

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 5/RP/2022

Subject : 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 the PoC order dated 6.3.2020 in Petition No.L-1/44/2010-CERC.

Date of Hearing : 29.3.2022

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

Review Petitioner : Torrent Power Limited
Respondents : National Load Despatch Centre (NLDC) and Anr.

Parties Present : Shri Sanjay Sen, Sr. Advocate, TPL
Shri Abhishek Munot, Advocate, TPL
Ms. Mandakini Ghosh, Advocate, TPL
Shri Tushar Nagar, Advocate, TPL
Shri Jaydip Chudasama, TPL
Shri Parth Desai, TPL

Record of Proceedings

Case was called out for virtual hearing.

2. Learned senior counsel for the Review Petitioner, Torrent Power Limited (TPL) submitted that the present Review Petition has been filed seeking review of the Commission's order dated 6.3.2020 in Petition No. L-1/44/2010-CERC ('Impugned order') and in terms of the order dated 21.1.2022 in Petition No. 345/MP/2019 filed by the Review Petitioner on the same subject matter, which was inadvertently numbered as Miscellaneous Petition instead of Review Petition. Learned senior counsel further submitted as under:

(a) The Commission vide order dated 4.2.2020 ('PoC order'), *inter-alia*, determined the PoC rate for Short-Term Open Access ('STOA') transactions for quarter 4 of financial year 2019-20 wherein the applicable PoC slab rate for TPL's generation (DGEN) node was determined as 37.07 Paise/kWh.

(b) After realising that NLDC had inadvertently considered the DGEN-Navsari dedicated transmission line as part of ISTS while computing the PoC rate applicable to TPL's DGEN Plant, TPL vide its letter dated 21.2.2020 requested the Commission to revise the PoC rate determined vide PoC order. The said letter of TPL was then forwarded to NLDC.

(c) Thereafter, the Commission vide Impugned order revised the PoC charges for STOA transactions determined in the PoC order. However, such revised/ corrected charges were made applicable only for the applications of

STOA received after the date of issue of the Impugned order (i.e. prospectively) and not from the date of applicability of the PoC order.

(d) Inadvertent error on the part of NLDC has been clearly admitted in its letter dated 2.3.2020 as well as in the reply filed by NLDC in the Petition No. 345/MP/2020.

(e) Once the Commission rectified the inadvertent computational error in PoC rates vide the Impugned order, the revised /corrected PoC rates ought to have been made applicable from the date of applicability of original PoC order. Also, TPL was not provided an opportunity of being heard while passing the Impugned order.

(f) NLDC in its reply filed in Petition No. 345/MP/2019 has attempted to justify the prospective application of the Impugned order by submitting that if the retrospective revision of PoC charges is allowed then the settled commercial transaction will required to be reopened and the resettlement of old transactions would additionally change the tax liabilities of the parities, reconciliation of TDS part of the payment, reconciliation of accounts, refunds to the applicants and recovery from the applicants, etc. for the period from 1.1.2020 to 6.3.2020.

(g) However, the above difficulties cannot come in a way of retrospective implementation of correct PoC rates. In many of the cases, directions have been issued for revision of RTA and refund of charges collected by CTU for adjustment against underpaid/overpaid transmission charges.

(h) NLDC vide its letter dated 29.11.2020 to the Power Exchanges had itself asked for retrospective revision with regard to STOA transmission charges for the approved transactions for which applications were made on or after 1st November, 2020 and refund of the transmission charges.

(i) Accordingly, the Respondents ought to be directed to refund the excess PoC charges paid by the Petitioner during the period from 17.2.2020 to 5.3.2020 amounting to approximately Rs. 4 crore along with applicable interest. Alternatively, the Respondents may be directed to adjust such amount against the future transmission charges liability.

3. After hearing the learned counsel for the Review Petitioner, the Commission reserved the order '*on admission*'.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**