

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 211/MP/2011**

**Coram:**

**Shri P.K Pujari, Chairperson**

**Shri I.S. Jha, Member**

**Shri Arun Goyal, Member**

**Shri Pravas Kumar Singh, Member**

**Date of Order: 20<sup>th</sup> June, 2021**

**In the matter of:**

Petition under Regulations 20 and 21 of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses), Regulations, 2010 and against the arbitrary action of Western Regional Load Despatch Centre by loading transmission losses on the 220 KV lines being used for transfer of power from the generating station of NSPCL to Bhilai Steel Plant.

**And**

**In the matter of:**

Steel Authority of India Limited  
Bhilai Steel Plant  
Bhilai-490 001  
Chattisgarh

**...Petitioner**

**Versus**

Western Regional Load Despatch Centre (WRLDC)  
Power System Operation Corporation (POSOCO)  
F-3, MIDS Area  
Marol, Andheri (East)  
Mumbai-400 093

**...Respondent**

**Parties Present:**

1. Shri M. G. Ramachandran, Sr. Advocate, SAIL
2. Ms. Anushree Bardhan, Advocate, SAIL
3. Ms. Srishti Khindaria, Advocate, SAIL
4. Shri Sitesh Mukherjee, Advocate, WRLDC
5. Shri Abhishek Kumar, Advocate, WRLDC
6. Ms. Lakshmi, SAIL

## ORDER

The Petitioner, Steel Authority of India Limited (SAIL), had filed the present petition challenging the action of the Western Regional Load Dispatch Centre (WRLDC) calling upon SAIL to bear the transmission losses on the dedicated transmission lines used by Bhilai Steel Plant of SAIL (SAIL-BSP) for getting electricity from the generating station/ units of NTPC-SAIL Power Company Limited (NSPCL).

2. The Commission by order dated 20.11.2013 had disposed of this petition. Aggrieved by the said order dated 20.11.2013 of the Commission, SAIL filed Appeal No. 41 of 2014 before the Appellate Tribunal for Electricity (in short, 'the Appellate Tribunal') which was disposed of by the Appellate Tribunal vide judgment dated 22.04.2015 remanding the matter to this Commission to consider the submissions of SAIL with regard to its arrangement for contract demand from Chhattisgarh State Power Distribution Company Limited (CSPDCL) to meet the exigencies arising out of the tripping of the dedicated transmission lines and pass appropriate order after hearing all parties.

3. Accordingly, the Commission heard the petition again and after hearing the parties, vide order dated 05.10.2017, granted relief to the Petitioner. However, the relief was granted prospectively.

4. The Petitioner filed Appeal No. 116 of 2018 before the Appellate Tribunal which was disposed of vide judgment dated 30.01.2020 directing the Commission to look into the matter of granting retrospective benefit to the Petitioner and provide reasoning for the decision. This order is being issued in compliance with the terms of the remand by the Appellate Tribunal vide judgment dated 30.01.2020.

## **Background**

5. NTPC-SAIL Power Company Ltd (NSPCL) is a joint venture company of SAIL and NTPC and has set up a 2x250 MW power plant at Bhilai (hereinafter referred to as 'the Power Plant'). NSPCL is an Inter-State Generating Station (ISGS) and its tariff is being determined by this Commission in accordance with the applicable Tariff Regulations. Part of the capacity of the Power Plant is utilised for captive consumption of SAIL-BSP. For this purpose, NSPCL is connected to SAIL-BSP through 2x220 kV dedicated transmission line which are installed, owned and operated by SAIL-BSP. NSPCL also supplies power to the Union Territories of Daman & Diu (DD) and Dadra and Nagar Haveli (DNH) for which it is connected to the transmission network of Power Grid Corporation of India Ltd (PGCIL) at Raipur sub-station through 400 kV D/C transmission line.

6. SAIL-BSP is also connected to 400/220 kV Bhilai (Khedamara) sub-station of Chhattisgarh State Power Transmission Company Limited (CSPTCL) for supply of power from Chhattisgarh Power Distribution Company Limited (CSPDCL). For this purpose, SAIL-BSP has entered into an agreement with CSPDCL for a contract demand of 225 MVA.

7. Chhattisgarh State Load Despatch Centre (CSLDC)/ Chhattisgarh State Power Transmission Company Limited was exercising control area jurisdiction over NSPCL in terms of the principles laid down by this Commission vide order dated 7.5.2008 in Petition No. 58/2008 (suo motu). In the 57<sup>th</sup> Commercial Committee Meeting of Western Region Power Committee (WRPC), it was decided that SAIL-BSP would be treated as embedded entity of CSPDCL and combined schedule for CSPDCL and SAIL-BSP would be given by WRLDC. It was further decided that the ISTS charges and losses would be applied to CSPDCL on its transactions and would

not be applied to SAIL-BSP on the dedicated transmission line from NSPCL to the steel plant of SAIL-BSP. The above decision was reiterated in the 58<sup>th</sup> Commercial Committee Meeting of Western Region Power Committee held on 7.4.2011 and the meeting between WRLDC, WRPC, NSPCL, CSPTCL and CSPDCL held on 25.4.2011.

8. After the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 (hereinafter referred to as 'the Grid Code') came into force on 01.04.2010, the control area jurisdiction of CSLDC over NSPCL shifted to Western Regional Load Despatch Centre (WRLDC) with effect from 01.08.2011 and the scheduling of power, billing and energy accounting in respect of NSPCL was vested in WRLDC.

9. WRLDC, vide its letter dated 29.07.2011, informed the Petitioner that with the implementation of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses), Regulation 2010 (in short, "the 2010 Sharing Regulations"), respective injection zonal loss and withdrawal zonal loss in accordance with the Detailed Procedure (made under the 2010 Sharing Regulations) would apply to every transaction scheduled by WRLDC. WRLDC informed that the transmission losses applicable to power scheduled from the Power Plant would be as follows:

- (i) Loss applicability to DD (Daman & Diu): Injection loss of Chhattisgarh zone and withdrawal loss of Daman & Diu (DD) zone;
- (ii) Loss applicability to Dadar and Nagar Haveli (DNH): Injection loss of Chhattisgarh zone and withdrawal loss of DNH zone;
- (iii) Loss applicability to CSPDCL and the Petitioner: Injection and withdrawal loss of Chhattisgarh zone.

10. Aggrieved by the allocation of transmission losses by WRLDC as mentioned above, the Petitioner had various communications with WRLDC and also discussed the matter in 59<sup>th</sup> Commercial Committee Meeting of WRPC held on 18.08.2011. Thereafter, on 09.11.2011, the Petitioner filed the present petition seeking the following main prayers among others:

- a) *Clarify that Petitioner shall not be subject to sharing of the inter-state transmission losses and charges in regard to the transmission of power from the generating facility to the place of captive consumption;*
- b) *Direct the WRLDC not to levy the losses of 3 % - 4 % which is causing sustained monetary loss to the Petitioner due to which the Petitioner is compelled to draw more power from CSPDCL at substantially higher price*
- c) *Direct the WRLDC to give suitable adjustment / compensation for the ISTS losses already deducted from NSPCL's power to SAIL-BSP.*

11. The Commission vide order dated 20.11.2013 decided that the Petitioner is liable to share the transmission losses. Aggrieved by the said order, the Petitioner filed Appeal No. 41 of 2014 before the Appellate Tribunal which was disposed of vide judgment dated 22.04.2015 remanding the matter to this Commission.

12. Accordingly, the Commission after hearing the parties issued order dated 05.10.2017 and granted relief to Petitioner prospectively from the date of issue of the order. Relevant extract of the order is as under:

*"28. In the light of the above discussion, SAIL-BSP shall not be liable to pay the transmission losses on the conveyance of power from NSPCL to SAIL-BSP for captive consumption. However, this will be subject to two exceptions. Firstly, if SAIL-BSP sell any power scheduled from NSPCL to any other entity, transmission losses will be applied on such power. Secondly, in the event of outage of all the four dedicated lines between NSPCL and SAIL-BSP, if it is proved that SAIL-BSP has drawn its share of power from NSPCL from Khedamara (Bhilai) Sub-Station, then in such cases, POC losses shall be applicable as per the extant regulations. Our decision in this order shall be applicable prospectively from the date of issue of this order."*

13. The Petitioner filed Appeal No. 116 of 2018 before the Appellate Tribunal which was disposed of by vide judgment dated 30.01.2020. Relevant extract of the judgement is as under:

*"After lengthy discussion on transmission losses in the conveyance of power from NSPCL to SAIL-BSP for captive consumption, though CERC says POC losses shall be*

*applicable as per the extant regulations, it does not give any reasoning why it should be only prospective and why it should not be retrospective having allowed the petition. In that view of the matter, we are of the opinion that since no explanation and reasoning for prospective applicability of extant regulations is indicated, we remand the matter to CERC with regard to only the last sentence which is highlighted above for fresh consideration:*

*We direct CERC to look into the matter of both the parties and decide whether retrospective benefit of the order could be granted or not with reasoning. Both the parties are at liberty to argue and assist CERC only on this aspect and nothing else. The exercise shall be completed within three months from the date of receipt of copy of this order.*

*With the above observations, the instant Appeal is disposed of.”*

## **Remand Proceedings before the Commission**

### **Hearing dated 23.07.2020**

14. Pursuant to the remand, matter was heard through video conferencing on 23.07.2020. Relevant Extract from Record of Proceedings is as under:

*“2. Learned senior counsel for the Petitioner submitted that the present Petition has been remanded by the Appellate Tribunal for Electricity (in short “Appellate Tribunal”) vide its order dated 30.1.2020 in Appeal No.116 of 2018 for the limited extent of ‘prospective application’ of the Commission’s decision dated 5.10.2017. Learned senior counsel submitted that the Appellate Tribunal has also remanded the Petition No. 126/MP/2017 on similar grounds and the same may be listed for hearing with the present Petition.*

*3. Learned counsel for the Respondent, WRLDC, sought time to file its reply. Learned counsel submitted that the Appellate Tribunal, in its order dated 30.1.2020, has not set aside the decision of the Commission granting relief to the Petitioner prospectively, but only observed that such decision is not supported by any reason.*

*4. Based on the request of learned counsel for WRLDC, the Commission directed WRLDC to file its reply by 7.8.2020 with advance copy to the Petitioner who May file its response, if any, by 18.8.2020. The Commission directed that the due date of filing of reply / response should be strictly complied with.”*

15. The Respondent (WRLDC) in its reply vide affidavit dated 24.08.2020 has made the following submissions:

(a) The power transaction between NSPCL and SAIL-BSP are scheduled by WRLDC as a transaction from the Power Plant of NSPCL to CSPDCL and not to SAIL-BSP. Accordingly, transmission losses were being uniformly applied for all transactions from the Power Plant of NSPCL as per the provisions of the Grid Code and the 2010 Sharing Regulations until this Commission vide its Order dated 05.10.2017 (in this Petition) granted prospective relief/ exemption

to the Petitioner. Thereafter, WRLDC has stopped applying transmission losses while scheduling transaction from NSPCL to CSPDCL for the portion meant for SAIL-BSP.

(b) Any retrospective revision of transmission losses for 'NSPCL to SAIL-BSP transaction' will impact the drawal schedule of CSPDCL which in turn would lead to change in deviation charge account of all 54 regional entities in the WR (Western Region), who being members of the regional deviation pool pay and/ or receive deviation charges in accordance with the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014 (in short, 'the DSM Regulations'). It will also require CSPDCL to pass on the impact of change in retrospective transmission loss as being sought and corresponding receipt of deviation charge to SAIL-BSP as per the extant regulations of the Chhattisgarh State Electricity Regulatory Commission.

(c) WRLDC has submitted that retrospective revision of transmission losses may not be done without hearing the following entities who would be impacted:

- i. CSPDCL: CSPDCL had drawn power from its regional quota as per the drawal schedule issued to it by WRLDC. Any change in drawal schedule, on post facto basis, by removing the transmission losses applied to some part of power scheduled to it may directly affect its DSM bills. Moreover, WRLDC is not aware of the deviation settlement mechanism (DSM) in place between CSPDCL and SAIL-BSP, neither it is aware of the practice regarding settlement of the accounts between them after the weekly regional DSM accounts are issued by Western Regional Power Committee (WRPC) Secretariat. Accordingly, it may not be prudent to consider retrospective revision of deviation accounts in absence of ascertaining view of CSPDCL.
- ii. WRPC: Any revision of drawal schedule has to be followed by revision of UI/DSM accounts to be carried out by WRPC. The WRPC Secretariat issues weekly Unscheduled Interchange (UI) and DSM accounts for all 54 regional entities in the WR. If retrospective revisions in transmission losses, as prayed for by the Petitioner, are allowed, WRPC will have to revise UI/ DSM accounts for all 54 WR entities. It is, therefore,



necessary to implead WRPC as a respondent as accounting and billing have to be carried out at their end.

- iii. Regional entities, intra-State entities, SLDCs of WR: Any revision of the past accounts concerning UI/ DSM would necessarily involve changes in the drawal schedule of all 54 regional entities of WR. Therefore, post-facto revision of the UI/ DSM account for CSPDCL (for NSPCL to SAIL-BSP transaction) would affect all the intra-State entities of all States in WR, all 4 SLDCs and all 54 regional entities of WR. Since it is likely that all these entities will be financially impacted with this action, all the 4 SLDCs and all 54 regional entities, being necessary parties, must be impleaded as respondents in the Petition.

(d) DSM is a mechanism to bring in discipline in grid operation. It incentivises the players who comply with the scheduling code and penalises those who fail to maintain discipline in terms of containing their interchange within the schedule. Accordingly, depending on the grid frequency and nature of deviation, some of the players/ entities are to pay into the regional pool and some entities are to receive from pool. DSM charge receivable by the entities is an income for them and they pay taxes against such income. Thus, this resettlement of old transactions for past 6 years (2011-2017) would additionally change the tax liability of affected entities and all such entities would have to reconcile their taxes and corresponding returns with the Income Tax Department as well.

(e) The period under consideration is that of 6 (six) years (2011-2017). Assuming 52 weeks per year, the number of weekly accounts to be revised is approximately 312 (weekly deviation accounts). Since the year 2006, WRLDC had been using an energy scheduling software developed in-house which was operational until July, 2016 i.e. when new web-based scheduling software (WBES) was made available. WBES was developed through a professional IT company by Power System Operation Corporation for use by all RLDCs. The old scheduling software was very sluggish and had limited flexibility, thus necessitating replacement with WBES in July 2016. Presently, the said old software is non-functional and it will not be possible to do a post-facto



modification of the voluminous schedule data duly factoring all regulatory changes that have occurred since the year 2011.

(f) UI (unscheduled interchange) and/ or DSM accounts are a settled issue and reopening the accounts for the entire 312 weeks will not only create massive administrative chaos at regional level energy accounting but the same chaos in settlement will also percolate down to the intra-State level accounting.

(g) Regulation 6(3) of the 2010 Sharing Regulations stipulates that transmission losses shall not be revised retrospectively.

(h) There is a possibility that the data necessary in order to retrospective effect to the impugned order is no longer available with the relevant stakeholders given the lapse of approximately 7 years. Under Regulation 16 of the Central Electricity Authority (Grid Standards) Regulations, 2010, all entities, Appropriate Load Despatch Centres and Regional Power Committees are required to keep operation data for a minimum period of 3 years.

16. The Petitioner (SAIL) vide affidavit dated 19.10.2020 has filed rejoinder to the reply of WRLDC and has made the following submissions:

(a) The Petitioner suffered financial loss on account of adjustment of transmission losses and supply of less quantum of power from the Power Plant of NSPCL. The financial loss on account of the same aggregates to Rs 89.77 crores.

(b) The minimum amount of compensation to be paid for the wrong adjustment of transmission losses during the past period is clearly determinable with reference to the price at which the Petitioner was being supplied electricity by NSPCL. The measure of such computation is also consistent with Section 73 of the Indian Contract Act, 1872 as genuine and reasonable compensation. The amount so computed is required to be recovered as part of the transmission charges of inter-State transmission system in the Western Region. The adjustment and energy accounting in the above manner is simple and without any ambiguity. The Respondent No. 1 cannot avoid its obligation to undertake energy accounting to give relief to the Petitioner.

(c) Tariff is a continuous process and the Petitioner cannot be denied of its right merely because it may cause certain adjustments in the PoC accounts. Accordingly, necessary adjustments are to be undertaken in the apportionment of POC charges. The Petitioner cannot be denied the reliefs particularly when the error was on account of Respondent no. 1 and not for any act of omission/ commission attributable to the Petitioner. Mere inconvenience to WRLDC for the mistake perpetuated by it for a period of almost 7 years, to the financial detriment of the Petitioner cannot be a valid consideration to deny the Petitioner its legitimate relief. It is a settled principle that no party can seek an advantage of its own wrong i.e. to avoid 'manual work' for carrying out the necessary adjustments.

(d) The contention that a retrospective effect to the Order dated 05.10.2017 would lead to substantial adjustments and re-opening of already settled PoC accounts, cannot be a ground for denying the Petitioner its legitimate dues. The legitimate financial claims of the Petitioner of substantial amount cannot be set at naught merely because certain adjustments may be required to be carried out.

(e) The regional entities to be affected are on account of the omission/ misinterpretation by WRLDC and the same cannot be a ground for denying Petitioner the necessary relief w.e.f. 01.08.2011.

(f) There have been a number of instances wherein this Commission has issued revised PoC rates on account of error by POSOCO which necessitated revision in LTA and STOA charges. Reference in this regard may be made to following orders:

- a. Corrigendum dated 19.09.2018 in L-1/44/2010 in the matter of Approval of slab rates for POC Charges and losses for the period July to September 2018; and
- b. Corrigendum dated 03.02.2016 in L-1/44/2010 in the matter of Approval of slab rates for POC Charges and losses for the period May and June 2015.

## Hearing dated 26.03.2021

17. The matter was again heard through video conferencing on 26.03.2021 and the order was reserved. Relevant extract of RoP in hearing dated 26.03.2021 is as under:

*“3. Learned senior counsel for the Petitioner mainly submitted the following:*

*(a) While vide order dated 5.10.2017, the Petition has been allowed in the favour of the Petitioner, the relief has been granted to the Petitioner only prospectively.*

*(b) The dedicated lines from NSPCL to SAIL-BSP were wrongly treated as ISTS and consequently transmission losses were wrongly loaded on to the Petitioner by WRLDC. There was no use of ISTS in the transmission of power from NSPCL to SAIL-BSP and the line squarely qualified as an intra-State system. The Petitioner had consistently followed up this issue with WRLDC and RPC forum and before the Petitioner had filed matter in the Commission.*

*(c) The relief to the Petitioner ought to be applied retrospectively, because the Petitioner has been wronged by order of WRLDC and it has been successful before the Commission in showing that it was a wrongful action of WRLDC. Thus, the Petitioner has suffered a legal prejudice and the compensation is an automatic remedy and it should get relief retrospectively with effect from August 2011.*

*(d) The contention of WRLDC that giving retrospective effect to the order dated 5.10.2017 would lead to substantial adjustments and re-opening of already settled PoC accounts and difficulty for WRLDC in calculation or settlement cannot be a ground for denying the Petitioner's legitimate dues.*

*(e) The Commission itself has determined the tariff for different utilities relating to the control period after the expiry of the control period. The revised tariff is always given effect to by providing for recovery of the amount for the past period in a prospective manner by increasing or decreasing the amount of recovery from the persons availing the services in future.*

*(f) The Petitioner has claimed compensation not on market rate but only to the extent of loss of power due to loading of transmission losses at a rate at which NSPCL was supplying power to the Petitioner.*

*4. Learned counsel of Respondent No. 1, WRLDC made detailed submissions in support of his contentions and relied upon the Commission's order dated 5.10.2017, judgment of the Appellate Tribunal and reply of WRLDC. The learned counsel referred to the Commission's order dated 4.5.2018 in Petition No. 126/MP/2017 wherein the Commission has directed that a deviation from present regulatory regime is taken in typical circumstances of the case. Learned counsel mainly submitted the following:*

*(a) Since the matter relates to neither determination of tariff nor interpretation of any regulation dealing with applicability of tariff, the proposition of the Petitioner that the tariff is a continuous process will not apply in this case.*

*(b) The order which is remanded back does not interpret any regulation, but enunciate a new regulatory principle that has been required on account of certain hardships that the Commission noticed ex-post where a generating station is connected to both CTU and STU system. Therefore, it is a regulatory measure which shall be in all circumstances prospective and not retrospective. In this regard, reliance was placed on various judgments of the Appellate Tribunal and the Hon'ble Supreme Court.*

*(c) The principle 'where there is right there is remedy' may not apply in the present case as the right had been created only by the order of the Commission.*

*The principle 'act of Court will prejudice no one' also does not apply to this case when the Commission, acting as a regulator, has found that there is a gap in the regulations in a particular circumstance where the apportionment of transmission losses is done on the STU network, which was addressed by the Commission after examining that there is no power flow in the ISTS network for the said power.*

*(d) If a real and true picture of accounting cannot be done by setting the clock back, exercising any other measure for giving money back to the Petitioner again will be regulatory measure and that cannot be given retrospective effect. Money goes into consolidated fund of Government of India and doing a rough calculation for compensation and granting relief to the Petitioner would have to be borne by somebody. This situation has resulted because a new principle was given effect by the order of the Commission and so it should be prospective only. The way the Petitioner has proposed to calculate the loss due to less scheduling is not the correct way because actual drawl is not going to change retrospectively and deviation settlement charges are applicable on actual schedule and drawal difference.”*

18. In compliance to ROP for hearing dated 26.03.2021, the Petitioner vide its submission dated 06.04.2021 has quoted various retrospective Tariff Revision Orders as well as PoC corrigendum orders in support of its claim. The Petitioner has also submitted the compilation of judgements cited in its submission. The Petitioner has mainly reiterated its submissions and has additionally submitted as under :

(a) The tariff applicable for any period is bound to be revised from time to time on account of various aspects including on account of fresh determination of tariff, true-up/review of tariff or decision by the Appellate Authority and, therefore, the revised tariff gets implemented under many circumstances, after the relevant period is over.

(b) Accordingly, the plea that the relevant period has expired and that it will cause inconvenience to WRLDC cannot be a ground for not allowing the recovery of the already deducted transmission losses from SAIL-BSP.

19. The Respondent (WRLDC), vide its affidavit dated 15.05.2021, has submitted the following:

(a) The order dated 05.10.2017 which is under remand brought about a change in regulatory position with respect to prevalent regulations on treatment of ISTS transmission losses during scheduling by RLDCs. The relevant regulatory provisions were relaxed for the Petitioner in view of the apparent

hardships encountered in the cases wherein an ISGS is connected to both ISTS as well as the State transmission network.

(b) The 2010 Sharing Regulations has not envisaged any special treatment for the transactions scheduled from NSPCL to CSPDCL and the Petitioner (who is an embedded entity within CSPDCL). Accordingly, the regulatory provision was implemented by the Respondent No.1 uniformly for all DICs. This uniform treatment of all transactions scheduled from an ISGS irrespective of connectivity with STU and CTU as per this Commission's approved Detailed Procedure of 30.06.2011 got changed after the issuance of the order in this Petition No. 211/MP/2011 on 05.10.2017.

(c) RLDC is required to deduct the estimated transmission losses before drawing the regional entity-wise drawal schedule. Since NSPCL is an ISGS, its despatch schedule has to be prepared by RLDC. Further for preparing the net drawal schedule of Chhattisgarh, of which SAIL-BSP is an embedded entity, estimated transmission losses have to be deducted as per Regulation 6.5.7 of the Grid Code.

(d) Regulation 3(b) of the 2010 Sharing Regulations makes it clear that State Electricity Board/ State Transmission Utility connected with ISTS shall be responsible for sharing of charges and losses on behalf of distribution companies, generators and others bulk customers connected to the transmission system owned by the SEB/ STU/ intra-State transmission licensee. CSPTCL or CSPDCL are connected to ISTS and are liable to pay the transmission losses. In present case, SAIL-BSP is connected on one side to NSPCL (an injection DIC which is connected with ISTS) through NSPCL-SAIL(BSP) line and on other side to a drawee DIC i.e. CSPDCL.

(e) The Commission has clearly held in its order dated 21.11.2013 that WRLDC has allocated transmission losses as per the 2010 Sharing Regulations and the Detailed Procedure issued thereunder. This position was changed later by means of regulatory intervention/ measure by this Commission vide its order dated 05.10.2017 in view of the apparent hardship being faced by the entities like the Petitioner for a power station connected to both CTU and STU.

(f) The 2010 Sharing Regulations had no scope for granting selective exemption from payment of ISTS transmission losses to similarly placed entities.

(g) Clarity in application of ISTS transmission losses for generating stations connected to both ISTS and intra-State transmission systems was brought in vide the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses), Regulation 2020 (in short, “the 2020 Sharing Regulations”) notified on 04.05.2020. The aforesaid clear demarcation was not there in the 2010 Sharing Regulations. It clearly shows that there was an ambiguity/ grey area in respect of applicability of transmission losses which got clarified vide the 2020 Sharing Regulations.

(h) The Appellate Tribunal vide judgement dated 28.01.2021 in Appeal No. 170 of 2020 (DVC v. JSERC & Ors.) has stated that the regulatory orders cannot be given retrospective effect and must be applicable only with prospective effect.

(i) The order dated 05.10.2017 issued in this Petition is not an order interpreting any regulations rather it is an order which has introduced a new regulatory principle that has been issued by the Commission on account of hardships faced by the Petitioner. Therefore, it is a regulatory measure and accordingly in all circumstances it must operate prospectively and not retrospectively.

### **Analysis and Decision**

20. The Commission is considering the present case on remand from the Appellate Tribunal. Relevant extract of the judgment of Appellate Tribunal in Appeal No. 116 of 2018 dated 30.01.2020 is as follows:

*“After lengthy discussion on transmission losses in the conveyance of power from NSPCL to SAIL-BSP for captive consumption, though CERC says POC losses shall be applicable as per the extant regulations, it does not give any reasoning why it should be only prospective and why it should not be retrospective having allowed the petition. In that view of the matter, we are of the opinion that since no explanation and reasoning for prospective applicability of extant regulations is indicated, we remand the matter to CERC with regard to only the last sentence which is highlighted above for fresh consideration:*

*We direct CERC to look into the matter of both the parties and decide whether retrospective benefit of the order could be granted or not with reasoning. Both the parties are at liberty to argue and assist CERC only on this aspect and nothing else. The exercise shall be completed within three months from the date of receipt of copy of this order.”*

21. As per above judgment of the Appellate Tribunal, the scope of the remand is limited only to the extent as to whether retrospective benefit of the order of the Commission dated 05.10.2017 in Petition No. 211/MP/2011 could be granted or not with reasoning.

22. The matter was heard on 23.07.2020 and 26.03.2021. Both the Petitioner and the Respondent have submitted their arguments.

23. The Respondent WRLDC has raised a preliminary issue as regards impleading various parties such as CSPDCL, WRPC, 54 Western Region Regional Entities and 4 SLDCs of Maharashtra, Madhya Pradesh, Chhattisgarh and Gujarat who may be impacted if retrospective relief is granted to the Petitioner. In our view, the matter has been heard before and orders have been issued by the Commission. The issue of non-rejoinder of parties was not raised by WRLDC before. Moreover, the Appellate Tribunal has directed the Commission to “look into the matter of both the parties and decide whether retrospective benefit of the order could be granted or not with reasoning.” Since clear-cut direction of the Appellate Tribunal is to decide the matter based on the submissions of the Petitioner and WRLDC, it is not permissible to enlarge the scope of the remand proceedings by impleading other parties as urged by WRLDC. Hence, we are not inclined to accept the request of WRLDC to implead any other party at the stage of the remand proceedings.

24. The Petitioner has mainly submitted that vide order dated 05.10.2017, the Petition has been allowed in its favor, but the relief has been granted only prospectively. The dedicated lines from NSPCL to SAIL-BSP were wrongly treated as



ISTS and consequently transmission losses were wrongly loaded on to the Petitioner by WRLDC. There was no use of ISTS in the transmission of power from NSPCL to SAIL-BSP and the line squarely qualified as an intra-State transmission system. The relief to the Petitioner ought to be applied retrospectively, because the Petitioner has been wronged by order of WRLDC and the Petitioner has been successful before the Commission in showing that considering the dedicated line as ISTS and allocating transmission losses was a wrongful action of WRLDC. Thus, the Petitioner has suffered a legal prejudice and it should get relief retrospectively with effect from August 2011. The Petitioner has submitted that tariff is a continuous process and the Petitioner cannot be denied of its right merely because it may require certain adjustments in the PoC accounts.

25. The Respondent, WRLDC has mainly submitted that it is required to deduct the estimated transmission losses before drawing the regional entity-wise drawal schedule. Since NSPCL is an ISGS, its despatch schedule has to be prepared by RLDC. Further for preparing the net drawal schedule of CSPDCL, of which SAIL-BSP is an embedded entity, estimated transmission losses have to be deducted as per Regulation 6.5.7 of the Grid Code. Regulation 3(b) of the 2010 Sharing Regulations makes it clear that State Electricity Board/ State Transmission Utility connected with ISTS shall be responsible for sharing of charges and losses on behalf of distribution companies, generators and others bulk customers connected to the transmission system owned by the SEB/ STU/ intra-State transmission licensee. CSPTCL/ CSPDCL are connected to ISTS and are liable to pay the transmission losses. In present case, SAIL-BSP is connected on one side to NSPCL (an injection DIC which is connected with ISTS) through NSPCL-SAIL (BSP) line and on other side to a drawee DIC i.e. CSPDCL. The 2010 Sharing Regulations has not envisaged any special treatment for the transactions scheduled from NSPCL to CSPDCL and the  
Order in Petition No. 211/MP/2011

Petitioner (which is an embedded entity within CSPDCL). Accordingly, the regulatory provision was implemented by WRLDC uniformly for all DICs.

26. WRLDC has further submitted that the Commission had, in its order dated 21.11.2013, held that WRLDC had allocated losses as per the 2010 Sharing Regulations. However, this position was changed later by means of regulatory intervention by this Commission vide its order dated 05.10.2017 in view of the apparent hardship being faced by the entities like the Petitioner for a power station connected to both CTU and STU. Therefore, WRLDC has contended that the order dated 05.10.2017 brought about a change in regulatory position with respect to prevalent regulations on treatment of ISTS losses during scheduling by RLDCs.

27. We have considered the submissions of the Petitioner and the Respondent. Regulation 3 of the 2010 Sharing Regulations (repealed w.e.f. 01.11.2020) provided as under:

*“3. Yearly Transmission Charges, revenue requirement on account of foreign exchange rate variation, changes in interest rates etc. as approved by the Commission and Losses shall be shared amongst the following categories of Designated ISTS Customers who use the ISTS:-*

*(a) Generating Stations (i) which are regional entities as defined in the Indian Electricity Grid Code (IEGC) or (ii) are having LTA or MTOA to ISTS and are connected either to STU or ISTS or both.*

*(b) State Electricity Boards/State Transmission Utilities connected with ISTS or designated agency in the State (on behalf of distribution companies, generators and other bulk customers connected to the transmission system owned by the SEB/STU/ intra-State transmission licensee);*

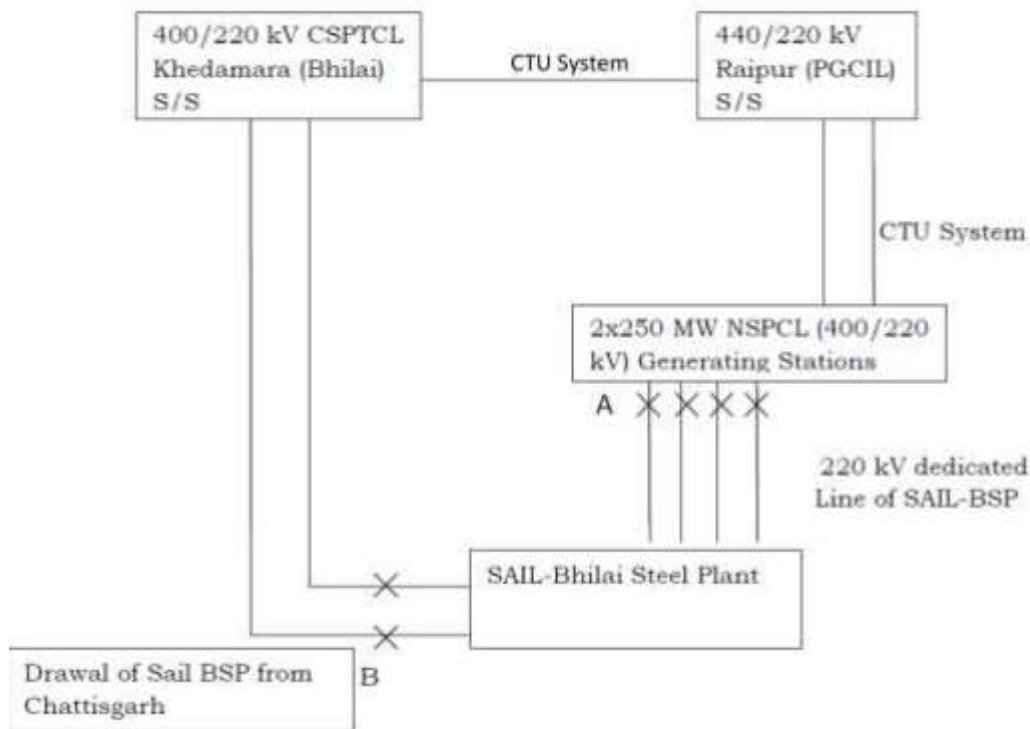
*(c) Any bulk consumer directly connected with the ISTS, and*

*(d) Any designated entity representing a physically connected entity as per clauses (a), (b) and (c) above.”*

As per this Regulation, all DICs who use the ISTS are liable to bear the transmission charges and losses. We observe that the Commission in its order dated

20.11.2013 in the instant Petition had held “that WRLDC has allocated losses as per the Sharing Regulations and the procedure issued thereunder.”

28. Single line diagram for instant case is as under:



29. While the matter was being heard by this Commission after being remanded back from APTEL vide Judgement dated 22.04.2015 in Appeal No. 41 of 2014, the contention raised by WRLDC was as follows:

“(m)WRLDC in response to the petition submitted before this Commission that SAILBSP and CSPDCL are connected to NSPCL through the two 220 kV double circuit dedicated lines between NSPCL and SAIL-BSP as well as through the 220 kV Chhattisgarh State network and are using these lines for availing power from NSPCL. Therefore, the dedicated transmission lines are operating in parallel to the ISTS/STU system where the demand of BSP is met through the dedicated transmission lines as well as CTU/STU system and this influences the flows in the parallel network either when the line trips or is taken under outage by the owner of the line. Therefore, the power flow on the dedicated transmission lines would not be necessarily equal to BSP/CSPDCL’s schedule from NSPCL. WRLDC further submitted that NSPCL is connected to ISTS and BSP is Order in Petition No. 211/MP/2011 Page 8 connected to CSPTCL system and loop flow in either direction is possible. Based on the daily power flow on the 400 kV NSPCL-Raipur D/C section as well as 220 kV NSPCL-BSP section (on 11.9.2011, 30.11.2011 and 11.1.2012), WRLDC has sought to demonstrate through the following three scenarios that SAIL-BSP is utilising the ISTS both from the considerations of reliability and transfer of power. XXX...”

Hence, the contention of WRLDC was that due to interconnected nature of transmission lines, SAIL-BSP is using the ISTS and the dedicated transmission lines of SAIL-BSP are incidental to ISTS.

30. The Commission did not agree with contention of WRLDC as regards the issue of incidental flow and vide Order dated 05.10.2017 in the instant petition held as under:

*“...A casual or remote relationship between the dedicated transmission line and the ISTS through the common bus of the generating station cannot render the dedicated transmission line as incidental to ISTS. Therefore, the dedicated transmission lines between NSPCL and SAIL-BSP which is not designed or intended to carry power other than from the NSPCL to SAIL-BSP for the purpose of captive consumption by the latter cannot be considered as incidental to ISTS.*”

*16. WRLDC on the basis of a schematic diagram as quoted in para 8(c) of this order has submitted that SAIL-BSP along with the 220 kV BSP-NSPCL lines and 400 kV Raipur Khedamara (CSPTCL) lines form a parallel loop with the ISTS network. In case of tripping of units of NSPCL, the flow of power from Raipur to NSPCL to SAIL-BSP also takes place. WRLDC has further submitted that SAIL-BSP had been drawing power through the meshed network of ISTS on many occasions, including on 11.9.2011, 30.11.2011 and 12.1.2012 which was taken note of in the order dated 20.11.2013. In our view, the said power flow from Raipur to NSPCL to SAIL-BSP has taken place on a few occasions on account of tripping of the units of NSPCL since the dedicated transmission lines between NSPCL and SAIL-BSP share a common bus at NSPCL with NSPCL-Raipur transmission lines. This occasional flow cannot render the 220 kV dedicated transmission lines between NSPCL and SAIL-BSP as incidental to inter-State transmission of electricity”*

Hence, it was concluded that the dedicated lines of SAIL-BSP cannot be termed as incidental to ISTS.

31. The Commission vide order dated 05.10.2017 observed the following regarding use of ISTS by SAIL-BSP:

*“20. In view of the above, it cannot be said that SAIL-BSP uses the Inter State Transmission System of either the PGCIL or any other licensee or for that matter even the Intra State Transmission System of CSPTCL or any other distribution system for supply of power from NSPCL to SAIL-BSP.....”*

32. Further, the Commission considered the cases where SAIL-BSP could use the ISTS and directed that in such cases POC losses will be applicable as follows:

*“28. In the light of the above discussion, SAIL-BSP shall not be liable to pay the transmission losses on the conveyance of power from NSPCL to SAIL-BSP for captive*

*consumption. However, this will be subject to two exceptions. Firstly, if SAIL-BSP sell any power scheduled from NSPCL to any other entity, transmission losses will be applied on such power. Secondly, in the event of outage of all the four dedicated lines between NSPCL and SAIL-BSP, if it is proved that SAIL-BSP has drawn its share of power from NSPCL from Khedamara (Bhilai) Sub-Station, then in such cases, POC losses shall be applicable as per the extant regulations.”*

33. Regulation 6.5.3 & 6.5.7 of the Grid Code provides as under:

*“6.5.3 By 8 AM every day, the ISGS shall advise the concerned RLDC, the station-wise ex-power plant MW and MWh capabilities foreseen for the net day, i.e., from 0000 hrs to 2400 hrs of the following day.*

*6.5.7 By 6 PM each day, the RLDC shall convey:*

*(i) The ex-power plant “despatch schedule” to each of the ISGS, in MW for different time block, for the next day. The summation of the ex-power plant drawal schedules advised by all beneficiaries shall constitute the ex-power plant station-wise despatch schedule.*

*(ii) the “net drawal schedule” to each regional entity, in MW for different time block, for the next day. The summation of the station-wise ex-power plant drawal schedules from all ISGS and drawal from/injection to regional grid consequent to other long term access, medium term and short-term open access transactions, after deducting the transmission losses (estimated), shall constitute entity-wise drawal schedule.”*

The above provides that net drawl schedules shall be determined after deducting the transmission losses.

34. We observe that SAIL-BSP has not obtained any Long term Access or Medium term open Access from ISTS, neither NSCPCL has obtained any Long term Access or Medium term open Access for supply of power to SAIL-BSP. We also observe that there is no allocation of power by MoP for NSPCL power to SAIL-BSP. Thus, SAIL-BSP is not a regional entity and rather it is an embedded entity of CSPDCL.

35. We observe that WRLDC has been scheduling power from NSPCL as a regional entity under the Grid Code. Thus, NSPCL as a regional entity is given injection schedule. CSPDCL as a regional entity is given drawl schedule. Under all such schedules ISTS losses are applicable. Therefore, till the order dated 05.10.2017 in this Petition, WRLDC had been applying transmission losses on the Petitioner in

terms of its interpretation of the provisions of the 2010 Sharing Regulations and the Grid Code. However, the peculiarity of this situation was that the point of injection was same as the point of drawal. The treatment for such cases was not covered in the Grid Code or the 2010 Sharing Regulations. Hence, WRLDC had proceeded as per the provisions of the 2010 Sharing Regulations.

36. NSPCL is connected to ISTS and also has a dedicated transmission line to a single consumer i.e. SAIL-BSP which is also connected to the State network. Thus, SAIL-BSP, along with the 220 kV BSP-NSPCL lines and 400 kV Raipur-Khedamara lines form a parallel loop with the ISTS network, as a result of which there are occasions when flow of power from Raipur to NSPCL to SAIL-BSP also takes place. The Commission, by way of interpretation, took a view that *“This occasional flow cannot render the 220 kV dedicated transmission lines between NSPCL and SAIL-BSP as incidental to inter-State transmission of electricity”*. And, on the basis of this view, the Commission concluded that the Petitioner *“shall not be liable to pay the transmission losses on the conveyance of power from NSPCL to SAIL-BSP for captive consumption”*. However, the above decision was made subject to two exceptions. Firstly, if SAIL-BSP sells any power scheduled from NSPCL to any other entity, transmission losses will be applied on such power. Secondly, in the event of outage of all the four dedicated lines between NSPCL and SAIL-BSP, if it is proved that SAIL-BSP has drawn its share of power from NSPCL from Khedamara (Bhilai) Sub-Station, then in such cases, POC losses shall be applicable as per the extant regulations. In other words, as and when the dedicated transmission lines are used for inter-State transmission of power, transmission losses as per the Sharing Regulations, 2010 shall be applicable.

37. Thus, there was no clarity on the treatment of such entities as the Petitioner in the sharing of transmission losses under Sharing Regulations 2010. In fact, the prevailing concept for sharing transmission loss which was being followed was that transmission losses were applicable on all entities which were connected to ISTS system including the entities which were connected directly to switchyard of ISGS and whose scheduling was being done by the concerned RLDC. As such, the direction of RLDC was as per prevailing concept and interpretation of Regulation. The decision of the Commission in the instant case was based on a new dispensation on account of a peculiar situation not covered under Regulations.

38. We would also like to point out that there is no provision in the 2010 Sharing Regulations to revise transmission losses retrospectively. Regulation 6(3) of the 2010 Sharing Regulations provides as under:

***“6. Mechanism of sharing of ISTS losses.***

*(3) The applicable transmission losses for the ISTS shall be declared in advance and shall not be revised retrospectively.”*

39. A new dispensation was provided to the Petitioner by interpreting the provisions of the 2010 Sharing Regulations and the Grid Code (applicable in case of an entity that was connected to both CTU and STU) and also after taking into consideration the hardships being faced by the Petitioner on account of the then prevailing interpretation of WRLDC and, in accordance with the provisions of the extant regulations, the relief was granted prospectively. In our view, contention of the Petitioner that it is eligible for grant of such relief retrospectively is not in line with Regulation 6(3) of the 2010 Sharing Regulation as quoted above and the provisions of Grid Code.

40. We observe that from time to time, peculiarities do come up which are neither covered under the Regulations nor do the Regulations provide enough clarity on



dealing with such peculiarities. In such cases, the Commission either provides a new dispensation or goes for amendment in Regulations. The issue in the instant case was one such issue which was not covered under the 2010 Sharing Regulations and therefore, the Commission provided a new dispensation in the order dated 05.10.2017 in the instant Petition and in line with this dispensation, clarity on treatment of such entities which are connected to both ISTS and State network has now been brought in the 2020 Sharing Regulations as under:

*“13 (11) Where a generating station is connected to both ISTS and intra-State transmission system, only ISTS charges and losses shall be applicable on the quantum of Long Term Access and Medium Term Open Access corresponding to capacity connected to ISTS.”*

We, therefore, are of the view that as a new dispensation was provided in the order dated 05.10.2017 in the instant Petition, the relief can only be granted prospectively, in accordance with the provisions of the extant regulations.

41. The Petitioner has relied on the judgements of the Supreme Court in Uttar Pradesh Power Corporation Limited Vs. National Thermal Power Corporation Limited [(2009) 6 SCC 235], judgements of the Appellate Tribunal in MP Power Management Company Vs. Central Electricity Regulatory Commission & Others [Judgement dated 1.7.2014 in Appeal No. 232 of 2013] and in Siel Limited. Vs. Punjab State Electricity Regulatory Commission [2007 ELR APTEL 931], orders of this Commission dated 16.7.2018 in Review Petition No.47/RP/2017 (Rajasthan Rajya Vidyut Prasharan Nigam Limited Vs. Power Grid Corporation of India Limited), order dated 16.7.2018 in 2/RP/2017 (Madhya Pradesh Power Trading Corporation Limited Vs. Power Grid Corporation of India Limited), and order dated 9.4.2020 in Petition No.310/GT2018 (SJVNL Vs. PSPCL). The main thrust of the argument of the Petitioner is that tariff is a continuous and on-going process and can be retrospectively revised and in fact,

the Commission has allowed retrospective revision of tariff in its various orders. According to the Petitioner, the Commission having unequivocally and unambiguously held that action of Respondent No.1 was wrong, ought to compensate the Petitioner for the past payment of transmission losses by apportioning the same on the users of the inter-State transmission system in the same manner as in case of transmission tariff modification at a subsequent stage. We have gone through the judgements and the orders cited by the Petitioner. The issue involved in the present case is not that of revision of tariff. As already held in this order, the Commission in the order dated 5.10.2017 in Petition No.211/MP/2011 was dealing with an issue which was not covered in the Sharing Regulations, 2010 i.e. whether the dedicated transmission lines connected from the bus bar of a generating station to its captive user is liable to pay the transmission losses. The Commission came to the conclusion that the captive user, in this case SAIL-BSP, is not liable to pay the transmission losses subject to two exceptions as mentioned in paragraph 36 of this order. Being new decision on a substantive question of law, the Commission decided to apply the decision prospectively.

42. The Hon'ble Supreme Court in BABURAM Vs C.C. JACOB [(1999) 3 SCC 362] has laid down the following principle for prospective declaration of law:

*"5. The prospective declaration of law is a device innovated by the Apex Court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is a device adopted to avoid uncertainty and avoidable litigations. By very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to its date of declaration are validated. This is done in the larger public interest....."*

Though the above was in the context of the declaration of law by the Hon'ble Supreme Court, the essence and spirit of the above observations are applicable as well in case of other courts and tribunals when they decide on a substantive question

of law. In the case in hand, the Commission in paragraph 24 of the order dated 5.10.2017 in Petition No.211/MP/2011 has declared that the decision in the said order has implication in similarly placed cases. Paragraph 24 is extracted as under:

*“24. In our view, the present case has implication to similarly placed entities like SAILBSP and the States which draw power from the bus-bar of an ISGS through the transmission systems of STU without utilizing the ISTS. We direct the staff to examine the issue and propose amendment to the Sharing Regulations for clarity.”*

Since the Commission has declared that the dispensation decided in the order dated 5.10.2017 has implication in case of similarly placed entities as that of SAIL-BSP, it is well within the purview of the Commission to decide that the said dispensation shall have prospective application in order to avoid reopening of settled issues, avoid uncertainty and avoidable litigations in the light of the principle laid down by the Hon'ble Supreme Court.

43. Petition No. 211/MP/2011 is disposed of in terms of above. With this, the directions of the Tribunal in its judgment dated 30.01.2020 in Appeal No. 116 of 2018 stands complied with.

**Sd/  
(Pravas Kumar Singh)  
Member**

**Sd/  
(Arun Goyal)  
Member**

**Sd/  
(I.S. Jha)  
Member**

**Sd/  
(P.K Pujari)  
Chairperson**