from WR to



NR, have been operationalized prior to the COD of Champa-Kurukshetra HVDC bi-pole line. Therefore, on COD of Asset-I, generators proposed on other corridors like Jabalpur-Orai and Champa-Kurukshetra II have been granted revised LTA on Asset-1. It would be prejudicial to load the transmission charges for the entire HVDC system upon the beneficiaries with firms PPAs or LTA customers which were originally granted LTA on Jabalpur-Orai and Champa-Kurukshetra-II systems and who have subsequently opted for Phase-I project pursuant to the direction of the Commission in RoP dated 14.2.2017 in Petition No. 84/MP/2016. Therefore, all the beneficiaries are necessarily to be made responsible to share transmission charges in accordance with Regulation 11(4)(3)(i) of the 2010 Sharing Regulations.

- (h) The Review Petitioner has sought the review of the direction given in para 68 (b) of the order dated 6.11.2018 submitting that the LTA customers in respect of Champa-Kurukshetra Pole-I are the IPP generators with firm PPAs for supply of power to the States of Uttar Pradesh and Rajasthan. In terms of PPAs, the billing for the transmission charges of Champa-Kurukshetra Pole-I is first paid by the generators and subsequently reimbursed by the State utilities as per their PPAs. However, the generators are not making payments against the bills raised on them by the Review Petitioner owing to inordinate delays by the State utilities in making the payment of bills for energy/transmission charges. This situation forces the Review Petitioner to take coercive measures of imposition of regulation of power supply and STOA curtailment. The Review Petitioner should be permitted to bill the State utilities directly instead of the generators where firm PPAs exist throughout the



country as the same would remove the financial burden on the generators in meeting the time schedules to pay the transmission charges.

Submissions

13. The Review Petition 20/RP/2018 and 3/RP/2019 were admitted by the Commission vide order dated 7.8.2018 and 9.5.2019 respectively and the respondents were directed to file their reply.

Reply of Uttar Pradesh Power Corporation Limited (UPPCL), Respondent No.9

14. UPPCL in its reply vide affidavit dated 4.10.2018 submitted as follows:-

- (a) There are definitive limits to the exercise of the power of review and the review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1. A review by no means can be an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error. The Review Petitioner has in effect questioned the correctness of the orders of the Commission.
- (b) The Review Petitioner has again submitted the certificate(s) in support of Assets-2 and 3 alongwith the Review Petition and has reiterated that Asset 3 could not be put to use as the downstream assets under the scope of HVPNL have not achieved COD. However, the Commission had after taking into account the RLDC certificate and CEA certificate already taken a conscious decision to not approve the COD and the tariff for Assets-2 and 3.
- (c) As regards sharing of transmission charges, the Commission has rightly held in the impugned orders that the HVDC transmission charges have to borne by all the LTA beneficiaries of the IPPs of WR for whom the transmission system



was developed or IPPs themselves as per the Regulation 11(4)(3)(iii) of the 2010 Sharing Regulations. Hence, the Review Petitions filed by the Review Petitioner are absolutely devoid of merits and are liable to be dismissed.

15. However, UPPCL vide its affidavit dated 29.3.2019, has submitted that there is merit in the argument put forth by the Review Petitioner and that the asset cannot be looked as standalone entity but as a part of meshed network and its benefit flows to all DICs. Thus, transmission charges should be apportioned in accordance with Regulation 11(4)(3)(i) of the 2010 Sharing Regulations as done in order dated 11.4.2017 and not as per Regulation 11(4)(3)(iii) of the 2010 Sharing Regulations.

Reply of Tata Power Delhi Distribution Limited (TPDDL), Respondent No.13

16. TPDDL has submitted in its reply, vide affidavit dated 13.12.2018, as follows:-

- (a) The submissions and issues raised by the Review Petitioner had already been raised and considered by the Commission while passing the order in Petition No.13/TT/2017.
- (b) The Review Petitioner has failed to show discovery of any new fact or circumstance or any mistake or error apparent on the face of record. Moreover, the Review Petitioner has sought the same relief which had been denied by the Commission at the time of arguing the main petition.
- (c) Relying on the judgment of Hon'ble Supreme Court in Kamlesh Verma v. Mayawati & Ors. 2013 (8) SCC 320, judgment of Hon'ble Appellate Tribunal for Electricity (hereinafter referred to as "APTEL") dated 21.11.2017 in Review Petition No. 18 of 2015 and order of the Commission dated 3.12.2018 in



Petition No. 24/RP/2018, it is contended that the present Review Petitions do not satisfy the conditions for review.

- (d) The issue of sharing of transmission charges had not only been discussed and decided in detail by the Commission in the order dated 22.2.2018 but also while passing the order dated 6.11.2018 in Petition No. 205/TT/2017.
- (e) It is trite principle that transmission charges for an asset that is not “put to use” cannot be recovered from the beneficiaries. The Commission has aptly disallowed the COD of Assets-2 and 3 and directed the Review Petitioner to file a fresh petition claiming tariff once they are put to use upon declaration of COD of the corresponding downstream assets of HVPNL.
- (f) Regulatory Approval granted by the Commission, 28th Standing Committee Meeting on System Planning of Northern Region, Annexure- 4 of Long-term Agreement, 15th TCC and 16th meeting of NRPC, all point out that the transmission system was developed based on the request of 13 generating companies for the purpose of evacuation of the power from IPP generating projects and that the generating companies had agreed to share and bear the transmission charges.
- (g) During the course of proceeding of Petition No. 205/TT/2017 also, the Review Petitioner had the opportunity to make representations on the sharing methodology for transmission charges before the Commission. However, the Commission after re-considering the submissions of the Review Petitioner on sharing of transmission charges’ merely modified the order dated 22.2.2018 only to further clarify the same and eliminate any scope of confusion.



- (h) The contentions of the Review Petitioner for requesting a review in the sharing methodology of transmission charges pertaining to Champa-Kurukshetra HVDC lines are generic in nature. The benefits of HVDC transmission system cited by the Review Petitioner are well known and the same were a part of the earlier petitions/submissions made by the Review Petitioner. The same is not related to the determination/recovery of transmission charges of the instant asset.
- (i) Reliance of the Review Petitioner on the ROP dated 14.2.2017 in Petition No. 84/MP/2016 is misplaced as the said matter involved the surrender/relinquishment of LTA by the beneficiaries/generating companies and the Commission had directed CTU to utilize the spare capacity for granting the LTA to the pending applications.

Reply of Madhya Pradesh Power Management Company Limited (MPPMCL), Respondent No.18

17. MPPMCL has submitted in its reply, vide affidavit dated 31.1.2019, as follows:-

- (a) The Review Petition has been filed after the expiry of limitation period as per Article 124 of the Schedule of Limitation Act and is liable to be dismissed.
- (b) There is no erroneous overlooking of proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations and there is no error apparent on face of record as regards the non-approval of COD of Asset-2 and 3.
- (c) The Commission has rightly disallowed the COD of Asset-2, after observing that the trial operation with regard to Asset-2 was under no load condition and that almost the entire capacity of the transformer remains unutilised and that



is not serving the intended purpose without COD of the associated downstream system under the scope of HVPNL. Similarly, the Commission has rightly disallowed the COD of Asset-3 as it was not put to use as the downstream assets under the scope of HVPNL were not put into commercial operation.

- (d) There is also no error apparent on the face of record regarding the decision of the Commission allowing the recovery of HVDC charges under Regulation 11(4)(3)(iii) instead of 11(4)(3)(i) of the 2014 Tariff Regulations as the HVDC corridor was for import of power to NR from various generation projects from WR i.e. evacuation of power from 13 LTTCs as can be seen from the LTA between PGCIL and 13 LTTCs.

Reply of BSES Rajdhani Power Limited (BRPL) and BSES Yamuna Power Limited (BYPL), Respondent Nos.11 and 12

18. BRPL and BYPL, Respondent Nos.11 and 12, in their reply have submitted as follows:-

- (a) The Review Petitioner has contended that the Assets-2 and 3 were successfully charged and put into commercial operation on 25.3.2017 along with Asset-1 and that the Asset-2 is being used for drawing auxiliary supply and Asset-3 was also ready for regular service. However, the Commission in the order has clearly stated that Assets-2 and 3 have not been put to use and accordingly these assets although forming part of the project but not in use and thus they are required to be excluded from the capital cost as per Regulation 9(6)(a) of the 2014 Tariff Regulations and therefore there is no error apparent on the face of the record in the order.



(b) The question of applicability of Regulation 11(4)(3)(i) or Regulation 11(4)(3)(iii) of the 2010 Sharing Regulations had already been deliberated and finally the Commission after noticing that the said transmission assets were implemented on the request of various IPPs in Chhattisgarh region, came to the conclusion that the respective beneficiaries who are utilizing the instant transmission assets should share transmission charges under Regulation 11(4)(3)(iii) of the 2010 Sharing Regulations in respect of the Northern Region beneficiaries.

(c) None of the grounds raised by the Review Petitioner is justified for review of the impugned orders. Further, the case of the Review Petitioner does not satisfy the principles for review as laid down by the Hon'ble Supreme Court in case of Parsion Devi and Others vs Sumitra Devi and Others (1997) 8 SCC 715.

Reply of KSK Mahanadi Power Limited (KSKMPL), Respondent No.32

19. KSKMPL has submitted in its reply, vide affidavit dated 6.3.2019, as follows:-

(a) It has been severely prejudiced by the aspect of sharing of transmission charges as decided by the Commission and supports the Review Petition to the extent of reviewing the sharing of transmission charges.

(b) It was originally granted the LTA for 1000 MW on 765 kV Jabapur-Orai transmission line and pursuant to minutes dated 24.3.2017, was upgraded to Champa-Kurukshetra Pole-I upon its operationalization.



- (c) There is huge increase in the billing of its LTA from November 2018 pursuant to the order dated 22.2.2018 and it is being charged for more than its LTA quantum of 1000 MW.
- (d) There is huge difference in monthly transmission charges in Pole I and Pole II of HVDC Champa-Kurukshetra line despite a gap of only 6 months' in their COD and the transmission charges for Pole I and Pole II need to be added together to arrive at the monthly transmission charges and not separately. This aspect has also been recognized by the Review Petitioner in its Minutes dated 24.3.2017 that the Champa-Kurukshetra HVDC link is of 3000 MW capacity but the same is being implemented in two phases of 1500 MW each.
- (e) Respondent has also contended that the Review Petitioner is not billing the transmission charges as per the decision of the Commission in order dated 22.2.2018 as around 17 Nos. of IPPs/Generating Companies had signed BPTA with the Review Petitioner and obtained open access on Champa-Kurukshetra corridor on the basis of target region or otherwise but the bills have not been raised by the Review Petitioner on those generators whose LTA is still on target region basis and the entire cost is being recovered only for those generators whose LTA has been operationalized on apportioned basis.

20. The Review Petitioner in its rejoinders to the reply of the respondents reiterated the submissions made in the Review Petition and made certain further submissions and they are as follows:-

- (a) The Review Petitioner is not re-agitating the issues but the Review Petitions have been filed seeking rectification of the errors in orders which



have occurred on account of omission to take into account the facts and materials placed by the Review Petitioner. Relying on the judgment of Hon'ble Supreme Court in Indian Charge Chrome Ltd. V. Union of India [(2005) 4 SCC 67], the Review Petitioner has submitted that omission to consider the contentions made (and material placed) constitutes manifest error resulting in grave miscarriage of justice, which are amenable to rectification under exercise of review jurisdiction.

(b) The Review Petitions have been filed under Section 94 of the Electricity Act, 2003 read with Regulations 103, 111 and 114 of the Conduct of Business Regulations, 1999 read with Order 47 Rule 1 of Code of Civil Procedure, 1908. Regulation 103 of the said regulations provides for filing of an Application/Petition for review of any decision, direction or order passed by the Commission within 45 days of making the said decision. The order dated 22.2.2018 was uploaded on the website of the Commission on 23.2.2018 and as such has come to the knowledge of the Review Petitioner on the said date. Thus, the Review Petition filed on 9.4.2018 is within the period of limitation and is not barred under Article 124 of the Schedule of the Limitation Act, 1963.

(c) As regards the rise in the transmission charges for LTA, the Review Petitioner as CTU has been raising bills for transmission charges on all DICs of the Champa-Kurukshetra line based on the Regional Transmission Accounts (RTAs) issued by the Regional Power Committee which are based on the inputs provided by NLDC, POSOCO. Further, these bills have been issued in accordance with the orders dated



22.2.2018 and 6.11.2018 in Petition Nos. 13/TT/2017 and 205/TT/2017 respectively.

(d) The Review Petitioner has received the bill dispute notice from some of the LTA customers namely, TRN, Maruti Power, Dhariwal Infrastructure Ltd., M B Power and KSK Mahanadi with regard to significant increase in the billing of transmission charges pertaining to Pole I of the Champa-Kurukshetra HVDC line from October 2018 onwards. The main objection of the LTA customers is towards computation of transmission charges as the same is being interpreted by them as double charging i.e. HVDC charges for Pole I as well as POC charges as against the earlier billing of HVDC charges of the LTA quantum in Pole I and POC charges for the balance. In order to clarify the said position, the Review Petitioner vide letter dated 12.3.2019 has requested the NLDC, POSOCO to review the situation and provide necessary clarification to the above so as to settle the bill disputes. The Review Petitioner has also forwarded the letter of the Respondents and bill dispute notices to NLDC and reply of NLDC vide letter dated 29.3.2019 is placed on record.

(e) As regards the direction of the Commission in ROP dated 14.2.2017 in Petition No. 84/MP/2016 regarding the applicability of Regulation 11(4)(3)(i) instead of 11(4)(3)(iii) on the subject transmission asset would lead to a disadvantage to the beneficiaries with the firm PPAs or LTA customers on target region which were originally granted LTA on Jabalpur-Orai/Champa-Kurukshetra II system and later opted for up-gradation to



Phase I project on account of relinquishment in WR-NR corridor by other generation projects.

21. The submissions made by TRN, MB Power and Maruti Power are similar in nature and the gist of the submissions made are as follows:-

(a) The Applicants were originally granted Long Term Access on 765 kV D/C Jabalpur-Orai transmission line, which was scheduled to be put into commercial operation in March 2018.

(b) The Applicants opted to operationalize their LTA on 800 kV HVDC Champa-Kurukshetra Pole I pursuant to Meeting dated 23.3.2017 wherein the Review Petitioner offered to prepone the LTA. However, the Review Petitioner did not indicate or convey that the LTA on HVDC Champa-Kurukshetra will be subject to levy of additional transmission charges.

(c) There has been substantial increase in transmission charges for their LTAs from November 2018 (April 2018 in case of Maruti Power) onwards and bill disputes have been raised in terms of BDC Guidelines, which are yet to be resolved.

22. The final hearing of the Review Petitions took place on 30.5.2019 and the parties were directed to file their written submissions, if any. Pursuant to the above directive, the Review Petitioner, TRN, KSKMPL, MB Power and TPDDL have filed their written submissions and reiterated their earlier submissions. Only the additional points brought out in the written submissions are noted in the subsequent paragraphs for the sake of brevity.



Written Submissions of TRN Energy

23. TRN Energy has made the following additional submissions in its written submissions:-

- (a) In order to fasten the liability for payment of transmission tariff, it is imperative for the Commission to apply the correct regulation, which is Regulation 11(4)(3)(i) of the 2010 Sharing Regulations. The order of the Commission which decides as to which of the generators will bear the transmission tariff cannot be contrary to the provisions of the Regulations framed by it.
- (b) Divergence from its earlier order dated 11.4.2017, allowing AFC under Regulation 7(7) of the 2014 Tariff Regulations for inclusion in the PoC charges, wherein the Commission held that the transmission charges are to be shared by the DICs in NR is also an error apparent on the face of record.

Written submissions of KSK Mahanadi Power Limited

24. KSK Mahanadi Power Limited, in its written submissions has made the following additional submissions:-

- (a) It filed Petition Nos. 120/MP/2019 and 142/MP/2019 challenging the billing methodology followed by the Review Petitioner regarding the transmission charges of the Champa-Kurukshetra corridor. There is a complete dichotomy in the manner in which the bills are raised pursuant to the orders of the Commission which has led to an exponential rise in the billing charges without any increase or change in the LTA quantum. This is a clear reason as to why relief claimed in the Review Petitions need to be granted by the Commission.



(b) The Champa-Kurukshetra HVDC is one corridor and capable of transmitting of 3000 MW of power. It is not that Pole I can transmit 1500 MW and Pole II can transmit the balance 1500 MW without the transmission line. Therefore, the correct manner of billing would be to make a sum total of the Annual Transmission Charges (ATC) as determined in both the tariff orders and then proportionating the same to 3000 MW.

Written Submissions of MB Power

25. M B Power has made the following additional submission in its written submissions:-

(a) The Review petitioner has planned and developed the said HVDC assets as part of ISTS as a whole and to stabilize the power evacuation to Western Region-Northern Region corridor by enhancing the Available Transfer Capability between WR-NR by 4000 MW. As the system developer, the Review Petitioner has made out a case that the subject HVDC transmission asset is for the purpose of enhancing the ATC for WR-NR and not limited to 13 Applicants (or presently on 6 IPPs provided LTA on the HVDC line). This fact was not taken into consideration by the Commission inadvertently.

(b) The Commission has also committed an error on the face of record by not applying the correct provision of the 2010 Sharing Regulations. The Commission ought to have applied the correct provision of law i.e. Regulation 11(4)(3)(i) of the 2010 Sharing Regulations and all the beneficiaries of the region should have been made liable for payment of transmission charges. Such misapplication of provision of law is an error apparent on the face of record which requires to be rectified.



- (c) The Commission has erred in its order dated 22.2.2018, which is completely contrary to and at variance with its earlier order dated 11.4.2017 wherein it was observed that transmission tariff for the subject assets shall be shared by the DICs in the NR as provided under Regulation 11(4)(3)(i) of the 2010 Sharing Regulations and therefore the said Review Petitions are maintainable in law.
- (d) The Commission while adjudicating the petitions did not consider the material and relevant facts pertaining to it, which may have material bearing on the finding and observations made by the Commission therein. The Hon'ble Supreme Court in the matter of Haridas Das v. Usha Rani Banik (2006)4 SCC 78 has held that a Review Petition shall be maintainable to enable a rehearing of the proceedings for "any other sufficient reason". Failure of non-consideration of the unambiguous, unequivocal and self-evident fact coupled with the fact that it did not have any occasion, as it was not arrayed as a party in original proceedings, squarely qualifies as "any other sufficient reason" for review of the impugned orders, especially when it has an adverse financial impact upon it.
- (e) An application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason. The words "sufficient reason" in Order 17 Rule 1 of the Code has been interpreted by the Hon'ble Supreme Court in matter of Board of Control for Cricket in India v. Netaji Cricket Club (2005) 4 SCC 741 to include misconception of fact.



- (f) An application for review may also be necessitated by way of invoking the doctrine “actus curiae neminem gravabit’ i.e. the act of the Court shall prejudice no one. This doctrine squarely applies to the present case wherein it has been prejudiced by the adverse financial implications.
- (g) Reliance on the findings in the matter of Parison Devi & Ors. v. Sumitra Devi & Ors. (1997) 8 SCC 715 has no relevance to the present case. The present Review Petitions are not appeal in disguise since they raise pertinent, valid and lawful issues which evidently are qualified by the legal provisions of Order 47 Rule 1 being error apparent on the face of record and any other sufficient reasons.
- (h) Reliance placed on the judgment of Hon’ble Supreme Court in Kamlesh Verma v. Mayawati (2013) 8 SCC 320, is misplaced and do not apply to the facts of the present case. The legal principles as laid down in para 20.1 of the said judgment squarely apply to the facts of the present case.
- (i) The HVDC lines were planned mainly for enhancing the power transfer capability between WR and NR and to provide control of power flow over parallel AC transmission system between WR and NR and that the said transmission asset was conceived and implemented as part of common corridor strengthening with an objective to bring reliability and certainty. Hence, it cannot be considered to have been implemented specifically for it and other 5 IPPs whose LTAs were upgraded from an alternate associated transmission system to the said 800 kV Champa-Kurukshetra Bi-pole link.



- (j) Review Petitioner is constrained to issue the invoices in question upon the generators including MB Power as it is following the RTAs issued by RPCs. Thus, it is in the interest of all concerned that such anomaly is rectified as they are financially prejudicing it severely.
- (k) The Review Petitioner is correct in saying that it should be allowed to bill the State Utilities/DISCOMs directly for the transmission/ POC charges instead of routing it through the generators. At present, the monthly bills for the transmission/POC charges are being raised by the Review Petitioner on generators who in-turn raise the bills on the State Utilities/Discoms. However, delays in payments against these bills by the State Utilities/DISCOMs to generators consequently lead to a delay in making payments by the generators to the Review Petitioner. Due to such delays, regulation of power of the generators, which not only adversely impacts the viable operations of their generation projects but also severely impair the cash flows and debt service obligations of the generators for absolutely no fault on their part. Therefore, it is proper and just to allow the Review Petitioner to bill the DISCOMs (being the DICs) directly.

Written Submissions of TPDDL

26. TPDDL has made the following addition submissions in its written submissions:-

- (a) Contention of the Review Petitioner that since the DISCOMs are not clearing bills in time, the order be reviewed and billing should be directly done on the beneficiaries instead of generators is erroneous and cannot be a ground for review of the order. The mechanism laid down by the Commission is in



accordance with Regulation 11(4)(3)(iii) of the 2010 Sharing Regulations and, therefore, the said contention cannot be used to vitiate a regulation.

(b) The Review Petitioner has filed the Review Petitions stating that the Commission should have taken a different view from what it ultimately arrived at in the order dated 22.2.2018 in Petition No. 13/TT/2017 and consequently in order dated 6.11.2018 in Petition No. 205/TT/2017. If the Review Petitioner's proposal is allowed, it would vitiate the principles set out in the judgment of Hon'ble Supreme Court in Kamlesh Verma v. Mayawati & Ors. 2013 (8) SCC 320, judgments of APTEL in (i) Review Petition No. 18 of 2015, in Indian Wind Energy Association & Anr. v. Gujarat Electricity Regulatory Commission & Ors., (ii) Review Petition No. 13 of 2016 in Appeal Nos. 244 and 246 of 2015 in the matter of Tata Power Company Ltd. v. Maharashtra Electricity Regulatory Commission and order of this Commission dated 3.12.2018 in Petition No. 24/RP/2018.

(c) Regulatory Approval granted by the Commission, 28th Standing Committee Meeting on System Planning of Northern Region, Annexure- 4 of Long-term Agreement, 15th TCC and 16th meeting of NRPC, all point out that the transmission system was developed based on the request of 13 generating companies for the purpose of evacuation of the power from IPP generating projects and that the generating companies had agreed to share and bear the transmission charges. TPDDL is not liable to pay transmission charges in respect of PPA/arrangements made by the others.

(d) Reasons based on which the Review Petitioner has sought the change in the sharing methodology of transmission charges pertaining to Champa-



Kurukshetra HVDC line as cited in the petition are baseless and is the subject-matter of appeal. The impugned order of the Commission does not suffer from patent error or mistake of law or fact.

(e) The Review Petitioner has also raised another ground for review by citing that as per the directions of the Commission in order dated 6.11.2018, LTA customers in respect of Champa-Kurukshetra (Pole I) are the IPP generators with firm PPAs for supply of power to the States of Uttar Pradesh and Rajasthan. However, in terms of the PPAs, the billing for the transmission charges for the line is being shared by the generator initially and subsequently reimbursed by the State utilities as per the terms of their PPAs and that the generators are not making payments mainly due to the inordinate delays by the State Utilities in settling bills for energy/transmission charges and therefore, the Commission may review the aforesaid direction given in the impugned order dated 6.11.2018 and allow POC billing to be done directly on the State Utilities instead of the generators. The aforesaid ground is extraneous to the scope of the Review jurisdiction of the Commission.

(f) The Review Petitioner has contended that the Discoms are delaying the payments. However, it may be a case that Discoms are making the payments and the generator is not paying in time to the Review Petitioner. Anyhow, if the Review Petitioner's contention is accepted, it would amount to change in the terms of the PPA which if allowed would amount to an amendment to the PPA that can only be done by way of Regulation and not by an order (reliance is placed on PTC v. CERC (2010) 4 SCC 603). The mechanism laid down by the Commission is in accordance with Regulation 11(4)(3)(iii) of the 2010



Sharing Regulations. Therefore, the said contention cannot be used to vitiate a Regulation.

(g) Regulation 11(4)(3)(iii) of the 2010 Sharing Regulations provides that in case there is a PPA or any other arrangement, then the transmission charges shall be borne by DICs in proportion to the PPA or other arrangement. The Regulation 11(4)(3)(iii) further provides for sharing of transmission charges in case of HVDC lines where there is a mix of identified beneficiaries and beneficiaries to a targeted region. Accordingly, the transmission charges pertaining to the capacity tied up under PPA (1825 MW) is to be borne by the respective beneficiaries and capacity granted with target region as NR (2124 MW) (including Point of Connection transmission charges, Reliability Support Charges and HVDC charges) is to be borne by generating companies as there being no identified beneficiary.

Analysis & Decision

27. We have considered the submissions made by the Review Petitioner and the respondents. The present Review Petitions are filed by the Review Petitioner against the orders dated 22.2.2018 and 6.11.2018 passed in the Petition Nos. 13/TT/2017 and 205/TT/2017 respectively. The Review Petitioner has sought review and modification of the impugned orders on the aspect of (i) non-approval of COD of Assets-2 and 3 and (ii) direction to share the transmission charges of Champa-Kurukshetra HVDC line under Regulation 11(4)(3)(iii) instead of Regulation 11(4)(3)(i) of the 2010 Sharing Regulations. We examine these two issues in the following paragraphs.



28. Before examining as to whether the contentions of the Review Petitioner satisfy the conditions of review, it would be pertinent to note the relevant provisions in this regard.

29. The Commission has the power to review its decision, directions and orders under Section 94(f) of the Electricity Act, 2003, which is extracted below:

“Section 94 (Powers of Appropriate Commission): -

(1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -
(f) reviewing its decisions, directions and orders;”

30. Further, Order 47 Rule 1 of the Civil Procedure Code, 1947, provides for filing of an application for review, which is extracted below:-

“1. Application for review of judgement

(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgement to the Court which passed the decree or made the order.”

31. Thus, under Order 47 Rule 1 of the CPC, 1908, an application for review would be maintainable upon the discovery of new and important matter or evidence or on account of some mistake or error apparent on the face of record or for any other sufficient reason.

32. Further, it is also a settled position in terms of the judgment of Hon'ble Supreme Court in Parsion Devi v. Sumitra Devi reported in 1997 8 SCC 715 that the



review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of CPC and that the judgment may be open to review, inter alia, if there is a mistake or an error apparent on the face of the record and that an error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent requiring court to exercise its power of review. These principles of the review have also been enunciated by the Hon'ble Supreme Court in judgment in Kamlesh Verma v. Mayawati and Ors. as reported in AIR 2006 SC 75. Both of these judgments have been relied upon by the respondents contesting the maintainability of the review petitions.

33. It is also necessary to refer the authority cited in support of the Review Petitions, the judgment of Hon'ble Supreme Court in BCCI v. Netaji Cricket Club as reported in 8 2004 (5) SCC 741, wherein the Hon'ble Court held that under Order 47 Rule 1 of the CPC, the words 'sufficient reason' is wide enough to include a misconception of fact or law by a court or even an Advocate. The relevant extract of the said judgment is as follows:-

"Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47, Rule 1 of the Code is wide enough to include a misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".



34. In addition to above, another judgment of Hon'ble Supreme Court in Indian Charge Chrome Ltd. v. Union of India has been relied upon to submit that review is also permissible on account of manifest errors which have crept up in the judgment under review resulting in grave miscarriage of justice.

35. Thus, having referred to the legal position on the exercise of reviewing powers, now we proceed to examine the grounds raised by the review petitioner, rival contentions and as to whether they call for the review of the orders or not.

36. MPPMCL has submitted that Review Petition No. 20/RP/2018 has been filed after the expiry of limitation period as envisaged under Article 124 of the Schedule of Limitation Act, which provides a period of 30 days in case review of judgment by a Court other than the Supreme Court. We are unable to accept this submission of MPPMCL as the Commission under Clause (1) of Regulation 103 of Conduct of Business Regulations, 1999 has specified 45 days period for filing petitions for review of the decisions, directions or orders passed by the Commission. We have scrutinized the record and found that Review Petition No. 20/RP/2018 has been filed within the period as prescribed under Regulation 103 of the Commission's (Conduct of Business), Regulations 1999. Hence, the contention of MPPMCL regarding period of limitation is rejected.

(i) Non-approval of COD of Asset-2 and 3

37. The Commission in the order dated 22.2.2018 did not approve the COD of the Asset-2 as it was not serving the intended purpose without COD of the associated downstream system under the scope of HVPNL. The COD of Asset 3 was also disallowed as it was not put to use due to non-readiness of transmission assets



under the scope of HVPNL under the proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations. The relevant portion of the impugned order is as follows:-

“16. We have considered the submissions of the petitioner regarding the COD of the instant assets. In support of COD of Asset-1, the petitioner has submitted the RLDC Certificate regarding trial operation, CEA Certificate for energisation of the transmission element and CMD certificate as required under grid code. Taking into consideration the RLDC certificate, CEA certificates and CMD certificate, the COD of Asset-1 is approved as 24.3.2017 and considered for the purpose of tariff computation.

17. The petitioner has claimed the COD of Asset-2 as 25.3.2017 and has submitted the RLDC certificate regarding the trial operation and CEA certificate for energisation of element. It is observed from the RLDC certificate that Asset-2 was charged under no-load condition. The petitioner has submitted that Asset-2 is being used for drawing the auxiliary supply from the tertiary of the 500 MVA transformer for the assets covered in the instant petition. The 2 nos. 500 MVA transformer were planned to cater to the demand over 220 kV feeders emanating from Kurukshetra Sub-station. We are not inclined to approve the COD of Asset-2 without ensuring the envisaged use of the transformers. In a similar situation in Petition No. 56/TT/2015, the Commission observed that installation of 315 MVA capacity transformer to meet the requirements of 2 MVA load is not a prudent decision and tariff was not allowed for the ICT of 315 MVA capacity transformer. The relevant portion of the Commission’s order dated 29.7.2016 in Petition No. 56/TT/2016 is extracted hereunder:-

.....
18. In view of the above, the COD of Asset-2 is not approved as almost the entire capacity of the transformer remain unutilized and it is not serving the intended purpose without the COD of the associated downstream system under the scope of HVPNL.

19. The petitioner has submitted that Asset-3 has not been put to use as the downstream assets under the scope of HVPNL have not been commissioned. Accordingly, the petitioner has claimed the COD of Asset-3 as 25.3.2017 under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations. The petitioner has submitted communication made with the HVPNL regarding commissioning of the downstream transmission system. Though the petitioner has submitted the RLDC certificate regarding trial operation on no-load condition, we are not inclined to approve the COD of Asset-3 as it has not been put to use without the COD of the downstream transmission assets under the scope of HVPNL.

20. Accordingly, the tariff for Asset-1 is only considered in the instant order. Tariff for Asset-2 and 3 shall be considered only after it is put to use, which is possible only after the COD of the downstream assets under the scope of HVPNL. The Annual Fixed Charges allowed for Assets-2 and 3 under Regulation 7(7) of the 2014 Tariff Regulations for inclusion in the PoC computation in order dated 11.4.2017 is withdrawn. The petitioner is directed to file a fresh petition claiming tariff for Assets-2 and 3 after they are put to use and the declaration of COD of the corresponding downstream assets of HVPNL. We would also like to state that the IDC and IEDC from the date of charging of Assets-2 and 3 on “no load condition” till the COD of the downstream assets under the scope of HVPNL shall be borne by HVPNL.”

38. The Review Petitioner has contended that the above decision of the Commission in not approving the COD of these assets and recovery of transmission



tariff is an error apparent on the face of record as it has been made by overlooking the statutory provisions of the Regulations, namely, proviso (ii) to Regulation 4(3) of the 2014 Tariff Regulations, which provides that COD of a transmission system or an element thereof may be declared if the said system has been prevented from being put to regular service for reasons not attributable to the transmission licensee. The Review Petitioner has also submitted that it had sufficiently established that its transmission assets were ready but were prevented from being put into regular use on account of non-readiness of the associated downstream system in the scope of HPVNL. The Commission has in number of cases approved the COD of a transmission asset which has not been put into service due to non-readiness of downstream or upstream system. The Review Petitioner has also submitted that it had a filed a Certificate of its CMD stating that the transmission element conforms to the relevant Grid Standard and Grid Code and are capable of operation to their full capacity in terms of Regulation 4(vi) of the Grid Code.

39. Per contra, the contentions of the Respondents are that the grounds raised for review of the orders on this count have already been raised and considered by the Commission in the impugned orders and since the assets were tested under no-load conditions, the Commission has rightly disallowed the COD of the Assets-2 and 3.

40. After having considered the rival contentions, we note that the Commission in the order dated 22.2.2018 did not approve the COD of Asset-2 of the ground that almost entire capacity of the transformer remained unutilised and it was not serving the intended purpose without the COD of the associated downstream system under the scope of HPVNL. In case of Asset-3, the Review Petitioner had claimed the COD under proviso (ii) to Regulation 4(3) of the 2014 Tariff Regulations and while



disallowing the COD, the Commission observed that Asset-3 has not been put to use since the downstream transmission assets under scope of HVPNL were not ready.

41. Since it is the contention of the Review Petitioner that the Commission has overlooked the proviso (ii) to Regulation 4(3) of the 2014 Tariff Regulations, it would be relevant to refer the same as extracted below:-

“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:

...

(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:

...

(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.”

42. In terms of Regulation 4(3), the date of commercial operation for transmission system shall be the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service. However, proviso (ii) to the Regulation clearly envisages that there might be a situation wherein the transmission system or an element thereof is prevented from regular services for reasons not attributable to the transmission licensee but on account of the delay in COD of the upstream or downstream transmission system and in such cases the transmission licensee shall approach the Commission for approval of COD of such system or element thereof. The Review Petitioner had come to Commission vide Petition No.13/TT/2017, invoking proviso (ii) to the Regulation 4(3) of the 2014 Tariff



Regulations and had sought declaration of COD for Asset-3, since the downstream assets under the scope of HVPNL was not ready, and Asset-2 could not be put for intended use and was being used for drawing auxiliary supply.

43. It is observed that Asset-3 was not put to regular services and Asset-2 was used for drawing only auxiliary supply on account of non-readiness of downstream assets under the scope of HVPNL. We also note that it has not been contested that the Assets-2 and 3 are not put to regular use due to reasons attributable to the Review Petitioner or its supplier or contractor. Moreover, it has already been recorded in the order dated 22.2.2018 that the said assets could not put to regular use on account of non-readiness of the downstream assets under the scope of HVPNL.

44. Thus, having held in the order dated 22.2.2018 that the said Assets-2 and 3 could not be put to regular use for no fault of the Review Petitioner and the fact that the Review Petitioner therein had invoked proviso (ii) to Regulation 4 (3) of the 2014 Tariff Regulations on account of non-readiness of downstream assets under the scope of HVPNL, disallowing the COD of Assets-2 and 3 on the ground that the assets were under no-load conditions, is in our view, an error, specifically in the present case, which is required to be rectified. We agree with the contention of Review Petitioner that impugned order is a deviation from the settled practice which was consistently followed by the Commission in various orders including order dated 24.2.2017 in Petition No. 85/TT/2017. Hence, we allow the review on this count and allow the COD of Assets-2 and 3 as 25.3.2017 taking into account the RLDC certificate regarding trial operation, CEA certificate for energization of element and the CMD Certificate stating these assets confirm to the relevant Grid Standards and



Grid Code and are capable of operation to their full capacity in term of Regulation 4(vi) of the Grid Code.

(ii) Sharing of transmission charges of the Champa-Kurukshetra HVDC line under Regulation 11(4)(3)(iii) instead of Regulation 11(4)(3)(i) of the 2010 Sharing Regulations.

45. As regards sharing of transmission charges of Champa-Kurukshetra HVDC Pole I and Pole II lines, the Commission in impugned orders dated 22.2.2018 and 6.11.2018 observed that the said transmission system has been developed based on the request of 13 generating companies for the purpose of evacuation of the power from the IPP generation projects and that the sharing of transmission charges for instant assets are to be done in accordance with the Regulation 11(4)(3)(iii) of the 2010 Sharing Regulations. The relevant extract of the order dated 22.2.2018 is as below:-

“89. The instant assets were developed by the petitioner considering the large quantum of power transfer from IPP generation projects in Chhattisgarh to NR. As per the petitioner, these assets facilitate controlled power flow requirement, flexibility of operation as well as maintaining system parameters within limits through its control mechanism and benefit all beneficiaries of NR region. The CTU has submitted that about 2000 MW LTA will be further operationalized after commissioning of 2nd Pole of Champa-Kurukshetra line without any specific PPA. The line will contribute to reliability of the NR beneficiaries.

90. On the basis of the submissions made by the petitioner and the respondents regarding sharing of the transmission charges, following issues are framed:-

- a) Whether the transmission system has been developed as a part of interregional transmission system for transfer of power from WR to NR for the benefit of NR beneficiaries?
- b) Whether Regulation 11(4)(3)(i) or 11(4)(3)(iii) of the 2010 Sharing Regulations is applicable in this case?

91. As regards, the first issue, it is observed that the instant transmission system was planned by the petitioner as a part of High Capacity Power Transmission Corridor-V for evacuation and transfer of power from IPP generation projects in Raigarh (Kotra), Champa, Raigarh (Tamnar) and Raipur generation complex in Chhattisgarh. Out of the estimated 15000-16000 MW quantum of power transfer requirement, about 5000 MW power was planned for transfer of power to Northern Region and balance power was to be consumed within Western Region. For evacuation and transfer of power from these generation projects, 765/400 kV High Capacity Pooling stations viz. at Raigarh



(Kotra), Raigarh (Tamnar), Raipur and Champa have been established. These pooling stations have been inter-connected through high capacity 765 kV transmission lines. However, considering the quantum of power transfer requirement (about 5000 MW) to Northern Region over a long distance, 800 kV, 6000 MW HVDC bi-pole line between±a high capacity transmission corridor viz. Champa Pooling Station and Kurukshetra with 3000 MW terminals at either end was planned and is being implemented in two phases of 1500 MW each pole.

.....

94. The petitioner entered into agreement with 13 generating companies (Long term transmission customer) and Para (A) of the Long Term Access Agreement signed on 24.2.2010 provides as under:-

“(A) Whereas long term transmission customer is the Power Project Developer/ State agency/ consumer/electricity trader/distribution licensee and is desirous to avail Long Term Open Access in accordance with the Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Open Access in interstate transmission and related matters) regulation 2009 hereinafter referred to as “Regulations” and Electricity Act, 2003 (including their amendments if any) to the Transmission System of POWERGRID for transfer of power from the respective places of generation to the places of delivery as per the Annexure-1.”

Further, Annexure-1 of the LTTA provides the list of 14 generators and their drawal points as WR and NR.

95. It is evident from the regulatory approval granted for the instant assets and the LTTA between the generating companies and the petitioner, that the instant transmission system has been developed based on the request of the 13 generating companies for the purpose of evacuation of the power from the IPP generation projects.

96. As regards the second issue of whether the transmission charges for the instant assets should be shared as per Regulation 11(4)(3)(i) or 11(4)(3)(iii) of the 2010 Sharing Regulations, the petitioner contention is that it will be shared as per Regulation 11(4)(3)(i) of the 2010 Sharing Regulations. TPDDL has contended that the system was planned as part of High Capacity Power System Corridor-V for evacuation and transfer of power from IPP generation projects in Chhattisgarh and it has no beneficial use to TPDDL and as per Regulation 11 of the 2010 Sharing Regulations, minutes of the 28th Standing Committee Meeting on Transmission System Planning of Northern Region dated 23.2.2010 and the agreement for Long Term Access dated 24.2.2010 between the petitioner and 13 long term transmission customers, the charges are to be borne by such customers and/or by the generators in case of non-use of the system. BRPL has submitted that the Commission in order dated 3.3.2016 in Petition No. 67/TT/2015 has held that the transmission charges of HVDC line will be recovered from the DICs of all regions and not from a particular region. Accordingly, the transmission charges of the instant assets should also be borne by all designated ISTS customers in line with the said order and further the transmission charges should be based on the usage determined through the load flow studies.

.....

101. It is evident from the regulatory approval granted by the Commission, provisions of Long Term Agreement and the Minutes of the Standing Committee Meetings the



instant transmission system has been developed on the request of the beneficiaries who were Long Term Customers as per LTA. The generators have also provisionally entered into PPAs with the beneficiaries. As per the record, PPAs exist for a capacity of 1825 MW, the balance capacity is for the beneficiaries in the target region. Regulation 11(4)(3)(iii) provides for sharing of transmission charges in case of HVDC lines where there is a mix of identified beneficiaries and beneficiaries to a target region. The relevant portion of Regulation 11(4)(3)(iii) of the 2010 Sharing Regulations is extracted hereunder:-

“(iii) Where transmission charges for any HVDC system are to be partly borne by a DIC (injecting DIC or withdrawal DIC, as the case may be) under a PPA or any other arrangement, transmission charges in proportion to the share of capacity in accordance with the PPA or other arrangement shall be borne by such DIC and the charges for balance capacity shall be borne by the remaining DICs by scaling up of MTC of the AC system included in the PoC. Such HVDC shall not be considered under (i) above.”

102. In our view, the above regulation is applicable in this case and accordingly, the transmission charges of the subject HVDC line shall be borne as under:-

- a) 10% of the transmission charges allowed shall be considered under Reliability charges which shall be borne by all DICs.
- b) Where the generators as LTTC has tied up PPA with the beneficiaries, the transmission charges of the subject transmission system shall be apportioned to such beneficiaries for such tied up capacity.
- c) Where the long term transmission customer has not firmed up the beneficiaries, the transmission charges shall be apportioned to such long term transmission customers in proportion to the capacity not tied up by each of the generators.
- d) The capacity, if any, left out after considering the capacities under (b) and (c) above, the HVDC charges for such balance capacity shall be borne by the remaining DICs of the target region by scaling up of MTC of the AC system included in the PoC as per Regulation 11(4)(3)(iii) of the 2010 Sharing Regulations. In such an event, direction at (a) above shall not be effected.”

46. The Review Petitioner has sought to review the aforesaid finding of the Commission on ground of error apparent by contending that the said transmission system had been planned to provide import of power to NR from various generation projects from WR along with parallel AC systems as a part of meshed network. Addition of this line has led to the stabilization of the existing corridor and, therefore, more power could be evacuated (more than 1500 MW capacity of HVDC link) from the bi-pole line. The Review Petitioner has also contended that some of the original grantees of LTA with HCPTC-V for transfer of power from WR to NR were operationalized prior to the COD of Champa-Kurukshetra HVDC bi-pole line and upon COD of HVDC Champa-Kurukshetra Pole- I, generators with proposed LTA on



other corridors such as Jabalpur-Orai and Champa-Kurukshetra Pole II were upgraded to Champa-Kurukshetra Pole I and it would be prejudicial to load entire transmission charges upon the beneficiaries with firm PPA or LTA customers on target region. The Review Petitioner has also submitted that in a meshed network it is not possible to allocate dedicated transmission lines for generation projects. Some of the Respondent-Generators also supported the review of the order on this count largely relying upon the submissions of Review Petitioner and contending that they were not originally granted the LTA on Champa-Kurukshetra HVDC line and were upgraded to Champa-Kurukshetra HVDC line pursuant to meeting with the Review Petitioner on 23.3.2017 without being conveyed the levy of additional charges.

47. Per contra, the Respondents opposing the review on this count have submitted that all the grounds raised by the Review Petitioner have already been considered in the orders under review and there is no error in the orders which qualifies for review. It has also been submitted that the grounds/benefits cited by the Review Petitioner are generic in nature and were also a part of earlier petition. It has also stated that the Regulatory Approval granted by the Commission, 28th Standing Committee Meeting on System Planning of Northern Region, Annexure- 4 of Long-term Agreement, 15th TCC and 16th meeting of NRPC, all point out that the transmission system was developed based on the request of 13 generating companies for the purpose of evacuation of the power from IPP generating projects and that the generating companies had agreed to share and bear the transmission charges and therefore, the Commission has rightly applied Regulation 11(4)(3)(iii) of the 2010 Sharing Regulations in the present case.



48. We have considered the rival contentions. It is observed that the Commission while dealing with the issue as to for whom the transmission system has been developed, arrived at the conclusion that the transmission system has been developed based on the request of 13 generating companies for the purpose of evacuation of the power from the IPPs generation project on the basis of the regulatory approval granted to High Capacity Power Transmission Corridor-V in order dated 31.5.2009 in Petition No. 233 of 2009 and Long Term Transmission Agreement dated 24.2.2010 as entered into between 13 Nos. of generating companies and the Review Petitioner. However, it is to be observed that the Review Petitioner had approached the Commission vide Petition No. 233 of 2009 seeking the regulatory approval for, inter alia, HCPTC-V - Transmission System Associated with IPP projects in Chhattisgarh. The said corridor included a host of high capacity transmission lines - AC as well DC lines and pooling stations under the head of 'Common transmission system strengthening to be implemented by Power Grid" and "Common transmission system strengthening under tariff based competitive bidding" as evident from Annexure – V of the said order. The 800 kV HVDC Champa-Kurukshetra bi-pole line covered under the sub-head of "WR-NR HVDC Interconnected for IPP Projects in Chhattisgarh" was part of 'Common transmission system strengthening to be implemented by Power Grid."

49. Further, it would also be pertinent to observe that the said corridor was envisaged for evacuation and transfer of power to the tune of 15000-16000 MW from IPPs envisaged in Raigarh (Kotra), Champa, Raigarh (Tamnar) and Raipur generation complex in Chhattisgarh. Out of the above, about 5000 MW was envisaged to be transferred to the Northern Region and in order to facilitate this transfer requirement to Northern Region over a long distance, instant HVDC



transmission system was envisaged in addition to parallel AC network to which would have not only increased ATC between WR to NR by 4000 MW but also to facilitate controlled power flow requirement, flexibility of operation and maintaining other system parameters.

50. In view of the above, we find merit in the submissions of the Review Petitioner that the instant transmission assets have been planned in meshed network along with existing AC system and it would not be possible to allocate the dedicated transmission line for generating projects. Moreover, this observation also gets support from the Minutes of the 28th meeting of Standing Committee on Transmission System Planning of Northern Region held on 23.2.2010 and 15th TCC & 16 NRPC Meetings held on 15.4.2010 & 16.4.2010. The relevant paras of the Minutes of the said meetings are extracted as under:-

“10. Transmission system associated with IPPs located in Chhatisgarh, Orissa, Jharkhand, West Bengal, Madhya Pradesh, and Southern Region:

Member (PS) explained that many new generation projects were coming up under Central sector and Private Sector and a large quantum of power was targeted to be sold in Northern region. Even though firm beneficiaries has not been finalised, based on target beneficiaries, expected power flow have been captured while evolving the system in association with POWERGRID.

...”

“...

vii) Transmission system associated with IPPs located in Chhatisgarh, Orissa, Jharkhand, West Bengal, Madhya Pradesh, and Southern Region:

POWERGRID explained that subsequent to Long Term Open access regulations of CERC, POWERGRID received applications for a capacity addition of more than 200,000 MW from various generation developers. Out of the above capacity about 55,000 MW has been targeted to be sold in Northern region. While processing these applications readiness of generation projects applied for LTOA were assessed....

The proposed transmission corridors will focus on wheeling power from the generation projects located in the coal belt of Chhattisgarh, Jharkhand, Orissa and imported coal based generation projects in coastal Tamil Nadu & Andhra Pradesh. All the above applications have no firm beneficiaries and accordingly the transmission system requirement has been worked out on the basis of target beneficiaries/regions.”



51. Further, the Long Term Access agreement 24.2.2010 entered into between the Review Petitioner and the 13 Nos. of generating companies for the transfer of power from the generating stations to the place of delivery as indicated at Annexure-1 of the agreement clearly identified the transmission system required to be built by the LTA customer and the common transmission system to evacuate and dispatch the power to respective beneficiaries from the generation projects to be built by the Review Petitioner. The instant transmission assets were under the scope of common transmission system to be built by the Review Petitioner.

52. It is apparent from the above observations that the instant transmission assets were envisaged and created in order to evacuate and transfer of power from the IPP generation projects in the WR to the Northern Region on the basis of the LTA with firm PPA and the target LTA to NR. Therefore, this Commission in order dated 11.4.2017 while granting AFC under Regulation 7(7) of the 2014 Tariff Regulations, had observed that since the transmission assets were to be utilized against the LTA having firm PPA (1825 MW) and target region (to NR) (2124 MW), the transmission charges shall be shared as provided under the Regulation 11(4)(3)(i) of the 2010 Sharing Regulations.

53. Further, the observation of the Commission in the impugned orders holding that the instant transmission assets have been created for 13 generation project is also not appropriate as LTAs of these generating stations, which were the original grantee of LTAs on HCPTC-V for transfer of power from WR to NR, have been operationalized prior to COD of Champa-Kurukshetra Pole 1 and upon commissioning of Champa-Kurukshetra Pole-I, some of the generating companies such as TRN Energy, MB Power and Maruti Power who were originally granted LTA



subject to commissioning of Jabalpur-Orai transmission line were upgraded to Champa-Kurukshetra Pole-1. This is also evident from interim order dated 28.10.2016 in Petition No. 84/MP/2016 and the ROP dated 14.2.2017 in Petition No. 84/MP/2016, wherein the Commission has allowed the operationalization of LTA of such generators on account of capacity arising out of the relinquishment by the other generators.

54. In light of the above observations, we find that there is an error in the impugned orders which hold that the instant transmission assets are created only for 13 nos. of generation projects, as the instant transmissions assets are clearly envisaged for the bulk power transfer from the WR to NR in addition to the parallel existing network, which not only increases ATC between the region but also contributes to reliability of power supply to the NR beneficiaries. Further, the Commission in the impugned orders has also held that the sharing of transmission charges for the instant assets would be as per Regulation 11(4)(3)(iii) of the 2010 Sharing Regulations. This finding of the Commission was also on the basis that the instant transmission system has been developed for 13 generation projects and that the Annexure-4 of the LTA agreement and Minutes of 15th TCC and 16th NRPC meeting recognized the liability of payment of transmission charges on the generating company and/or beneficiary.

55. Admittedly, the clauses of the Agreement as well as the observations during the meeting that the generators/beneficiaries are liable to pay the transmission charges were prior to coming into effect of the 2010 Sharing Regulations. After the coming into effect of the 2010 Sharing Regulations, the provisions of the Regulations are necessarily to be applied in the present case and having come to the conclusion that the instant transmission assets are created to supply the power to Northern Region,



the methodology specified for sharing of transmission charges in the orders dated 22.2.2018 and 6.11.2018 would also require modification as the applicable methodology for sharing of transmission charges would now be as per Regulation 11(4)(3)(i) of the 2010 Sharing Regulations and it would come into effect from the date of commercial operation of the instant assets.

56. The Review Petitioner as well as some of the Respondents have requested that the annual transmission charges of Pole I and II need to be added together and the monthly transmission charges should be arrived at by considering them as one corridor and that they should not be billed separately. They have submitted that Champa-Kurukshetra HVDC is one corridor that is capable of transmitting of 3000 MW of power and it is incorrect to state that Pole-I and Pole-II can each separately transmit 1500 MW. Therefore, they have submitted that the correct manner of billing would be to make a sum total of the Annual Transmission Charges (ATC) as determined in both the tariff orders and then proportionating the same to 3000 MW. We agree with this contention of the Review Petitioner and the Respondents. The transmission scheme itself had been envisaged as \pm 800 kV, 3000 MW HVDC Bi-pole Champa Pooling Station (WR)-Kurukshetra (NR) Transmission Line and the Review Petitioner had filed separate petitions merely to take care of the different dates of commercial operation of Pole-I and II. Therefore, we direct the Review Petitioner to add together the annual transmission charges of Pole-I and Pole-II to arrive at monthly transmission charges and also to file one combined petition claiming tariff for all the assets covered in the transmission project at the truing up stage.



57. As regards the other issue of exponential rise in transmission charges and wrong billing raised by some of the respondents, we are of the view that this issue arose as the billing was being done as per provisions under Regulation 11(4)(3)(iii) of the 2010 Sharing Regulations as decided in our impugned Orders. This issue would be taken care of as we have allowed the prayer in the present Review Petitions allowing the sharing of transmission charge under Regulation 11(4)(3)(i) instead of sharing under Regulation 11(4)(3)(iii) of the 2010 Sharing Regulations.

58. As regards the submission of the Review Petitioner that it should be permitted to bill the State Utilities directly instead of the generators where firm PPAs exist throughout the country, we do not express any view on this issue as the same is not within the purview of the present Review Petitions.

59. In view of the above observations, the Review Petition No.20/RP/2018 alongwith I.A. Nos.46/IA/2019, 48/IA/2019 and 49/IA/2019 and Review Petition No. 3/RP/2019 stand disposed of.

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

sd/-
(P. K. Pujari)
Chairperson

