

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 29/RP/2018
Alongwith IA No.64/2018
in Petition No. 216/MP/2016**

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

Date of order: 15th of April, 2019

In the matter of

Petition for review of the order dated 25.6.2018 in Petition No. 216/MP/2016 under Section 94 of the Electricity Act, 2003 read with Order 47 Rule 1 of the CPC and Regulation 103(1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

**And
In the matter of**

Power Grid Corporation of India Limited
B-9, Qutab Industrial Area,
Katwaria Sarai,
New Delhi- 110016

...Petitioner

Vs.

1. Bhopal Dhule Transmission Company Limited
F-1, "The Mira Corporate Suites",
1 & 2 Ishwar Nagar,
Mathura Road, New Delhi – 110065.

2. Chhattisgarh State Power Trading Corporation Company
2nd Floor, Vidyut Sewa Bhawan,
Danganiya, Raipur – 492013, Chhattisgarh.

3. Sterlite Energy Limited
1st Floor, City Mart Complex,
Baramuda, Bhubaneshwar – 751003.

4. GMR Kamalanga Energy Limited
10th Floor, C&D Block, IBC Knowledge Park,
Opposite Fire Station, Bannerughatta Road,
Bangalore – 560029, Karnataka



5. Navbharat Power Private Limited
Malaxmi House, 82583/3,
Road No. 2 Banjara Hills,
Hyderabad – 500034, Andhra Pradesh
6. Monnet Power Company Limited
Monnet House, 11 Masjid Moth,
Greater Kailash Part II, New Delhi – 110048
7. Jindal India Thermal Power Limited
B-1, Local Shopping Complex,
Vasant Kunj, New Delhi – 110070
8. Lanco Babandh Power Private Limited
Plot No. 397, Udyog Vihar V,
Gurgaon – 122016, Haryana
9. Ind Barath Energy (Utkal) Private Limited
Plot No. 30A, Road No.1,
Jubilee Hills, Film Nagar,
Hyderabad – 500033, Andhra Pradesh
10. MB Power (Madhya Pradesh) Limited
235 Okhla Industrial Area,
Phase-III, New Delhi Delhi – 110020
11. RKM Powergen Limited
147, Gitanjali Avanti Vihar
Sector 1, Raipur– 492004, Chhattisgarh
12. Athena Chhattisgarh Power Limited
7-1-24 B Block, 5th Floor, Roxana Towers,
Greenlands, Begumpet,
Hyderabad – 500016, Andhra Pradesh
13. Jindal Power Limited
2nd Floor, DCM Building,
Plot No. 94, Sector 32,
Gurgaon – 122001, Haryana
14. SKS Power Generation (Chhattisgarh) Limited
501 B, Elegant Business Park,
Andheri, Kurla Road, J. B. Nagar,
Andheri (East), Mumbai – 400059
15. Korba West Power Co. Limited
6th and 7th Floor, Vatika City Point,
M. G. Road, Gurgaon – 122002, Haryana



16. DB Power Limited
813, Phase-V, Udyog Vihar,
Gurgaon, Haryana – 122016

17. Visa Power Limited
No.9, HLL Building, Shakespeare Sarani,
Kolkata – 700071, West Bengal

18. KSK Mahanadi Power Company Limited
82/293/82/A/431/A, Road No. 22
Jubilee Hills, Hyderabad – 500033,
Andhra Pradesh

19. Bharat Aluminum Company Limited
C/o Administrative Building,
Balco Nagar, Korba – 495684,
Chhattisgarh

20. Vandana Vidyut Limited
Vandana Bhawan, MG Road,
Raipur, Chhattisgarh – 492001

21. Lanco Amarkantak Power Limited
Plot No. 397, Udyog Vihar, Phase-3,
Gurgaon – 122016, Haryana

22. Chhattisgarh Steel & Power Limited
142, Saheed Smarak Complex, G. E. Road,
Raipur, Chhattisgarh- 492001.

23. GMR Chhattisgarh Energy Pvt. Limited
10th Floor, Tower D, IBC Knowledge Park,
4/1 Bannerghatta Road, Near Dairy Circle,
Bangalore – 560029

...Respondents

Parties Present:

Ms. Suparna Srivastava, Advocate, PGCIL
Ms. Manju Gupta, PGCIL
Shri V.C. Sekhar, PGCIL
Shri Jafar Alam, Advocate, BDTCL
Shri Deep Rao, Advocate, BDTCL
Shri Divyanshu Bhatt, Advocate, BDTCL
Shri TAN Reddy, BDTCL
Ms. Anisha Chopra, BDTCL



ORDER

The Review Petitioner, Power Grid Corporation of India Limited (hereinafter referred to as “the Review Petitioner”), has filed the present Review Petition under Section 94 of the Electricity Act, 2003 read with Regulation 103(1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, read with order 47 Rule 1 of the Code of Civil Procedure, 1908 for seeking review of the order dated 25.6.2018 in Petition No.216/MP/2016 (hereinafter referred to as ‘impugned order’) along with the following prayers:

“(a) admit the present Review Petition and review and modify the Order dated 25.6.2018 to the extent it directs the Review Petitioner to pay the transmission charges of the Dhule–Vadodra 765 kV S/s transmission line (DV) from 9.2.2015 to 13.6.2015 (124 days) on account of delay in providing the termination bays at Vadodra sub-Station;

(b) pass such further and other order(s) as this Commission may deem fit and proper in the facts and circumstances of the present case.”

Background of the case:

2. The Respondent No. 1, Bhopal Dhule Transmission Company Limited (hereinafter referred to as ‘BDTCL’), was selected as a successful bidder through the international tariff based competitive bidding under Section 63 of the Electricity Act, 2003 to establish transmission system comprising of the following elements:

(a) Transmission Line

- (i) Jabalpur-Bhopal 765kV S/C Transmission Line (JB Line);
- (ii). Bhopal-Indore 765 kV s/C Transmission Line (BI Line)
- (iii). Bhopal-Bhopal 400 kV D/C Transmission Line (BB Line)
- (iv). Aurangabad-Dhule 765 kV S/C Transmission Line (AD Line)
- (v). Dhule-Vadodara 765 kV S/C Transmission Line (DV Line)
- (vi). Dhule-Dhule 400 kV D/C Transmission Line (DD Line)

(b) Sub-stations:

- (i) 765/400 kV 2X1500 MVA substation at Bhopal (Bhopal Substation)



(ii) 765/400 kV 2X1500 MVA substation at Dhule (Dhule Substation)

3. The Petitioner entered into the Transmission Service Agreement dated 7.12.2010 with Long Term Transmission Customers. The Commission in its order dated 12.10.2011 in Petition No. 110/2011 granted the transmission licence to the Petitioner for inter-State transmission of electricity and in order dated 28.10.2011 in Petition No. 108 of 2011 adopted the transmission charges for the project.

4. As per the TSA, the transmission system was required to be completed and commissioned within 36 months from the effective date i.e. 31.3.2011. Therefore, the Scheduled Commercial Operation Date (SCoD) of the transmission assets was 31.3.2014. However, due to change in law and force majeure events, the transmission lines were put to actual use only by 13.6.2015. Accordingly, BDTCL approached the Commission through the Petition No.216/MP/2016 for seeking compensatory and declaratory reliefs under the TSA on account of *force majeure* and change in law events in addition to declaration that BDTCL is entitled to receive transmission charges in respect of the DV Line (Dhule-Vadodara) with effect from its Commercial Operation Date i.e. 9.2.2015. The Commission after hearing the parties, in Para 72 of impugned order dated 25.6.2018 inter alia observed that since the actual use of the line was delayed on account of non-readiness of the sub-station of PGCIL, BDTCL is entitled for transmission charges effect from 9.2.2015 in terms of the TSA.

Submissions of the Review Petitioner:

5. The Review Petitioner mainly has submitted as under:



(a) BDTCL, in Petition No. 216/MP/2016 arrayed the Review Petitioner as Respondent No.23 and after admitting the Petition, the Commission issued notice to all the Respondents, including the Review Petitioner, to file their replies. However, the address of the Review Petitioner mentioned by BDTCL in the Memo of Parties was given as “400/220 kV ASOJ M/s GETCO Substation, AT&PO: Amaliyara, Halol Road, Vadodara-390022” which was temporary office of the Review Petitioner for supervision of the construction activities and was closed in early 2016 after completion of the project activities. BDTCL deliberately and consciously served a copy of the Petition No. 216/MP/2016 at the site office of the Review Petitioner which had already been closed at the time of filing the Petition.

(b) The Petition was filed by BDTCL on 15.10.2016. However, BDTCL mapped the Review Petitioner on the Commission’s e-filing portal on 15.11.2017. These facts clearly show that the Review Petitioner was deliberately and wilfully prevented from participating in the proceedings before the Commission.

(c) On 16.11.2017, the Review Petitioner on the very next day after its mapping filed a reply to the Petition. However, the issues agitated by BDTCL could not be effectively addressed as the relevant information from CTU and its Regional Offices could not be gathered. Therefore, by way of the present Review Petition, the Review Petitioner is also placing on record the submissions which could not be placed before the Commission in Petition No.216/MP/2016.

(d) The Commission in the impugned order held that the Review Petitioner was liable to bear the transmission charges of the DV Line from 9.2.2015 to 13.6.2015



(124 days) on account of delay in providing the termination bays at Vadodra sub-station. The Review Petitioner was facing difficulties in allotment of land for Vadodra GIS sub-station from the District Administration which was granted by District Administration on 13.8.2013 and immediately thereafter, vide letter dated 11.9.2013, BDTCL was informed about the GPS co-ordinates of the 765 kV line gantries of Dhule line at Vadodara GIS sub-station.

(e) On 14.1.2015, the Review Petitioner informed the Chief Engineer (SP&PA), Central Electricity Authority (CEA) that the Vadodara 765/400 kV sub-station was expected to be commissioned by April, 2015 whereas the Dhule-Vadodara 765 kV line was expected to be commissioned by January, 2015 and proposed that the DV line could be charged at 400 kV utilizing Vadodara-Pirana 400 kV S/c line (bypassing Vadodara 765/ 400 kV substation) as an interim arrangement. Thereafter, the Review Petitioner vide letter dated 3.2.2015 recommended the interim arrangement to the CEA for its in-principle approval.

(f) As per BDTCL submissions, during the interim period between deemed COD i.e. 9.2.2015 and actual use of DV line i.e. 13.6.2015, the Review Petitioner did not provide the necessary interim arrangement required for operating the transmission line. However, the Commission vide order dated 25.5.2016 in Petition No.66/TT/2015 had taken note of time over-run on part of the Review Petitioner in implementing the Vadodara GIS sub-station mainly due to the delay in land allotment and non-readiness of associated transmission lines by BDTCL and had condoned the said delay. Since, the delay in land allotment thus having been condoned, the same could not have been considered adversely qua the Review



Petitioner as has erroneously been done by the Commission in the impugned order dated 25.6.2018.

(g) As per the terms and conditions of the TSA, completion of the sub-station at Dhule end was a prerequisite before declaring the COD of the DV line and BDTCL without fulfilling the prerequisite conditions had claimed deemed COD as 9.2.2015. Therefore, BDTCL was ineligible for being considered by the Commission for transmission charges for the elements forming part of the Dhule sub-station.

6. The Review Petitioner has filed Interlocutory Application No. 64/2018 for seeking stay of the impugned order dated 25.6.2018 to the extent it directs the Review Petitioner to pay to BDTCL transmission charges for the DV Line from 9.2.2015 to 13.6.2015.

7. Notice was issued to the Respondents on the Review Petition and IA to file their replies. Reply to the Review Petition has been filed by BDTCL and the Review Petitioner has filed rejoinder thereof.

8. BDTCL, vide its reply dated 28.12.2018, has submitted that the present Review Petition is not maintainable and has further submitted as under:

(a) On 16.11.2017, the Review Petitioner had filed a detailed reply on merits i.e. almost 8 months before the issuance of the impugned order dated 25.6.2018 and BDTCL had also filed rejoinder thereof. If the Review Petitioner believed that it had not been granted an opportunity to be heard, it was open to the Review Petitioner to approach the Commission seeking another hearing by way of an appropriate application. However, no such effort was made by the Review Petitioner.



(c) There is no contradiction between the Commission order dated 25.5.2016 in Petition No. 66/TT/2015 and the impugned order. It is evident from a conjoint reading of the Regulations 3, 8 and 12 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as “Tariff Regulations”) that the Review Petitioner may pass through the financial losses on account of any genuine *Force Majeure* events, as may have been condoned in Petition No. 66/TT/2015 or otherwise, at the time of truing up. Since, the impugned order in no way causes any violence to the findings of the Commission’s order in Petition No. 66/TT/2015, there is absolutely no error in the impugned order. Therefore, it is open for the Review Petitioner to claim the amounts payable to BDTCL at the time of true-up in accordance with Regulation 8(7) of the Tariff Regulations.

(d) The Commission in its order dated 21.9.2016 in Petition No. 43/MP/2016, explained that the entity responsible for constructing the connecting line bays shall be responsible for bearing the transmission charges in the event of delay. Therefore, the delay is solely attributable to the Review Petitioner in commissioning its Vadodara sub-station which has led to delay in the charging of the BDTCL’s DV Line.

(e) BDTCL has validly declared deemed CoD for the DV Line in terms of the TSA, and the same has attained finality which has also been considered by the Commission in its order dated 26.11.2015 in Petition No. 122/MP/2015. DV Line was ready in all respects and could have been charged and put into commercial operation on the deemed date of CoD, i.e. on 9.2.2015, had it not been for the



Review Petitioner's failure to timely commission the Vadodara sub-station. The said failure on part of the Review Petitioner was a non-natural *Force Majeure* event, beyond the control of BDTCL.

(f) At the time of the declaration of the deemed CoD of DV line by BDTCL neither the CEA, nor the Review Petitioner has raised any objection. However, the limitation period of 3 years for any challenges to the declaration of the aforesaid deemed CoD of 9.2.2015 has run out almost a year back. Therefore, it is not open to PGCIL to challenge the same in the present Review Petition.

9. The Review Petitioner, vide its rejoinder dated 5.2.2019, has reiterated the submissions made in the Petition and has submitted that the Commission in its order dated 26.11.2015 in Petition No.122/MP/2015 has specifically directed that the Respondent shall be entitled for transmission charges from the date each element was put under regular service. The said order must be read in its entirety and BDTCL cannot be allowed to selectively place reliance on one aspect of the order and leave out other findings and directions of the Commission.

Analysis and Decision:

10. In the present Petition, the Review Petitioner has sought review of the Commission's order dated 25.6.2018 in Petition No.216/MP/2016 whereby, the Commission adjudicated the compensatory and declaratory reliefs sought by BDTCL under the TSA dated 7.12.2010 on account of *force majeure* and change in law events claiming that the same had adversely affected the construction of the system strengthening project for the Western Region and put the liability to pay transmission charges for the DV line from 9.2.2015 to



13.6.2015 on the Review Petitioner. Aggrieved by the Commission's order dated 25.6.2018 in Petition No.216/MP/2016, the Review Petitioner has filed the present Review Petition on the following grounds:

A. The Review Petitioner was not given adequate opportunities to present its views and documents before the Commission in Petition No. 216/MP/2016.

B. The Commission vide order dated 25.5.2016 in Petition No. 66/TT/2015 has already condoned the time over-run in implementation of the Vadodara GIS sub-station. Therefore, the same cannot be considered adversely in Petition No. 216/MP/2016.

C. The Commission in its order dated 26.11.2015 in Petition No. 122/MP/2015 directed that the transmission charges in respect of each element shall be recovered from the date each element was put to regular service. Since, the DV transmission line was put to regular service on 13.6.2015, the transmission charges for the same should be recovered from 13.6.2015, not from the date of deemed CoD i.e. 9.2.2015.

11. We have considered the submissions made by the parties and perused the documents on record. Now, we proceed to deal with each of the aspects on which the Review Petitioner has sought review the decision in the impugned order.

A. Review Petitioner was not given adequate opportunities to present its views and documents before the Commission in Petition No. 216/MP/2016.

12. According to the Review Petitioner, BDTCL deliberately served the copy of Petition No. 216/MP/2016 on the site office of the Review Petitioner which was a temporary office opened by the Review Petitioner for supervision of the construction activities and was closed in early 2016 after completion of the project activities. The Review Petitioner has submitted that PGCIL came to know about the proceedings in the Petition No. 216/MP/2016 at a very late stage and immediately thereafter contacted the learned counsel for BDTCL to map the Review Petitioner. The Review Petitioner was mapped on the Commission's e-filing portal on 15.11.2017. Although, the hearing in the Petition No. 216/MP/2016 had



already taken place on 25.6.2017 and the order had been reserved by the Commission, the Review Petitioner has submitted that it had filed the reply on 16.11.2017 but could not effectively address the issues agitated by the BDTCL since the relevant information could not be gathered from CTU and its Regional Offices. Thus, the Review Petitioner was deliberately prevented by BDTCL from being adequately represented before the Commission and to file an appropriate reply in the said Petition.

13. *Per contra*, the Respondent, BDTCL has contended that the Review Petitioner was validly served the notice in Petition No. 216/MP/2016 on 19.12.2016, which is evidenced by Blue Dart Courier Delivery Waybill No. 14978022485. Further, the Review Petitioner never communicated to BDTCL that it was merely a temporary office or that future correspondence should be addressed to any alternate address. BDTCL has submitted that there is no error apparent on face of the record in well-reasoned impugned order dated 25.6.2018 in Petition No. 216/MP/2016. The Review Petitioner is treating this Review Petition as an appeal in disguise and is seeking to escape its obligations clearly recognized by this Commission.

14. We have considered the submissions of the Review Petitioner and the Respondent, BDTCL. It is noted that although the BDTCL had served the copy of the Petition No. 216/MP/2016 at the site office of the Review Petitioner which was a temporary office created by the Review Petitioner for supervision of project activities and hence, the Review Petitioner was prevented from timely and adequate representation before the Commission. We have taken a serious note of the act of BDTCL and are of the view that the BDTCL should have served the Review Petitioner at its Regional Office or its corporate office to enable the Review Petitioner to timely and adequately represent its case before the



Commission. Nevertheless, the Review Petitioner was mapped on the e-portal on 15.11.2017 and the Review Petitioner had filed its reply on 16.11.2017. Perusal of the reply dated 16.11.2017 filed by the Review Petitioner in Petition No. 216/MP/2016 reveals that the reply filed by the Review Petitioner was considered by the Commission in the impugned order while deciding the matter. The relevant portion of the order dated 25.6.2018 in Petition No. 216/MP/2016 is extracted as under:

“49. PGCIL in its reply dated 16.11.2017 has submitted that the possession of the land for Vadodara GIS sub-station being implemented by PGCIL was given by the District Administration on 13.8.2013 and immediately after possession of land, PGCIL vide its letter dated 11.9.2013 informed the Petitioner about GPS coordinates of the 765 kV line gantries of Dhule line at Vadodara GIS sub-station. PGCIL has submitted that it is a normal practice in construction of transmission line that around 4 to 5 kms of the line at terminating end is kept under hold for construction, pending GPS co-ordinates of the line end gantry or matched with the completion of the terminating sub-station. Since, DV line was commissioned on 2.2.2015 (declared deemed DOCO as 9.2.2015), it is beyond comprehension that the Petitioner could not complete the balance portion of the line of around 4-5 kms at Vadodara end, within the 17 months available to the Petitioner from the date of intimation of the gantry position by PGCIL. PGCIL has submitted that it is not clear as to how the Petitioner applied for the forest clearance, FRA, etc. for DV Line in September, 2011 when the route of the line itself was not finalized.”

15. Therefore, the Review Petitioner had filed a detailed reply on the merits of the claims raised in Petition No. 216/MP/2016. The Review Petitioner is re-agitating the same issue which has been extensively dealt with by the Commission in the impugned order dated 25.6.2018. Therefore, we are unable to agree with the Review Petitioner that it could not effectively address the issues agitated by BDTCL in Petition No. 216/MP/2016. Further, we agree with the contention of BDTCL that it was open to Review Petitioner to approach the Commission seeking another hearing by way of an appropriate application if it was not given time to adequately present its views and documents before the Commission during pleadings in Petition No. 216/MP/2016. Therefore, we do not find any infirmity in the



impugned order dated 25.6.2018 on this ground. Accordingly, review on this aspect is rejected.

B. The Commission vide order dated 25.5.2016 in Petition No. 66/TT/2015 has already condoned the time overrun in implementation of the Vadodara GIS sub-station. Therefore, the same cannot be considered adversely in Petition No. 216/MP/2016.

16. According to the Review Petitioner, the Commission in its order dated 25.5.2016 in Petition No.66/TT/2015 had taken note of time over-run on part of the Review Petitioner in implementing the Vadodara GIS sub-station mainly due to the delay in land allotment and non-readiness of associated transmission lines by BDTCL and had condoned the said delay. Since, the delay in land allotment had already been condoned, the same could not have been considered adversely in order dated 25.6.2018 in Petition No. 216/MP/2016. The Review Petitioner has submitted that vide order dated 30.6.2015 in Petition No.99/TT/2013, the Commission had dealt with a similar situation and had condoned the delay on part of Sterlite Transmission Projects Pvt. Ltd. for construction of the transmission line without any liability to pay transmission charges despite the asset of the PGCIL being ready. Since the Commission already cemented its view in the order dated 30.6.2015 in Petition No.99/TT/2013, the Review Petitioner is also entitled to the same benefit. The Review Petitioner has submitted that a similar view has also been taken by the Commission in order dated 10.6.2016 in Petition No.42/TT/2013.

17. BDTCL has contended that the Commission in its order dated 21.9.2016 in Petition No. 43/MP/2016, explained that the entity responsible for constructing the connecting line bays shall be responsible for bearing the transmission charges in the event of delay and also upheld the principle that the payment liability should fall on the entity on whose



account an element is not put to use in its various orders, namely, order dated 19.4.2016 in Petition No. 100/TT/2014, order dated 5.8.2015 in Petition No. 11/SM/2014, and Order dated 4.1.2017 in Petition No. 155/MP/2016. Therefore, the delay is solely attributable to the Review Petitioner in commissioning its Vadodara sub-station which has led to delay in the charging of the BDTCL's DV Line. Further, contrary to Review Petitioner's contentions, the Commission vide order dated 9.10.2018 in Petition No. 100/TT/2017 directed East North Interconnection Project Limited (ENICL) to pay the Review Petitioner, PGCIL, IDC and IEDC for the period of delay in commissioning ENICL's elements.

18. We have considered the submissions of the Review Petitioner and BDTCL. With regard to the transmission charges for DV Line from the date of deemed commissioning, i.e., 9.2.2015, the Commission in the impugned order dated 25.6.2018 had observed and directed as under:

"71. We have considered the submissions of the Petitioner and CSPTCL. The Petitioner has submitted that it is entitled to receive transmission charges for the DV Line with effect from i.e. 9.2.2015 in accordance with the provisions of the TSA, the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 and the Billing, Collection and Disbursement Procedure. However, the Petitioner is presently receiving transmission charges only from 13.6.2015 onwards. Let us consider Article 6.2.1 and Schedule 3 of the TSA which provides as under:

"6.2 Commercial Operation: 6.2.1 An element of the project shall be declared to have achieved COD seventy two (72) hours following the connection of the Element with the Interconnection Facilities or seven (7) days after the date on which it is declared by the TSP to be ready for charging but is not able to be charged for reasons not attributable to the TSP or seven (7) days after the date of deferment, if any, pursuant to Article 6.1.2.

Provided that an element shall be declared to have achieved COD only after all the elements, if any, which are pre-required to have achieved COD as defined in Schedule 3 of this Agreement, have been declared to have achieved their respective COD."

As per Schedule 3 of the TSA, the payment of transmission charges for any element irrespective of its successful commissioning on or before its Scheduled COD are required to be considered after successful commissioning of the Elements (s) which are pre-required for declaring the commercial operation of such elements as mentioned in the Table given in Schedule 3. Accordingly, for calculation of payment of transmission charges in respect of



the DV Line, the elements which are pre-required for declaring the commercial operation (COD) of the respective element are:

- (i) Aurangabad-Dhule 765 kV S/C Line, successfully commissioned on 5.12.2014;
- (ii) Dhule substation (2X1500 MVA, 765/400 kV), successfully commissioned on 6.12.2014; and
- (iii) (iii) Dhule –Dhule , 400 kV D/C line, successfully commissioned on 6.12.2014.

72. On a combined reading of Schedule 3 and Article 6.2.1 of the TSA, it becomes clear that an element shall be declared to have achieved COD only after all the elements, if any, which are pre-required to have achieved COD as defined in Schedule 3 of this Agreement, have been declared to have achieved their respective COD. The pre-required elements for declaring of the commercial operation of the DV Line are Aurangabad-Dhule 765 kV S/C Line, Dhule substation (2X1500 MVA, 765/400 kV) and Dhule-Dhule, 400 kV D/C line which had achieved their COD on 5.12.2014, 6.12.2014 and 6.12.2014 respectively. After obtaining the permission of CEA for anti-theft charging, the Petitioner has declared COD of the DV Line on 9.2.2015 which is in compliance with the provisions of Article 6.2.1 of the TSA. The Petitioner`s DV line could be actually put into use from 13.6.2015 after the COD of the sub-station of PGCIL. We are of the view that the Petitioner is entitled for transmission charges with effect from 9.2.2015 in terms of the TSA. Since the actual use of the line was delayed on account of non-readiness of the sub-station of PGCIL, we are of view that the Petitioner is entitled to recover the tariff from 9.2.2015 till 12.6.2015 from PGCIL in respect of the 765 DV transmission line, proportionate to the transmission charges calculated on the basis of the contracted transmission charges for the relevant years.”

19. It is noted that the Petitioner in Petition No. 216/MP/2016 had specifically prayed to declare that the Petitioner is entitled to receive transmission charges in respect of the DV Line w.e.f. its CoD i.e. 9.2.2015. The transmission line was declared under commercial operation with effect from 9.2.2015 in terms of Article 6.2.1 of the TSA. The decision in the impugned order dated 25.6.2018 has been arrived at after considering all the relevant documents available on record that the actual use of the line was delayed on account of non-readiness of the sub-station of PGCIL, and BDTCL is entitled to recover the transmission charges from 9.2.2015 till 12.6.2015 from PGCIL in respect of the 765 kV DV transmission line. The Review Petitioner has quoted previous Orders of the Commission in Petition No.99/TT/2013 and in Petition No.42/TT/2013. We have perused the decision taken in these orders. The relevant portion of the order dated 10.6.2015 in Petition No. 42/TT/2013 extracted as under:



“11. As per the Tribunal’s judgement, an element of transmission system can be declared as having attained commercial operation only if it has been charged successfully after successful trial operation and is in regular service. In the instant Order in Petition No. 42/TT/2013 Page 8 of 8 case, Bays and Line Reactors covered in the petition were ready, but the successful trial operation and charging could not be carried out without the Bongaigaon-Siliguri Transmission Line getting commissioned. As per the information available in the website of CEA, Bongaigaon-Siliguri Transmission Line was got completed in November, 2014. As the Bays and Line Reactors could not have been charged for trial operation without the availability of the transmission line, the case is not covered under the second proviso of Regulation 3(12)(c) of the 2009 Tariff Regulations. Accordingly, the date of commercial operation of Asset-1 and Asset-2 cannot be approved as 1.4.2013 and 1.6.2013 respectively as claimed by the petitioner.

12. We are of the view that the instant transmission assets could be charged and trial operation could be successfully carried out only on commissioning of the Bongaigaon-Siliguri Transmission Line, which is stated to have been commissioned in November, 2014. Accordingly, the date of commercial operation of the transmission assets could be only during the 2014-19 tariff period. However, the petitioner has claimed tariff for the transmission assets as per the 2009 Tariff Regulations. As such, the petitioner is directed to file a fresh petition claiming tariff for the transmission assets as per the 2014 Tariff Regulations within 30 days of issue of this order.”

In the above order, COD was not agreed in accordance with judgment of the Appellate Tribunal in Appeal No. 123 of 2011 and hence no decision on sharing of transmission charges was taken there.

20. Similarly, the Commission in its order dated 30.6.2015 in Petition No. 99/TT/2013 held as under:

“21. As per the IA, the commissioning schedule of the project was 18 months from the date of IA i.e. 19.9.2011. Accordingly the schedule date of completion works out to 18.3.2013, say 1.4.2013. There is no delay in commissioning of Asset-1(a) and 2. However, there is a delay of 1 month in commissioning of 1 no 80 MVAR Switchable Line Reactor i.e. Asset-1(b). The reason for delay in commissioning of 1 no. 80 MVAR Switchable Line Reactor is due to delay in commissioning of transmission line constructed by M/s Sterlite (through Tariff Based Competitive Bidding).

22. The petitioner has not claimed any IDC in respect of all three assets. The IEDC claimed by the petitioner has been considered with reference to the Abstract Cost Estimate submitted by the petitioner and is allowed subject to the petitioner submitting the details of expenditure as on the tariff date, i.e. 1.10.2013 and year wise detailed computation of IDC/IEDC on cash basis at the time of truing up. Order in Petition No. 99/TT/2013 Page 13 of 38 Further, as the tariff date of the instant assets has been considered to be 1.10.2013 in line with judgement of the Tribunal, the claim of IDC/IEDC in respect of Asset-1(a) and Asset-2 for the period from 1.4.2013 to 1.10.2013 and in respect of Asset-1(b) for the period 1.5.2013 to 1.10.2013, if any, shall be considered at the time of truing up.”



In the above order, the COD of asset was shifted in accordance with the judgment of the Appellate Tribunal in Appeal No.123 of 2011. However, since the Petitioner had not claimed any IDC, decision on sharing of IDC/IEDC has been directed to be considered at the time of truing up. Therefore, the contention of the Petitioner that the Commission had condoned the delay on part of Sterlite Transmission Projects Pvt. Ltd. for construction of the transmission line without any liability to pay transmission charges despite the asset of the PGCIL being ready is not correct.

21. The Review Petitioner has failed to capture the principle which has been adopted by the Commission in number of cases such as Petition Nos. 43/MP/2016, 155/MP/2016 and 236/MP/2015, etc., where a transmission element is ready for use but cannot be put to regular use due to unavailability of downstream network.

22. In the light of the above, there is no error apparent on the face of the record and review of the impugned order on this ground does not survive.

C. The Commission in its order dated 26.11.2015 in Petition No. 122/MP/2015 directed that the transmission charges in respect of each element shall be recovered from the date each element was put to regular service. Since, the DV transmission line was put to regular service on 13.6.2015, the transmission charges for the same should be recovered from 13.6.2015, not from the date of deemed CoD i.e. 9.2.2015.

23. According to the Review Petitioner, as per the terms and conditions of the TSA, completion of the sub-station at Dhule end was a pre-requisite before declaring the CoD of the DV line and BDTCL without fulfilling the same had claimed deemed CoD as 9.2.2015. Therefore, BDTCL was ineligible for being considered by the Commission for transmission charges for the elements forming part of the Dhule sub-station. The Review Petitioner has



further submitted that the Commission in its order dated 26.11.2015 in Petition No.122/MP/2015 specifically directed that the Respondent shall be entitled for transmission charges from the date each element was put under regular service. The said order should be read in its entirety and BDTCL cannot be allowed to selectively place reliance on one aspect of the order and leave out other findings and directions of the Commission.

24. BDTCL has contended that BDTCL validly declared deemed CoD for the DV Line in terms of the TSA, and the same was also found by the Commission in its order dated 26.11.2015 in Petition No. 122/MP/2015. Further, the Review Petitioner was Respondent No. 2 in the said order dated 26.11.2015. Since, the Review Petitioner did not challenge the above order, the same has attained finality. BDTCL has submitted that at the time of the declaration of the deemed CoD of DV Line by BDTCL neither the CEA, nor the Review Petitioner objected to the same.

25. We have considered the submissions made by the Review Petitioner and the BDTCL. It is noted that vide order dated 26.11.2015 in Petition No.122/MP/2015, we had directed that the Petitioner therein shall be entitled for transmission charges from the date each element was put into regular service without linking to the pre-requisites prescribed in the Schedule 3 of the TSA. The relevant portion of the said order dated 26.11.2015 is extracted as under:

“21. All the elements of the scheme awarded to the petitioner have been commissioned. Therefore, the purpose of prescribing the pre-requisites has been achieved. Moreover, the elements have been put into service on the basis of the recommendation of the CEA that the elements can be put into regular service after successful trial operation irrespective of the prerequisites specified in the TSA. Keeping these factors in view, we direct that the petitioner shall be entitled for transmission charges from the date each element was put into regular service without linking to the pre-requisites prescribed in the Schedule 3 of the TSA.....”



26. We are not in agreement with the contention of Review Petitioner that tariff shall be allowed from date of regular service for DV Line. DV Line was complete in all respects and could not be put to regular service for want of associated bays of PGCIL as on 9.2.2015. As on 9.2.2015, all prerequisites of this line were already commissioned on 6.12.2014. The Commission in its order dated 26.11.2015 in Petition No. 122/MP/2015 has covered aspect of considering commissioning of lines without prerequisites identified under TSA. Since prerequisites of DV Line were already commissioned prior to DV Line being ready, the direction that “petitioner is entitled for transmission charges from the date each element was put into regular service without linking to the pre-requisites” is not for DV Line.

27. Further, at Para 72 of the order dated 25.6.2018 in Petition No. 216/MP/2016, the Commission directed as under:

“72. On a combined reading of Schedule 3 and Article 6.2.1 of the TSA, it becomes clear that an element shall be declared to have achieved COD only after all the elements, if any, which are pre-required to have achieved COD as defined in Schedule 3 of this Agreement, have been declared to have achieved their respective COD. The pre-required elements for declaring of the commercial operation of the DV Line are Aurangabad-Dhule 765 kV S/C Line, Dhule substation (2X1500 MVA, 765/400 kV) and Dhule-Dhule, 400 kV D/C line which had achieved their COD on 5.12.2014, 6.12.2014 and 6.12.2014 respectively. After obtaining the permission of CEA for anti-theft charging, the Petitioner has declared COD of the DV Line on 9.2.2015 which is in compliance with the provisions of Article 6.2.1 of the TSA. The Petitioner’s DV line could be actually put into use from 13.6.2015 after the COD of the sub-station of PGCIL. We are of the view that the Petitioner is entitled for transmission charges with effect from 9.2.2015 in terms of the TSA. Since the actual use of the line was delayed on account of non-readiness of the sub-station of PGCIL, we are of view that the Petitioner is entitled to recover the tariff from 9.2.2015 till 12.6.2015 from PGCIL in respect of the 765 DV transmission line, proportionate to the transmission charges calculated on the basis of the contracted transmission charges for the relevant years.”

28. The Petitioner in Petition No. 216/MP/2016 (Respondent No. 1 herein) had submitted that it is entitled to receive transmission charges for the DV Line with effect from i.e. 9.2.2015 in accordance with the provisions of the TSA, the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 and the Billing, Collection and Disbursement Procedure, the same was not allowed from



9.2.2015. Therefore, the Commission in the impugned order dated 25.6.2018 directed that the actual use of DV Line was delayed because of non-readiness of sub-station of PGCIL and therefore, the Petitioner (Respondent No.1 herein) is entitled to recover the tariff from 9.2.2015 till 12.6.2015 from PGCIL in respect of DV Line i.e. for the period when the DV line could not be put to regular service. In view of the above, we are unable to agree with the Review Petitioner that there is an error apparent on the face of the impugned order. Accordingly, review on this count is rejected.

29. With regard to IA No.64/2018, since we rejected all the grounds raised by the Review Petitioner, IA filed for stay of the operation of the order dated 25.6.2018 in Petition No.216/MP/2016 is disallowed.

30. The Petition No. 29/RP/2018 alongwith IA No. 64/2018 is disposed of in terms of the above.

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

sd/-
(P.K. Pujari)
Chairperson

