

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

PETITION No. 336/MP/2020

CORAM:

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

Date of Order: 27th January 2021

In the matter of:

Petition under Section 79 (1) (c) and 79(1) (d) of the Electricity Act, 2003 for refund the excess Tariff collected during FY 2019- 20 and permission to bill the beneficiaries based on the proposed Transmission Charges for the control period FY 2019- 20 to FY 2023-24 in the Tariff Petitions filed by the Petitioner before this Commission on 3.2.2020 having Diary Nos. 318, 319 and 320 of 2020 till the time the Commission approves the Transmission Charges.

And

In the matter of:

Powerlinks Transmission Limited
10th Floor, DLF Tower A,
District Centre, Jasola,
New Delhi – 110 025

....

Petitioner

Versus

1. Power Grid Corporation of India Ltd
"Saudamini", Plot No-2,
Sector-29, Gurgaon -122 001, Haryana

2. West Bengal State Electricity Distribution Company Limited
Bidyut Bhawan, Bidhan Nagar, Block DJ,
Sector-II, Salt Lake,
Kolkata – 700 091, West Bengal

3. Damodar Valley Corporation
DVC Tower, Maniktala Civil Centre,
VIP Road, Kolkata-700 054, West Bengal

4. Bihar State Electricity Board
Vidyut Bhawan, Bailey Road,

Patna – 800 001, Bihar

5. Grid Corporation of India Limited
Vidyut Bhawan, Janpath
Bhubaneswar – 751 007, Odisha

6. Power Department
Govt. of Sikkim
Gangtok-737 101 7, Sikkim

7. Jharkhand State Electricity Board
In front of Main Secretariat
Doranda, Ranchi-834 002, Jharkhand

8. Rajasthan Rajya Vidyut Prasaran Nigam Limited
Vidyut Bhawan, Vidyut Marg,
Jaipur-302 005, Rajasthan

9. Ajmer Vidyut Vitran Nigam Limited
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura,
Jaipur, Rajasthan

10. Jaipur Vidyut Vitran Nigam Limited
400 kV GSS Building (Ground Floor)
Ajmer Road, Heerapura,
Jaipur, Rajasthan

11. Jodhpur Vidyut Vitran Nigam Limited
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura,
Jaipur, Rajasthan

12. Punjab State Electricity Board
The Mall,
Patiala-147 001, Punjab

13. Haryana Power Purchase Centre
Shakti Bhawan, Sector-6, II Floor
Panchkula – 134 109, Haryana

14. Uttar Pradesh Power Corporation Limited
(Formerly Uttar Pradesh State Electricity Board)
10th Floor, Shakti Bhawan Extn-14,
Ashok Marg, Lucknow – 226 001, U.P.

15. Power Development Department
Government of Jammu and Kashmir,
Mini Secretariat, Jammu

16. Delhi Transco Limited
Shakti Sadan, Kotla Road (Near ITO),
New Delhi – 110 002

17. Himachal Pradesh State Electricity Board
Vidyut Bhawan, Kumar House Complex Building II,
Shimla-171 004, Himachal Pradesh

18. Chandigarh Administration
Sector-9, Chandigarh

19. Uttarakhand Power Corporation Limited
Urja Bhawan, Kanwali Road
Dehradun, Uttarakhand

20. Northern Central Railway
Allahabad, U.P.

21. BSES Yamuna Power Limited
BSES Bhawan, Building No.-20
Nehru Place,
New Delhi – 110016

22. BSES Rajdhani Power Limited
BSES Bhawan, Building No.-20,
Nehru Place,
New Delhi – 110016

23. North Delhi Power Limited
Grid Substation Building, Hudson Line,
Near Kingsway Camp,
New Delhi – 110 088

24. New Delhi Municipal Council
Palika Kendra, Sansad Marg,
New Delhi – 110 002

.... Respondents

Parties Present :

Shri Venkatesh, Advocate, PTL
Shri Ashutosh Srivastava, Advocate, PTL
Shri Abhishek Nangia, Advocate, PTL
Shri Pankaj Prakash, PTL

Order

The instant Petition has been filed for seeking permission/ approval of the Commission to (a) provisionally refund the excess tariff which has been billed and collected by the Petitioner during the financial year 2019-20, and (b) bill the beneficiaries based on the proposed transmission charges for the control period 2019-24 in the Tariff Petitions (Petition Nos. 588/TT/2020, 589/TT/2020 and 590/TT/2020) filed by the Petitioner, till the approval of the transmission charges. Learned counsel also submitted that the Commission has considered and granted similar relief in its order dated 15.7.2016 in IA No. 25 of 2016 in Petition Nos. 233/TT/2015 and 213/TT/2015. Petitioner has prayed as under:

- a) *Allow the Petitioner to provisionally refund the differential amounts based on the proposed tariff in two installments*
- b) *Permit the Petitioner to do the monthly billing of Transmission Charges to its Beneficiaries provisionally based on the Proposed Transmission Charges in Petitions having Dairy Nos. 318, 319 and 320 of 2020, till the time the final tariff orders are issued by this Hon'ble Commission*
- c) *Reconcile the final receivable/payable with reference to provisionally billed/recovered amounts once the final tariff order is issued by the Hon'ble Commission*

Submissions of the Petitioner

2. The Petitioner has submitted that it is an inter-State transmission licensee under Section 2(73) of the Electricity Act, 2003. The Petitioner is entrusted with implementation of the scheme for Transmission System associated with the following:

- (a) Siliguri-Purnea 400 kV D/C (Quad. Conductor) Transmission Line (Asset-I)

(b) Purnea-Muzaffarpur (New) 400 kV D/C (Quad. Conductor) Transmission Line (Asset II)

(c) Muzaffarpur (New)-Gorakhpur (New) 400 kV D/C (Quad. Conductor) Transmission Line (Asset-III)

(d) Gorakhpur (New)-Lucknow (New) 400 kV D/C Transmission Line (Asset-IV)

(e) Bareilly-Mandola 400 kV D/C Transmission Line (Asset V)

(f) 220 kV D/C line from Muzaffarpur 400/220 kV new S/S to Muzaffarpur 220 kV S/S (BSEB) Transmission Line (Asset VI)

3. The Petitioner has submitted that it was granted transmission license by this Commission *vide* its order dated 13.11.2003. Accordingly, the Petitioner was permitted to transmit electricity as a transmission licensee, and for that purpose, to construct, maintain and operate Inter-State transmission system associated with the Tala Hydro-Electric Project (HEP) East-North Inter Connector and Northern Region Transmission System.

4. The Petitioner has submitted that the Commission *vide* its order dated 31.03.2017 in Petition No. 515/TT/2014 tried up transmission tariff for 2009-14 tariff period and determined transmission tariff for 2014-19 tariff period, for 400 kV D/C Muzaffarpur-Gorakhpur Transmission line (Asset-III) in Eastern-Northern Inter-region associated with Tala HEP, East-North Inter-Connector and Northern Region Transmission System in Northern Region. The Annual Transmission Charges approved by the Commission is as under:

Approved Annual Transmission Charges of Asset-III (Rs. in lakh)

Particulars	2014-15	2015-16	2016-17	2017-18	2018-19
Depreciation	2193.82	2194.46	2194.46	2194.46	2194.46
Interest on Loan	1122.10	917.07	711.15	503.42	295.98
Return on Equity (Pre-Tax)	2463.99	2466.20	2467.68	2467.68	2467.68
Interest on Working Capital	148.30	144.14	139.96	135.72	131.51
O&M Expenses	276.12	285.22	294.58	304.46	314.60

Particulars	2014-15	2015-16	2016-17	2017-18	2018-19
Sub-total	6204.32	6007.10	5807.83	5605.75	5404.23
Transmission Majoration Factor @10% of above	620.43	600.71	580.78	560.57	540.42
Total Transmission Charges	6824.76	6607.80	6388.61	6166.32	5944.65

5. The Petitioner has submitted that the Commission vide its order dated 18.4.2017 in Petition No. 516/TT/2014 tried up transmission tariff for FY 2013-14 in tariff period 2009-14 and determined transmission tariff for 2014-19 tariff period for Asset-IV: 400 kV D/C Gorakhpur-Lucknow Transmission line (COD: 1.8.2006) and Asset-V: 400 kV D/C Bareilly-Mandola transmission line (COD: 1.5.2006) in Northern region associated with Tala HEP, East-North Inter-Connector and Northern Region Transmission System. Annual Transmission Charges approved by the Commission in the said order is as under:

Approved Annual Transmission Charges of Asset-IV

(Rs. in lakh)

Particulars	2014-15	2015-16	2016-17	2017-18	2018-19
Depreciation	1117.10	1117.72	1117.72	1117.72	1117.72
Interest on Loan	584.08	479.17	373.45	267.67	162.71
Return on Equity (Pre-Tax)	1261.11	1261.79	1261.79	1261.79	1261.79
Interest on Working Capital	77.79	75.74	73.63	71.53	69.47
O&M Expenses	173.92	179.83	185.73	191.88	198.28
Sub-total	3214.01	3114.25	3012.32	2910.60	2809.97
Transmission Majoration Factor @10% of above	321.40	311.42	301.23	291.06	281.00
Total Transmission Charges	3535.41	3425.67	3313.56	3201.66	3090.97

Approved Annual Transmission Charges of Asset-V

(Rs. in lakh)

Particulars	2014-15	F2015-16	2016-17	2017-18	2018-19
Depreciation	1100.58	1101.17	1101.17	1101.17	1101.17
Interest on Loan	562.42	459.05	354.90	250.70	147.26
Return on Equity (Pre-Tax)	1242.77	1243.43	1243.43	1243.43	1243.43
Interest on Working Capital	76.10	74.06	71.98	69.91	67.86
O&M Expenses	166.82	172.48	178.15	184.04	190.18
Sub-total	3148.69	3050.19	2949.63	2849.24	2749.90
Transmission Majoration Factor @10% of above	314.87	305.02	294.96	284.92	274.99
Total Transmission Charges	3463.56	3355.21	3244.59	3134.16	3024.89

6. The Petitioner has submitted that the Commission vide its order dated 20.04.2017 in Petition No. 514/TT/2014 tried up transmission tariff for 2013-14 in

tariff period 2009-14 and determined transmission tariff for 2014-19 tariff period for Asset-I: 400 kV D/C Siliguri-Purnea transmission line, Asset-II: 400 kV D/C Purnea Muzaffarpur transmission line and Asset-VI: 220 kV D/C Muzaffarpur (PGCIL)-Muzaffarpur (BSEB) Transmission Line in Eastern Region associated with Tala HEP, East-North Inter-Connector and Northern Region Transmission System. The Annual Transmission Charges approved by the Commission in the said order are tabulated as follows:

Approved Annual Transmission Charges of Asset-I, Asset-II and Asset-VI (Rs. in lakh)

Particulars	2014-15	2015-16	2016-17	2017-18	2018-19
Depreciation	3749.23	3750.28	3750.28	3750.28	3750.28
Interest on Loan	1922.84	1569.54	1214.81	859.87	504.75
Return on Equity (Pre-Tax)	4202.38	4203.56	4203.56	4203.56	4203.56
Interest on Working Capital	251.10	243.80	236.45	228.96	221.83
O&M Expenses	431.01	445.21	459.84	472.25	491.09
Sub-total	10556.56	10212.40	9864.94	9514.92	9171.51
Transmission Majoration Factor @10% of above	1055.66	1021.24	986.49	951.49	917.15
Total Transmission Charges	11612.21	11233.63	10851.43	10466.41	10088.66

7. The Petitioner has submitted that the summary of the approved transmission charges for all assets of the Petitioner (Region-Asset wise) for 2014-19 tariff period in the above-mentioned orders is as follows:

(Rs. Lakhs)

Region (Assets)	2014-15	2015-16	2016-17	2017-18	2018-19
ER (A-I, A-II, A-VI)	11612.21	11233.63	10851.43	10466.41	10088.66
NR (A-IV)	3535.41	3425.67	3313.56	3201.66	3090.97
NR (A-V)	3463.56	3355.21	3244.59	3134.16	3024.89
IC (A-III)	6824.76	6607.80	6388.61	6166.32	5944.65
Total	25435.94	24622.31	23798.19	22968.54	22149.17

8. The Petitioner has submitted that the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (in short, the 2019 Tariff Regulations) were notified on 7.3.2019. Regulation 10(4) of the 2019 Tariff

Regulations provides for billing of beneficiaries at the transmission charges as approved by this Commission and applicable as on 31.03.2019 for the period starting from 01.04.2019. Billing at such rate shall be continued till approval of transmission charges by the Commission for 2019-24 tariff period. In compliance with the foregoing Regulation, for FY 2019-20, starting from 01.04.2019, the Petitioner has been billing the beneficiaries based on this Orders in Petition Nos. 514/TT/2014, 515/TT/2014 and 516/TT/2014 dated 20.4.2017, 31.3.2017 and 18.4.2017, respectively.

9. The Petitioner has submitted that it has filed Tariff Petitions on 03.02.2020 before the Commission for determining the Annual Transmission Charges for the tariff period 2019-24 based on the 2019 Tariff Regulations and true-up for the tariff period 2014-19. Summary of the proposed transmission charges (Region-Asset wise) for the tariff period 2019-24 is as follows:

(Rs. in lakh)					
Region (Assets)	2019-20	2020-21	2021-22	2022-23	2023-24
ER (A-I, A-II, A-VI)	7002.67	6982.91	6496.71	6414.71	6383.12
NR (A-IV)	2286.77	2264.57	1991.59	1971.30	1966.74
NR (A-V)	2242.01	2218.78	1953.95	1941.88	1945.86
IC (A-III)	4114.77	4069.58	3759.57	3726.58	3723.28
Total	15646.22	15535.84	14201.82	14054.48	14018.99

10. The Petitioner has submitted that as the approved tariff applicable on 31.03.2019 has been continued for FY 2019-20, pending approval of transmission charges for 2019-24, there has been over-recovery of transmission charges due to such provisional billing. Such over-recovery is on account of the difference in the transmission charges for FY 2018-19, in contrast to the proposed transmission

charges for the tariff period 2019-24, which are approximately 30% lower than what is being billed presently.

11. The Petitioner has submitted that the said reduction in proposed tariff leading to over-recovery is primarily on account of Regulation 33(5) of the 2019 Tariff Regulations which states that the remaining depreciable value as on 31st March of the year, closing after a period of 12 years from the effective date of commercial operation, shall be spread over the balance useful life of the assets. For transmission assets, the useful life is defined as 35 years and upon completion of 12 years of useful life, the remaining depreciable value (20% of capital cost), i.e. difference of depreciation allowed (90% of capital cost) and depreciation claimed till date (70% of capital cost), shall be spread over the balance useful life i.e. 23 years. Since the Petitioner's assets have completed 12 years of useful life on 31.03.2019 from the effective date of commercial operation, the depreciation claimed in 13th year i.e. FY 2019-20 is significantly lesser than what was claimed in earlier years. As a result, the overall proposed depreciation in the years from FY 2019-20 onwards is substantially lower than that approved for FY 2018-19 leading to substantial reduction in proposed transmission charges.

12. The differential between the approved/ billed viz-a-viz proposed Annual Transmission Charges is Rs. 65.03 crore, which will increase every year till FY 2023-24 and this is presently burdening the beneficiaries.

Analysis and Decision

13. We have heard the learned counsel of the Petitioner and perused the documents available on record. In terms of Regulation 10(4) of the 2019 Tariff

Regulations, the Petitioner, with effect from 01.04.2019, has been raising bills for the transmission charges for the assets owned by it as per the tariff approved for 2018-19 i.e. the tariff applicable as on 31.3.2019. The Petitioner has filed tariff petitions for determination of transmission tariff for 2019-24 tariff period and the same are pending consideration at the Commission. It has submitted that the transmission charges that are being billed to the long term customers w.e.f. 01.04.2019 (@ approved transmission charges for 2018-19) are substantially higher than the proposed transmission charges for the 2019-24 tariff period.

14. It is noted that the Petitioner has been billing the long term customers in terms of Regulation 10(4) of the 2019 Tariff Regulations. Regulation 10(7) of the 2019 Tariff Regulations provides that any over/ under recovery should be refunded to or recovered from, as the case may be, the long-term customers with interest. The relevant extract of the 2019 Tariff Regulations is as under:

“10. Determination of tariff

...

(4) In case of the existing projects, the generating company or the transmission licensee, as the case may be, shall continue to bill the beneficiaries or the long term customers at the capacity charges or the transmission charges respectively as approved by the Commission and applicable as on 31.3.2019 for the period starting from 1.4.2019 till approval of final capacity charges or transmission charges by the Commission in accordance with these regulations:

Provided that the billing for energy charges w.e.f. 1.4.2019 shall be as per the operational norms specified in these regulations.

(5) The Commission shall grant final tariff in case of existing and new projects, after considering the replies received from the respondents, and suggestions and objections, if any, received from the general public and any other person permitted by the Commission including the consumers or consumer associations.

(7) The difference between the tariff determined in accordance with clauses (3) and (5) above and clauses (4) and (5) above, shall be recovered from or refunded to, the beneficiaries or the long term customers, as the case may be, with simple interest at the rate equal to the bank rate prevailing as on 1st April of the respective year of the tariff period, in six equal monthly instalments.”

15. The Petitioner has stated that differential in the amount being billed and proposed transmission charges is due to the fact that depreciation claimed in 13th year i.e. 2019-20 is significantly lesser than what was claimed in earlier years i.e. up to 2018-19. As per Regulation 33(5) of the 2019 Tariff Regulations, after 12 years of useful life of the asset, the remaining depreciable value of the asset is spread over the remaining useful life and, therefore, the depreciation claimed for period 2019-24 is lesser by approximately 30% compared to that up to 2018-19. Regulation 33(5) of the 2019 Tariff Regulation is extracted as under:

“(5) Depreciation shall be calculated annually based on Straight Line Method and at rates specified in Appendix-I to these regulations for the assets of the generating station and transmission system:

Provided that the remaining depreciable value as on 31st March of the year closing after a period of 12 years from the effective date of commercial operation of the station shall be spread over the balance useful life of the assets.”

16. The instant Petition has been filed by the Petitioner for seeking approval of the Commission to (a) provisionally refund the excess tariff which has been billed and collected by the Petitioner during the financial year 2019-20, and (b) bill the long term customers for the 2019-24 tariff period based on the proposed transmission charges in the Tariff Petition No. 588/TT/2020, Petition No. 589/TT/2020 and Petition No. 590/TT/2020 filed by the Petitioner, till the approval of the transmission charges by the Commission.

17. In this context, we observe that Regulation 66 of the 2019 Tariff Regulations specifies that tariff determined by the Commission is the ceiling tariff and that the transmission licensee and the long-term customer may mutually agree to charge a lower tariff. Relevant extracts of the 2019 Tariff Regulations are as under:

“66. Deviation from ceiling tariff: (1) The tariff determined in these regulations shall be a ceiling tariff. The generating company or the transmission licensee and the

beneficiaries or the long-term customer, as the case may be, may mutually agree to charge a lower tariff.

(2) The generating company or the transmission licensee, may opt to charge a lower tariff for a period not exceeding the validity of these regulations on agreeing to deviation from operational parameters, reduction in operation and maintenance expenses, reduced return on equity and incentive specified in these regulations.

(3) If the generating company or the transmission licensee opts to charge a lower tariff for a period not exceeding the validity of these regulations on account of lower depreciation based on the requirement of repayment in such case the unrecovered depreciation on account of reduction of depreciation by the generating company or the transmission licensee during useful life shall be allowed to be recovered after the useful life in these regulations.

(4) The deviation from the ceiling tariff specified by the Commission shall come into effect from the date agreed to by the generating company or the transmission licensee and the beneficiaries or the long-term customer, as the case may be.”

18. Regulation 66 of the 2019 Tariff Regulations allows the transmission licensee to bill an amount lower than the tariff determined by the Commission when transmission licensee and long-term customers mutually agree to charge a lower tariff. In the instant matter, the Petitioner has not indicated whether it had approached the long-term customers in this regard before filing this petition. However, we note that the long-term customers of the Petitioner are respondents to the present petition, but none of them have filed any reply. We, therefore, construe that the Respondents have no objection to the Petitioner charging a lower tariff. In any case, the long-term customers will have benefit of being charged a lower tariff if the same is allowed.

19. We also note that the Petitioner has already filed petitions (Petition No. 588/TT/2020, Petition No. 589/TT/2020 and Petition No. 590/TT/2020) for determination of tariff in respect of the assets owned by it and the same will be decided by the Commission in due course of time.

20. In view of the above, we allow the Petitioner to refund the excess tariff billed and collected (difference between tariff charged since 01.04.2019 on basis of tariff

allowed for 2018-19 and the proposed transmission tariff claimed in Petition No. 588/TT/2020, Petition No. 589/TT/2020 and Petition No. 590/TT/2020) to the long term customers. We also allow the Petitioner to bill the long-term customers as per proposed tariff in Petition No. 588/TT/2020, Petition No. 589/TT/2020 and Petition No. 590/TT/2020 till tariff is granted by the Commission. Since the above arrangement is provisional and is subject to determination of final tariff in Petition No. 588/TT/2020, Petition No. 589/TT/2020 and Petition No. 590/TT/2020, any adjustments as regards interest in terms of Regulation 10(7) of the 2019 Tariff Regulations shall be done after final order is issued by the Commission in those petitions.

21. Petition No. 336/MP/2020 is disposed of in terms of the above.

sd/-
(Arun Goyal)
Member

sd/-
(I. S. Jha)
Member

sd/-
(P. K. Pujari)
Chairperson