

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 22/RP/2019
in Petition No. 255/TT/2018**

Coram:

**Shri P.K. Pujari, Chairperson
Shri I.S. Jha, Member**

Date of Order : 20.06.2021

In the matter of:

Review petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, seeking review of order dated 4.10.2019 in Petition No. 255/TT/2018.

And in the matter of:

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

.... Review Petitioner

Vs

1. Rajasthan Rajya Vidyut Prasaran Nigam Ltd.
132 kV, GSS RVPNL Sub- Station Building,
Caligiri Road, Malviya Nagar, Jaipur-302017 (Rajasthan)
2. Ajmer Vidyut Vitran Nigam Ltd.
132 kV, GSS RVPNL Sub- Station Building,
Caligiri Road, Malviya Nagar, Jaipur-302017
3. Jaipur Vidyut Vitran Nigam Ltd.
132 kV, GSS RVPNL Sub- Station Building,
Caligiri Road, Malviya Nagar, Jaipur-302017.
4. Jodhpur Vidyut Vitran Nigam Ltd.
132 kV, GSS RVPNL Sub- Station Building,
Caligiri Road, Malviya Nagar, Jaipur-302017.
5. Himachal Pradesh State Electricity Board
Vidyut Bhawan, Kumar House Complex Building II,
Shimla-171 004.
6. Punjab State Power Corporation Ltd.
Thermal Shed TIA, Near 22 Phatak, Patiala - 147 001.

7. Haryana Power Purchase Centre,
2nd Floor, Shakti Bhawan,
Sector-6, Panchkula-134 109.
8. Power Development Department,
Government of Jammu & Kashmir,
Mini Secretariat, Jammu.
9. Uttar Pradesh Power Corporation Ltd.
10th Floor, Shakti Bhawan Extn 14,
Ashok Marg, Lucknow - 226 001 (UP)
10. Delhi Transco Ltd.
Shakti Sadan, Kotla Road (Near ITO), New Delhi -110 002.
11. BSES Yamuna Power Limited (Delhi Discom),
B Block, Shakti Kiran, Bldg. (Near Karkadooma Court),
Karkadooma, 2nd Floor, DELHI, 110092.
12. BSES Rajdhani Power Limited (Delhi Discom),
Bus Terminal, Nehru Place,
BSES Bhawan, New Delhi, 110019.
13. North Delhi Power Ltd.
Power Trading & Load Dispatch Group,
Cement Building, Adjacent To 66/11 kV Pitampura-3,
Grid Building, Pitampura, New Delhi-110034.
14. Chandigarh Electricity Dept.
UT- Chandigarh, Division 11,
Opposite Transport Nagar, Industrial area phase-I,
Sector 9, Chandigarh.
15. Uttarakhand Power Corporation Ltd.
Urja Bhawan, Kanwali Road, Dehradun.
16. North Central Railway,
Allahabad.
17. Tata power Delhi Distribution Ltd.
33 kV Substation, Building, Hudson Lane,
Kingsway Camp, North Delhi – 110009.

..... Respondents

For Petitioner : Ms. Ranjitha Ramachandran, Advocate, PGCIL
Ms. Srishti Khindaria, Advocate, PGCIL
Shri A. K Verma, PGCIL
Shri V. P Rastogi, PGCIL

For Respondents : None

ORDER

Power Grid Corporation of India Ltd. has filed the instant review petition seeking review of the order dated 4.10.2019 in Petition No. 255/TT/2018 under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, wherein the transmission tariff was determined by the Commission for six new 500 MVA 400/220 kV Inter-connecting Transformers (ICTs) installed in place of six 315 MVA 400/220 kV ICTs, from their COD to 31.3.2019, and the Commission decapitalised the replaced six 315 MVA 400/220 kV ICTs.

Background

2. The Review Petitioner had filed Petition No. 255/TT/2018 for determination of transmission tariff of six 500 MVA 400/220 kV ICTs at Mandola sub-station and Ballabgarh sub-station (hereinafter referred to as 'the subject assets') under the "Northern Region Strengthening Scheme-XXXII in the Northern Region" for the 2014-19 tariff period under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as "the 2014 Tariff Regulations"). The subject assets replaced the existing six 315 MVA 400/220 kV ICTs installed at Mandola sub-station and Ballabgarh sub-station. The tariff for the subject assets was allowed vide order dated 4.10.2019 in Petition No. 255/TT/2018. The Commission in the impugned order dated 4.10.2019 had de-capitalised the six 315 MVA 400/220 kV ICTs and observed that the said ICTs would not recover any tariff for the reasons that their useful life was over, the entire loan had been paid back and 90% depreciation had been recovered. Accordingly, the cost of the replaced six 315 MVA 400/220 kV ICTs was deducted from the capital cost of the subject assets while allowing tariff for them from their COD to 31.3.2014. The Review Petitioner has

sought review of the said findings of the Commission in the order dated 4.10.2019 in Petition No. 255/TT/2018 in the instant Review Petition.

3. The Review Petitioner has made the following prayers:

“a) Allow the Review Petition and modify the Order dated 4.10.2019 passed in Petition No. 255/TT/2018 to the extent stated in the present Review Petition;

b) Allow the tariff as applicable for the replaced 315 MVA ICT to be used in regional spare;

c) pass any such further order or orders as this Hon’ble Commission may deem just and proper in the circumstances of the case.”

4. The impugned order dated 4.10.2019 was heard by coram of Chairperson, Dr. M. K. Iyer, Member and Shri I. S. Jha, Member. Dr. M. K. Iyer, Member has demitted office and, hence, the instant review petition is heard by coram of Chairperson and Shri I. S. Jha, Member.

5. The matter was heard through video conference on 16.7.2020 and was admitted vide order dated 24.7.2020 and notice was issued to the Respondents. However, none of the Respondents have filed any reply in the matter. The matter was finally heard on 27.4.2021 and order was reserved. None of the Respondents appeared in the matter despite notice.

Submissions of the Review Petitioner

6. The Review Petitioner has submitted that decapitalisation and disallowance of tariff (on the ground that their useful life was over, the entire loan has been paid back and 90% depreciation has been recovered) for the six 315 MVA 400/220 kV ICTs at Mandola sub-station and Ballabgarh sub-station, in spite of approval in the Regional Power Committee (RPC) to continue to use them as spare reactors, is an apparent error. The gist of the submissions made by the Review Petitioner in the review petition and in its Written Submissions (WS) dated 13.5.2021 in support of its plea for review of order dated 4.10.20019 are as follows:

a) The impugned order has failed to consider that the replaced 315 MVA 400/220 kV ICTs are/ would be in use as under:

Sr. No.	Asset	New Project
1	315 MVA ICT-I at Mandola sub-station which has been replaced by 500 MVA - Asset I	Kept as regional spare (Northern Region)
2	315 MVA ICT-II at Mandola sub-station which has been replaced by 500 MVA - Asset II	Being diverted to Rourkela sub-station under ERSS XVII.
3	315 MVA ICT-III at Mandola sub-station which has been replaced by 500 MVA - Asset III	Kept as Regional Spares (Northern Region)
4	315 MVA ICT-IV at Mandola sub-station which has been replaced by 500 MVA - Asset IV	Being diverted to Rourkela sub-station under ERSS XVII.
5	315 MVA ICT-I at Ballabgarh sub-station which has been replaced by 500 MVA - Asset V	Diverted to Agra sub-station under NRSS XXXIV.
6	315 MVA ICT-II at Ballabgarh sub-station which has been replaced by 500 MVA - Asset VI	Kept as Regional Spares (Northern Region)

b) The impugned order has failed to consider that the replaced 315 MVA 400/220 kV ICTs are still in use and, therefore, entitled for tariff. When the asset is being used and has been agreed to be used, it is entitled for tariff as per the applicable Tariff Regulations.

c) The RPC has specifically approved that three replaced ICTs will be kept as regional spares and other three would be used in other sub-stations (two in Rourkela sub-station and one in Agra sub-station). As the RPC has accepted the extended life, the applicable tariff elements cannot be denied.

d) Two of the replaced ICTs are already installed in Rourkela sub-Station and ICT in Agra sub-station is likely to be installed shortly. As three ICTs are installed/ being installed in another sub-stations and are in use, they are entitled to tariff.

e) The use of assets as regional spares has been recognized by the Commission in other petitions. The Commission vide order dated 23.3.2016 in Petition No. 232/TT/2015 and order dated 5.3.2021 in Petition No. 250/TT/2020 has allowed for continued recovery of tariff of assets as regional spares.

f) The Commission in the impugned order itself has recognized that the replaced asset would be capitalised in the books of accounts of the transmission asset where it is shifted. The Commission has also noted the

policy of the Review Petitioner for use of assets as regional spare ICTs and reactors and had observed that the Review Petitioner has submitted the required details. There is no observation or finding that the use as regional spares is not warranted or otherwise there is any error in such use.

g) The disallowance of tariff for transmission assets which are in use amounts to use of such assets for free which is not only contrary to Section 61 of the Electricity Act, 2003 but also contrary to the equity and justice as the Review Petitioner would be required to put the asset to use without recovery of tariff.

h) There is no bar in the use of the transmission assets/ ICTs even beyond the useful life provided in the Tariff Regulations. Merely because the ICTs have completed useful life, does not mean that the ICTs cannot be used any more. It is common for ICTs to continue to be used beyond useful life. The replacement of 315 MVA 400/220 kV ICTs with 500 MVA 400/220 kV ICTs was due to the demand at the sub-station requiring increase in transformer capacity and not for any fault in the existing ICTs. Therefore, the dismantled ICTs can still be put to use in other places and such use would be efficient and economical as compared to procuring new ICTs.

i) The 2014 Tariff Regulations recognizes extended life of assets and additional costs to be incurred for renovation or modernisation of the assets for purpose of extension of life. Similarly, the 2019 Tariff Regulations also recognizes use of an asset beyond its useful life. The impugned order is contrary to the provisions of the 2014 Tariff Regulations and the 2019 Tariff Regulations which provide for tariff beyond their useful life.

j) It is established principle that assets when used beyond their useful life would recover tariff as applicable. Once the above principle is accepted, there is no reason to deny tariff to the assets whenever they are removed from one sub-station and to be used in another sub-station or to be used as regional spares.

k) In the present case, if the ICTs had continued to be in the original sub-stations, they would have continued to recover tariff as per the Tariff Regulations. There is no reason or rationale to deny such tariff merely because the ICTs have been shifted to other sub-stations or used as regional spares.

l) Even though there is no additional capital cost for renovation and modernisation and the depreciation and interest on loan are nil, there are other elements of tariff which are applicable such as O&M Expenses, return on equity (RoE) and the consequent interest on working capital (IWC), etc. ICTs would still have to be operated and maintained. Merely because ICTs have completed their useful life, does not mean that there are no O&M Expenses.

m) It is in the interests of all the beneficiaries to use such ICTs even beyond their useful life as this would involve substantially lower transmission tariff after its useful life since such tariff would consist only of ROE, O&M Expenses and IWC component. However, there is no incentive for the Review Petitioner to continue an asset beyond the useful life if no recovery of tariff is permitted for such asset.

n) The use of replaced ICTS as regional spares/use in other sub-stations is done by the Review Petitioner to avoid additional capital cost of new ICTs and thereby incurring unnecessary expenditure. On each augmentation/ upgradation of transmission capacity, if the lower capacity power transformer is decommissioned and new transformer is purchased, it will lead to unnecessary burden on the consumers.

o) The Review Petitioner has acted in a prudent manner and has benefited the beneficiaries and consumers and ought not to be adversely treated for such action by denying tariff for the old ICTs.

p) The Committee constituted by the Commission in Petition No. 38/TT/2017 considered the use of replaced/ dismantled ICTs and transformers as regional spares and recommended that they can be used as regional spares with the approval of the concerned RPC and they should get tariff.

q) The review jurisdiction is broad and can be used to correct the error and prevent miscarriage of justice or consider the aspects which have not been considered earlier.

r) The Commission in order dated 23.3.2016 in Petition No.232/TT/2015 and order dated 5.3.2021 in Petition No.250/TT/2020 had allowed tariff for spare assets.

7. Learned counsel for the Review Petitioner reiterated the submissions made in the review petition during the hearing on 27.4.2021.

Analysis and Decision

8. We have considered the submissions of Review Petitioner and the material available on record. The grievance of the Review Petitioner is that the decapitalisation and disallowance of tariff of the six replaced 315 MVA 400/220 kV ICTs at Ballabgarh sub-station and Mandola sub-station even though it is approved by the RPC to use them as regional spares or to be used in other sub-stations (Rourkela and Agra), is an apparent error. We note that the Review Petitioner had filed Review Petition No.23/RP/2019 seeking review of order dated 30.9.2019 in Petition No. 171/TT/2018 on identical grounds and the Commission vide order dated 5.6.2021 had dismissed the contentions raised by the Review Petitioner and disposed Review Petition No.23/RP/2019. The relief sought and the grounds for seeking relief in the instant review petition is similar to Review Petition No.23/RP/2019. We consider the grounds for seeking relief in the instant review petition in the following paragraphs.

9. The Review Petitioner has sought review of the impugned order mainly on the following three grounds: (a) the three ICTs to be used as regional spares and three ICTs to be installed in Agra sub-station and Rourkela sub-station are entitled to tariff as the asset is "in use"; (b) the six 315 MVA 400/220 kV ICTs at Ballabgarh sub-station and Mandola sub-station were replaced not for any fault of ICTs but for augmentation of the transformation capacity; and (c) the replaced ICTs are being used as regional spares with the consent of the beneficiaries in the RPC. The Review

Petitioner has contended that the Commission has not considered these aspects in the impugned order, which is an apparent error.

10. The relevant portion of the impugned order is extracted hereunder for reference:

“33. We have examined the matter, in case of shifting of assets from one transmission project to another transmission project, we are of the view that the replaced asset should be de-capitalized in the books of the account of the transmission system from where it is transferred and should be capitalized in the books of accounts of the transmission system where it is shifted. Further, we have observed that the petitioner has been procuring regional spare ICTs/reactors and is using these spares for replacement of ICTs/reactors against any failure. Petitioner, in the recent past, was directed to identify the cases where such regional spare ICTs/reactors have been used and was also asked to submit the usage policy of regional spare ICTs/reactors and treatment of tariff after consultation at RPC level. The petitioner was also directed to submit list of regional spares already available versus requirement of such spares, category wise. Petitioner had, accordingly, submitted the required details.

34. Referring to the information of decapitalization indicated at para 30 above, we observe that all the 315 MVA ICTs were capitalized between September 1988 and February 1992 and the same have been decapitalized between February 2016 and September 2016. We are of the opinion that, ideally, the 6 no. 315 MVA ICTs should be considered as decapitalized with effect from the dates of commercial operation of the 6 no. 500 MVA ICTs. Further, the data submitted by the Petitioner makes it amply clear that the entire loan corresponding to the 315 MVA ICTs has been paid back and that 90% depreciation too has been recovered. Thus, these ICTs have, more or less, completed their lives as defined under the Tariff Regulations. Considering these facts, we are of the conscious view that although the Petitioner is free to divert these used ICTs to any Region and to utilize them as regional spares, they shall not be eligible for recovery of tariff any more from their respective dates of de-capitalisation. For the 315 MVA ICTs with residual life as on the date of de-capitalisation, Petitioner may put them to use as per requirement, considering Net Value of the Assets. In such situation, Petitioner is directed to discontinue the recovery of tariff against these 315 MVA ICTs as and when the depreciation is fully recovered. Compliance in this regard should be submitted while filing the truing-up petition for 2014-19 period for Rihand Transmission System, tariff for which (315 MVA ICTs) was earlier allowed in petition no 133/TT/2015. As such, we do not intend to allow carrying costs between the date of de-capitalization and date of re-capitalization.

11. We have perused the impugned order. It is observed that the Commission has considered the submissions of the Review Petitioner regarding its proposal to use the replaced six 315 MVA 400/220 kV ICTs and the fact that ICTs have completed their useful life and has recovered 90% of the value of ICTs as depreciation. Thus, the Commission was conscious of the fact that there was no fault with the ICTs. Therefore, we are not able to agree with the contention of the Review Petitioner that the Commission did not consider the submissions in the impugned order. The Review

Petitioner is trying to re-agitate the issues which have already been decided by us in order dated 4.10.2019, which is not allowed in a review petition.

12. The Review Petitioner has contended that the Committee constituted by the Commission in Petition No. 38/TT/2017 had recommended that the dismantled/replaced asset used as a regional spares with the consent of the RPC concerned should get tariff. Without going into the merits of the recommendations of the Committee, we would like to state that the Commission is not bound by the recommendations of the Committee. Moreover, it is pertinent to point out here that the Committee had also recommended that, *“A call may have to be taken by the Commission on the issue.”*

13. As regards the Review Petitioner’s contention that the Commission in order dated 23.3.2016 in Petition No. 232/TT/2015 and order dated 5.3.2021 in Petition No. 250/TT/2020 had allowed tariff for spares, it is observed that the Commission’s order dated 23.3.2016 in Petition No. 232/TT/2015 was passed before APTEL’s judgement dated 25.4.2016 in Appeal No. 98 of 2015. In Appeal No. 98 of 2015, APTEL held as under:

“18. The Appellant has argued that when the transformers are used as spare transformers, it cannot be said that they are not in use and therefore, its claim for retention of capital cost of the replaced 3x50 MVA transformers with the consent of the beneficiaries does not violate the Regulations of the Central Commission as these replaced assets are to be considered as ‘asset in use’.

This submission of the Appellant does not have any merit in light of the fact that these 3x50 MVA transformers stand replaced and till the time they are requisitioned by any beneficiary State, they would remain as spare transformers and hence, it could be treated as spare transformers but ‘asset not in use’.

This Tribunal in its earlier judgment dated 08.05.2014 in Appeal No. 173/2013 (NTPC Ltd. Vs. Central Electricity Regulatory Commission & Ors.) and judgment dated 01.05.2015 in Appeal No. 97/2013 (NTPC Ltd. Vs. Central Electricity Regulatory Commission & Ors.) disallowed capitalization of spare/additional transformers. In judgment dated 01.05.2015, this Tribunal observed that unless there is a specific provision in the Regulations permitting capitalization of the cost of spare assets, such assets cannot be included in the capital base.

19. Since there is no provision in the statutory Regulations of the Central Commission in support of the Appellant's claim to permit retention of replaced assets not in use, in the capital cost of the new assets, we are of the considered view that the Appellant's claim in this regard is untenable. We are in agreement with the findings of the Central Commission in this regard in its Impugned Order dated 06.01.2015. As such, both these issues are decided against the Appellant."

14. As the APTEL's judgement dated 25.4.2016 prevails over the Commission's order dated 23.3.2016, we set aside the contention of the Review Petitioner without going into the facts of the matter in Petition No. 232/TT/2015. As regards the second order relied upon by the Review Petitioner dated 5.3.2021 in Petition No. 250/TT/2020, it is observed that the facts in the instant matter are different from the facts in Petition No. 250/TT/2020, on the aspect of the age of the asset(s) concerned. Moreover, a decision in a subsequent matter (order dated 5.3.2021 in Petition No. 250/TT/2020) cannot be a ground for review of a decision in an earlier matter (the impugned order is dated 4.10.2019 in Petition No. 255/TT/2018) as held in judgement of Hon'ble J&K High Court in *Abdul Salam vs State of J&K (AIR 1981 J&K 21)* and of the Hon'ble Punjab and Haryana High Court judgement in *Ram Chand vs State of Punjab and Others {(1971) ILR 2 Punjab and Haryana 184}*.

15. In view of the above discussions, we are of the considered view that there is no apparent error in the impugned order.

16. Accordingly, Review Petition No. 22/RP/2019 is disposed of in terms of the above discussions and findings.

sd/-
(I. S. Jha)
Member

sd/-
(P. K. Pujari)
Chairperson