

**CENTRAL ELECTRICITY REGULATORY COMMISSION**

**NEW DELHI**

**Review Petition No. 13/RP/2020**  
**along with IA No. 26/IA/2020**

**Coram: Shri P. K. Pujari, Chairperson**  
**Shri I. S. Jha, Member**  
**Shri Arun Goyal, Member**

**Date of Order: 26.08.2020**

**In the matter of:**

Petition for review of order dated 25.4.2019 in Petition No. 124/TT/2018 under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 103(1) & 116 of the Central Electricity Regulatory Commission (Conduct of Business), Regulations, 1999.

NHPC Ltd.  
N.H.P.C Office Complex  
Sector-33 Faridabad-121003  
(Haryana)

**...Review Petitioner**

**Vs.**

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

**.... Respondent**

**For Petitioner** : Shri Rajiv Shankar Dvivedi, Advocate, NHPC  
Shri M. G. Gokhale, NHPC

**For Respondents** : None

**Order**

The instant Petition No. 13/RP/2020 has been filed by NHPC Limited (hereinafter referred to as "Review Petitioner/ NHPC") seeking review of the order dated 25.4.2019 in Petition No. 124/TT/2018, wherein the Commission held that



NHPC would bear the transmission charges of the 220 kV Kishanganga-Amargarh D/C line on M/C tower from 27.2.2018 to 17.5.2018. NHPC has also filed Interlocutory Application No.26/IA/2020 for condonation of the delay in filing the review petition.

### **Background**

2. Power Grid Corporation of India Limited (hereinafter referred to as “PGCIL”) filed Petition No. 124/TT/2018 for determination of transmission tariff of the 220 kV Kishanganga-Amargarh D/C line on M/C tower (hereinafter referred to as “subject asset”) under “Transmission system associated with Kishanganga HEP” in Northern Region for the period from COD, i.e. 27.2.2018 to 31.3.2019 under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as the “2014 Tariff Regulations”).

3. PGCIL, in Petition No. 124/TT/2018, sought approval of the date of commercial operation (COD) of the instant asset under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations as it completed the transmission line under its scope, but was not able to put the transmission line into commercial operation as NHPC did not commission its generating station. Taking into consideration the facts of the matter, the Commission approved the COD of the subject asset as 27.2.2018 under the said provision and held that the transmission charges from 27.2.2018 to 17.5.2018, the day before the date of commercial operation of the generating station by NHPC would be borne by NHPC. The relevant portion of the order dated 25.4.2019 in the Petition No.124/TT/2018 is extracted hereunder:-

*“15. In support of COD of Asset-I, the petitioner has submitted provisional CEA Certificate dated 22.2.2018 under Regulation 43 of CEA (Measures relating to safety and Electric Supply) Regulations, 2010, NRLDC letter dated 16.7.2018 with first time charging date as 25.2.2018, indicating intermittent power flow during trial run period. The petitioner has also submitted the CMD Certificate vide affidavit dated 17.10.2018*



*certifying that the transmission line, and communication system conform to the relevant Grid Standard and Grid Code and are capable of operation to their full capacity with effect from 27.2.2018 as required under Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010. Thus, in our opinion, when all the conditions for commercial operation are being met, the petitioner cannot be denied the leverage of declaration of Commercial Operation of Asset-I. Considering these facts, we approve the Commercial Operation Date of instant assets as 27.2.2018 under Proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations.*

*16. Further, the Implementation agreement entered between NHPC & PGCIL dated 8.7.2014, para-1 (i) read as under: 1xx (i) In the event of respective units of generating station are not commissioned (COD) by scheduled commissioning date of the associated transmission system (ATS), generation company shall bear the IDC or the transmission charges if the transmission system is declared under commercial operation by the CERC in accordance with the clause 3 of Regulation 4 of Tariff Regulations, 2014, till the generating station is commissioned (COD).*

*17. Thus, as the COD of the instant transmission assets has been approved as 27.2.2018 under Proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations and the COD of unit-I of NHPC was declared on 18.5.2018, the transmission charges from 27.2.2018 (COD of the transmission lines) to 17.5.2018 (day before COD of unit-I of NHPC) shall be borne by NHPC.”*

4. The Review Petitioner has also filed Interlocutory Application No. 26/IA/2020 for condonation of delay of 317 days in filing the instant review petition. As regards the reasons for delay in filing the instant review petition, the Review Petitioner has submitted that PGCIL has not raised any bill till date on NHPC in terms of the order dated 25.4.2019 in Petition No. 124/TT/2018. However, anticipating an invoice from PGCIL, NHPC analysed the order in detail and found factual errors in the impugned order. The Review Petitioner has submitted that the multi-level involvement of various departments of the Review Petitioner has delayed the filing of the instant review petition. The Review Petitioner submitted that there is merit in the instant Review Petition and therefore, in the interest of justice, requested to condone the delay in filing the instant review petition and prayed that the petition may be set down for hearing on merit.

5. We have considered the submissions of the Review Petitioner regarding the delay in filing the instant review petition. As per Regulation 103(1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, a



petition for review has to be filed within 45 days of issue of order. However, there is delay of 317 days in filing the review petition. The Review Petitioner has submitted that the delay in filing the review petition was due to involvement of various departments of the Review Petitioner in arriving at the decision to file the review petition. We are not convinced with reasons given by the review petitioner for the delay in filing the instant review petition. However, in the interest of justice and in view of issues for which review has been sought by the Petitioner, the delay in filing the instant review petition is condoned and we admit the review petition as a one-time exception and consider the issues raised by the Review Petitioner on merit. The Review Petitioner is directed to streamline its working procedure and decision making process so that the review petitions are filed in future, if any, within the statutory time limit of 45 days.

6. NHPC has sought review of the order dated 25.4.2019 in Petition No. 124/TT/2018 on the following three grounds:-

- a. Making NHPC liable for payment of transmission charges for the delay period from 27.2.2018 to 17.5.2018 is erroneous as it failed to take note of Regulation 12(2) of the 2014 Tariff Regulations and Implementation Agreement between the Review Petitioner and PGCIL which also provides for payment of IDC for the period of mismatch between COD of transmission line of PGCIL and NHPC's generation.
- b. Interest on Loan has been erroneously considered for a full year instead of computing on a pro-rata basis for the period 27.2.2018 (COD) to 31.3.2018.
- c. Full year O&M Expenses have been considered for the purpose of calculating interest on working capital for the financial year 2017-18 instead of calculating it on pro-rata basis for the period 27.2.2018 to 31.3.2018.



## **Submissions of NHPC**

7. NHPC has made the following submissions in support of the instant review petition:

a. NHPC has been made liable for the transmission charges from 27.2.2018 (COD of the transmission lines) to 17.5.2018 (day before COD of Unit-1). There is an Implementation Agreement between the Review Petitioner and PGCIL and as per the said Agreement, in case of delay in commissioning of the generation by NHPC, there is an option for levy of IDC or transmission charges. A conjoint reading of Regulation 12(2) of the 2014 Tariff Regulations and the implementation agreement, presents two options, either to consider IDC or transmission charges. However, the Commission has opted transmission charges for fixing the liability on NHPC. This has resulted in increased liability on NHPC and therefore prayed that the option of IDC may be considered instead of transmission charges.

b. During the proceedings in Petition No. 124/TT/2018, NHPC submitted that after back charging of Kishanganga-Amargarh line, unit-1 was first synchronized with grid on 28.2.2018. After that all three units were under testing and commissioning and finally first unit was declared under commercial operation from 18.5.2018 and remaining two units were declared under commercial operation on 24.5.2018. Infirm Power of 21.94 MU @ ₹178/KWh was supplied by NHPC from the generating station from 28.2.2018 to 17.5.2018 and revenue of ₹365 lakh has also been deducted from capital cost.

c. 'Interest on Loan' has been erroneously considered as ₹692.96 lakh i.e. for full year and it has not been reduced on pro-rata basis for the period 27.2.2018 to 31.3.2018. Interest on loan calculated on pro-rata basis for 33 days works out to ₹ 62.62 lakh.

d. While calculating the Interest on Working Capital, the full year O&M Expenses has been considered for calculating 'Maintenance Spares' and 'One Month O&M' for the period 2017-18 and it has not been reduced on pro-rata basis for the period 27.2.2018 to 31.3.2018.



## **Analysis and Decision**

8. We have considered the submissions of NHPC and perused the information on record. There is no dispute over the fact that there is delay in commissioning of its generating by NHPC while PGCIL's transmission system was ready. Therefore, the COD of the subject transmission line was approved by the Commission as 27.2.2018 under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations in order dated 25.4.2019 in Petition No. 124/TT/2018 and it was held that NHPC is liable for payment of transmission charges from COD of the subject transmission line, i.e. from 27.2.2018 to 17.5.2018 i.e. (day before the date of commercial operation of unit-1 of generating station by NHPC). NHPC has contended that a conjoint reading of Regulation 4(3) and Regulation 12(2) of 2014 Tariff Regulations and the Implementation Agreement presents two options, either imposition of IDC or transmission charges. NHPC has been held liable for transmission charges for the period of mismatch. NHPC has submitted that levy of transmission charges imposes a heavier financial burden on NHPC and, therefore, the option of imposition of IDC should be considered.

9. We are of the consistent view that whenever the COD of a transmission system is approved under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations, the transmission charges for the period of mismatch between the COD of the transmission system and the generating station shall be borne by the defaulting party. In the instant case, the subject transmission line was ready and the NHPC's generating station was not ready and, therefore, the COD of transmission line was approved under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations and it was held that NHPC would bear the transmission charges for the period of mismatch. As such, there is no infirmity in order dated 25.4.2019. NHPC is trying to



re-agitate the matter on merits which is not allowed at the stage of review. Accordingly, NHPC's prayer for reconsideration of Commission's decision to impose transmission charges instead of IDC is rejected.

10. The other two grounds for review raised by NHPC are (a) full year 'Interest on Loan' has been considered instead of considering it on pro-rata basis for the period 27.2.2018 (COD) to 31.3.2018 and (b) in case of working capital, the full year O&M Expenses has been considered for the purpose of calculating interest on working capital for the period 2017-18 instead of considering it on pro-rata basis for the period from 27.2.2018 to 31.3.2018. NHPC has contended that the wrong consideration of 'Interest on Loan' and 'Interest on Working Capital' has resulted in higher Annual Fixed Charges. NHPC has also submitted the revised Annual Fixed Charges on pro-rata basis for the period from 27.2.2018 to 31.3.2018. We agree with the contention of the Review Petitioner. It is observed that certain inadvertent arithmetical errors have crept in the impugned order that has led to wrong consideration of transmission charges (interest on loan and O&M expenses component in interest on working capital) as contended by NHPC. These errors will be corrected at the stage of truing up of the tariff of the 2014-19 period of the 220 kV Kishanganga-Amargarh D/C line on M/C tower.

11. In terms of the above discussions, the Review Petition No. 13/RP/2020 along with IA 26/IA/2020 is disposed of.

sd/-  
**(Arun Goyal)**  
Member

sd/-  
**(I. S. Jha)**  
Member

sd/-  
**(P. K. Pujari)**  
Chairperson

