

**CENTRAL ELECTRICITY REGULATORY COMMISSION
New Delhi**

Petition No. 8/TT/2020

- Subject** : Petition for revision of transmission tariff of 2004-09 and 2009-14 tariff periods, truing up of transmission tariff of the 2014-19 tariff period and determination of transmission tariff of the 2019-24 tariff period for Asset-I: 400 kV D/C Agra-Bassi Transmission Line with associated bays; Asset-II: 3x105 MVA 400/220/33 kV ICT-III along with associated bays at Wagoora Sub-Station; Asset-III: 220 kV Zainkot III & IV bays at Wagoora Sub-Station; and Asset-IV: 40% FSC on Allahabad-Mainpuri 400 kV D/C Transmission Line at Mainpuri under Transmission System associated with Northern Region System Strengthening Scheme-II in the Northern Region.
- Date of Hearing** : 31.3.2021
- Coram** : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member
- Petitioner** : Power Grid Corporation of India Ltd. (PGCIL)
- Respondents** : Uttar Pradesh Power Corporation Limited and 16 others
- Parties Present** : Shri M.G. Ramachandran, Senior Advocate, PGCIL
Ms. Ranjitha Ramachandran, Advocate, PGCIL
Shri Shubham Arya, Advocate, PGCIL
Shri R. B. Sharma, Advocate, BRPL
Shri Mohit Mudgal, Advocate, BYPL
Shri S. S. Raju, PGCIL
Shri B. Dash, PGCIL
Shri V. P. Rastogi, PGCIL
Shri A. K. Verma, PGCIL
Ms. Megha Bajpayee, BRPL

Record of Proceedings

Case was called out for virtual hearing.

2. The learned senior counsel for the Petitioner submitted that the instant petition is filed for revision of transmission tariff of 2004-09 and 2009-14 tariff periods, truing up of transmission tariff of 2014-19 tariff period and determination of transmission tariff of 2019-24 tariff period for 4assets under Northern Region System Strengthening Scheme-II in the Northern Region. He submitted that rejoinder to the reply of UPPCL, dated 5.2.2020, was filed vide affidavit dated 23.12.2020 and rejoinder to the reply of BRPL, dated 17.3.2021, was filed vide affidavit dated 25.3.2021. The additional information sought through Technical Validation letter was filed vide affidavit dated 2.7.2020.



3. The learned counsel for BRPL made the following submissions:
- a. While reopening of the tariff of 2001-04, 2004-09 and 2009-14 periods based on the APTEL's judgements, the Commission is considering only a portion of the Hon'ble Supreme Court's judgement in the matter of U.P. Power Corporation Limited Vs. National Thermal Power Corporation Limited reported in (2009) 6 SCC 235 and not the entire Judgement. The Commission may re-examine the issue of revising the tariff considering the entirety of the Hon'ble Supreme Court judgment and decide if the same is applicable to the facts of this case. He contended that the claim to increase the tariff is permissible only when the tariff is in force and not afterwards. Further, the Commission may revisit its order dated 6.11.2019 in Petition Nos. 288/TT/2019, 300/TT/2019, 301/TT/2019 and 305/TT/2019 in view of the facts, legal position and the judgment of the Hon'ble Supreme Court.
 - b. The truing up of transmission tariff for the 2009-14 tariff period and determination of tariff for the 2014-19 tariff period has not been done in accordance with Regulation 6(1) of the 2009 Tariff Regulations. The true-up has to be done based on actual tax rate applicable to the company and based on the truing up of tariff, if the recovered tariff exceeds the tariff approved, the Petitioner shall refund the same to the beneficiaries along with simple interest.
 - c. The transmission licensees have been allowed huge tax benefits under Section 80 IA of the Income Tax Act, 1961 in the form of Tax Holiday and other benefits like higher depreciation in the initial years. However, the benefits arising out of the Tax Holiday are not being passed on to the beneficiaries. The Petitioner should file the Profit and Loss Statement clearly depicting the tax paid on the transmission business.
4. In response, the learned senior counsel of the Petitioner made the following submissions:
- a. As per judgment of the Hon'ble Supreme Court of India in the matter of U.P. Power Corporation Limited Vs. National Thermal Power Corporation Limited, the Commission in order dated 6.11.2019 in Petition Nos. 288/TT/2019, 300/TT/2019, 301/TT/2019 and 305/TT/2019 has already stated that the Commission is vested with all the powers to revise the tariff from time to time. It is submitted that the argument of the BRPL that the Commission has not considered the complete scope of the judgment but only a selected portion is devoid of any merit. It is submitted that the order dated 6.11.2019 of the Commission is in consonance with the Hon'ble Supreme Court judgment.
 - b. Even though Tax Holiday is available to the Petitioner under Section 80 IA of the Income Tax Act, 1961 (1961 Act), the Petitioner has to pay the MAT under Section 115JB of the 1961 Act.



c. For the purpose of grossing up of rate on RoE, the MAT rates are considered as it is the tax rate at which tax has been paid. Form-3 is a system generated form and due to a system error/constraint, the header in Form-3 displays 0.00 instead of blank and the actual effective tax rate used for grossing up RoE is provided in Form 8.

5. The learned counsel for BYPL submitted that BYPL is adopting the submissions made by the learned counsel for BRPL.
6. After hearing the parties, the Commission reserved the order in the matter.

By order of the Commission

sd/-
(V. Sreenivas)
Dy. Chief (Law)

