

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Review Petition No. 21/RP/2021**  
**(along with IA No. 21/IA/2021 and I.A. No.77/IA/2021)**  
**in**  
**Petition No. 104/TT/2020**

**Coram:**

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

**Date of Order: 27.05.2022**

**In the matter of:**

Review Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 103(1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, seeking review and modification of the order dated 31.3.2021 in Petition No. 104/TT/2020.

**And in the Matter of:**

Power Transmission Corporation of Uttarakhand Limited,  
Vidyut Bhawan,  
Near ISBT Crossing, Saharanpur Road, Majra,  
Dehradun-248002

**....Review Petitioner**

**Vs**

1. Rajasthan Rajya Vidyut Prasaran Nigam Limited,  
Vidyut Bhawan, Vidyut Marg,  
Jaipur – 302005, Rajasthan.
2. Ajmer Vidyut Vitran Nigam Limited,  
132 kV, GSS RVPNL Sub- Station Building,  
Caligiri Road, Malviya Nagar,  
Jaipur-302017 (Rajasthan).
3. Jaipur Vidyut Vitran Nigam Limited,  
132 kV, GSS RVPNL Sub- Station Building,  
Caligiri Road, Malviya Nagar,



Jaipur-302017 (Rajasthan).

4. Jodhpur Vidyut Vitran Nigam Limited,  
132 kV, GSS RVPNL Sub- Station Building,  
Caligiri Road, Malviya Nagar,  
Jaipur-302017 (Rajasthan).
  5. Himachal Pradesh State Electricity Board,  
Vidyut Bhawan, Kumar House Complex Building II,  
Shimla-171004 (Himachal Pradesh).
  6. Punjab State Electricity Board,  
Thermal Shed Tia, Near 22 Phatak,  
Patiala-147001 (Punjab).
  7. Haryana Power Purchase Centre,  
(Through S.E./C&R-1),  
Shakti Bhawan, Sector-6,  
Panchkula- 134109 (Haryana).
  8. Power Development Department,  
Government of Jammu & Kashmir,  
Mini Secretariat,  
Jammu.
  9. Uttar Pradesh Power Corporation Limited,  
Shakti Bhawan, 14, Ashok Marg,  
Lucknow - 226001 (Uttar Pradesh).
  10. Delhi Transco Limited,  
Shakti Sadan, Kotla Road,  
New Delhi-110002.
  11. BSES Yamuna Power Limited,  
B-Block, Shakti Kiran Building (Near Karkadooma Court),  
Karkadooma 2<sup>nd</sup> Floor,  
New Delhi-110092.
  12. BSES Rajdhani Power Limited,  
BSES Bhawan, Nehru Place,  
New Delhi-110019.
  13. North Delhi Power Limited,  
Power Trading & Load Dispatch Group,  
Cennet Building, Adjacent to 66/11 kV Pitampura-3,
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Grid Building, Near PP Jewellers, Pitampura,  
New Delhi-110034.

14. Chandigarh Administration,  
Sector -9,  
Chandigarh.
15. Uttarakhand Power Corporation Limited,  
Victoria Cross Vijeyta Gabar Singh Urja Bhawan,  
Kanwali Road,  
Dehradun (Uttarakhand).
16. North Central Railway,  
Allahabad (Uttar Pradesh)-211011.
17. New Delhi Municipal Council,  
Palika Kendra, Sansad Marg,  
New Delhi-110002.

...Respondents

**For Review Petitioner** : Shri Sitesh Mukherjee, Advocate, PTCUL  
Ms. Sonam Anand, Advocate, PTCUL  
Shri S.P. Arya, PTCUL  
Shri H.S. Hyanki, PTCUL

**For Respondents** : Shri Ved Prakash Rastogi, PGCIL

### **ORDER**

Power Transmission Corporation of Uttarakhand Limited (hereinafter referred to as "PTCUL/Review Petitioner) has filed the present Review Petition No.21/RP/2021 seeking review and modification of the order dated 31.3.2021 in Petition No. 104/TT/2020 under Section 94(1)(f) of the Electricity Act, 2003, read with Regulation 103(1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.



## **Background**

2. PGCIL filed Petition No. 104/TT/2020 for truing-up of transmission tariff from the date of commercial operation (COD) to 31.3.2019 under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as “the 2014 Tariff Regulations”) and for determination of tariff from 1.4.2019 to 31.3.2024 under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (hereinafter referred to as “the 2019 Tariff Regulations”) in respect of the following assets under “Northern Region System Strengthening Scheme-XVIII” in Northern Region (hereinafter referred to as “the transmission project”):

**Asset-I:** Combined Assets: One circuit of 400 kV D/C Dehradun-Bagpat line alongwith associated bays at both ends. Part of second circuit of 400 kV D/C Dehradun-Bagpat Transmission Line as 400 kV S/C Roorkee-Dehradun line from Dehradun end and partly as 400 kV S/C Saharanpur-Bagpat line from Bagpat end using part of one circuit of 400 kV D/C Roorkee-Saharanpur line (under-NRSS XXI) at intersection point along with associated bays at Dehradun and Bagpat end;

**Asset-II:** 400/220 kV, 315 MVA ICT-I at Dehradun and associated bays with 01 number 220 kV line bay, 400/220 kV, 315 MVA ICT-II at Dehradun and associated bays with 01 number 220 kV line bay and 80 MVAR bus reactor at Dehradun and associated bays; and

**Asset-III:** 04 number 220 kV bays at Dehradun Sub-station.



3. In Petition No. 104/TT/2020, the Petitioner claimed COD in respect of Asset-III as 4.2.2017 under proviso (ii) of clause (3) of Regulation 4 of the 2014 Tariff Regulations since the downstream transmission system associated with Asset-III under the scope of PTCUL was not complete. Accordingly, COD of Asset-III was approved by the Commission as 4.2.2017 under proviso (ii) of clause (3) of Regulation 4 of the 2014 Tariff Regulations taking into consideration self-declaration of COD letter along with RLDC charging certificate dated 3.5.2017 and trial operation certificate dated 3.5.2017. Vide order dated 31.3.2021 in Petition No. 104/TT/2020, the Commission further observed that PTCUL shall bear the yearly transmission charges for in respect of Asset-III from its COD w.e.f. 4.2.2017 to the COD of downstream asset. The relevant extracts of the order dated 31.3.2021 in Petition No. 104/TT/2020 are as follows:

*“31. In view of the above, PTCUL not having constructed the downstream asset, we consider it appropriate to approve COD of Asset-III under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations. Therefore, COD of Asset-III is approved as 4.2.2017 taking into consideration the self-declaration COD letter along with RLDC charging certificate dated 3.5.2017 and trial operation certificate dated 3.5.2017. PTCUL shall bear the yearly transmission charges for the asset from COD (4.2.2017) of Asset-III up to COD of its downstream asset. At the same time, the Petitioner is directed to explore the possibilities for putting the 4 unutilised 220 kV bays (Asset-III) in Dehradun sub-station to use at the earliest. In this connection, it is observed from the submissions of PTCUL that it is constructing a 220 kV D/C Mori-Dehradun Transmission Line along with 220 kV line bays at Dehradun sub-station of the Petitioner and a tripartite LTA agreement has been entered into between PTCUL, PGCIL and SJVNL for implementation of the said transmission line and bays. We do not see any reason for construction of new bays when 4 line bays are lying unutilised in Dehradun Sub-station. Therefore, the Petitioner and PTCUL are directed to explore possibility to use the existing unutilised bays for the 220 kV D/C Mori-Dehradun Transmission Line with suitable modifications, if required, rather than constructing new bays. Once the Asset-III is put to use for the 220 kV D/C Mori-Dehradun Transmission Line or for any other purpose, the tariff for the asset will be recovered from the PoC pool. The Petitioner shall submit an affidavit about status of utilization of bays at Dehradun sub-station when it files petition for truing up for 2019-24 period.”*

*“Sharing of Transmission Charges*

...



144. *The transmission charges in respect of Asset-III shall be borne by PTCUL from its COD on 4.2.2017 to the COD of the downstream assets under its scope and thereafter, as in the case of Asset-I and II, the billing, collection and disbursement of its transmission charges shall be governed by Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 or the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020, as applicable, as provided in Regulation 43 of the 2014 Tariff Regulations for the 2014-19 tariff period and Regulation 57 of the 2019 Tariff Regulations for the 2019-24 tariff period.*”

4. Aggrieved with the above order, PTCUL has filed the instant review petition. The

Review Petitioner has made the following prayers:

*“(a) admit the present petition and review and recall the judgment and order dated 31.03.2021 passed by this Hon’ble Commission in Petition No. 104/TT/2020 to the extent that it has determined the COD of Asset-III as 04.02.2017 under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations and has held PTCUL to be liable to build the downstream networks and liable to bear the yearly transmission charges for Asset-III from COD on 04.02.2017 to COD of the downstream networks;*

*(b) hold that PTCUL is/was not liable to make the downstream asset with respect to Asset-III;*

*(c) hold that PTCUL is not liable to pay yearly transmission charges of the Asset-III;*

*(d) Condone the delay in filing the present review petition;*

*(e) Pass such further order(s) as may be deemed necessary by this Hon’ble Commission.”*

5. PTCUL has filed I.A. No. 21 of 2021 for condonation of 54 days delay in filing the present Review Petition and I.A. No. 77 of 2021 seeking early listing of the Review Petition and directions and stay of the operation of impugned order dated 31.3.2021 in Petition No. 14/TT/2020.

6. Review Petitioner in I.A. No. 21 of 2021 has submitted that due to second wave of Covid-19 pandemic, there was delay of 54 days in filing the present Review Petition. Considering the fact mentioned, the application is allowed and delay of 54 days in filing the Review Petition is condoned. Accordingly, the I.A. No. 21 of 2021 is disposed of.



7. Review Petitioner in I.A. No. 77 of 2021 has prayed for early listing of the Review Petition and for stay of operation of the impugned order dated 31.3.2021 in Petition No. 104/TT/2020. Considering the facts mentioned in the application, the application for early listing is allowed. However, for the reasons mentioned in this order, no ground is made out for stay of operation of the impugned order dated 31.3.2021 in Petition No. 104/TT/2020. Accordingly, I.A. No. 77 of 2021 is disposed of.

8. The Review Petition was heard through video conference on 20.1.2022 and order in the Review Petition was reserved.

#### **Submissions of the Review Petitioner**

9. The Review Petitioner has made the following submissions in support of the Review Petition:

- a) The present Review Petition deals with 04 number of 220 kV bays at Dehradun Sub-station (referred to as Asset-III by PGCIL in Petition No.104/TT/2020), which is a part of Northern Region System Strengthening Scheme-XVII. In order to strengthen the grid of the Northern Region, a 400/220 kV Sub-Station at Dehradun was planned and envisaged by PGCIL in the year 2008. PGCIL filed Petition No. 55/TT/2017 in the year 2017 for approval of COD of 4 number of 220 kV bays at Dehradun Sub-station as 4.2.2017 by claiming that downstream transmission associated with them was under the scope of PTCUL and it was not completed by it. Since the downstream asset was not executed at the relevant time, the Commission vide order dated 30.11.2017 did not allow tariff in respect



of Asset-II i.e. 4 number of bays at Dehradun Sub-station and directed PCGIL to file a fresh petition matching with the associated downstream transmission system. PGCIL filed a Review Petition No. 8/RP/2018 before this Commission against the non-approval of COD of 04 numbers 220 kV bays at Dehradun Sub-station in the order dated 30.11.2017. This Commission by way of its order dated 12.6.2018 dismissed the Review Petition of PGCIL by holding that there is no error apparent on the face of record. PTCUL was not impleaded as party in Petition No. 55/TT/20217 or the Review Petition No.8/RP/2018.

- b) PGCIL thereafter filed Petition No.104/TT/2020 in January, 2020 for approval of COD of Asset-III i.e. 4 number of 220 kV bays at Dehradun Sub-station as 4.2.2017 under proviso (ii) to Regulation 4(3) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as the 2014 Tariff Regulations). By way of order dated 31.3.2021, the Commission allowed COD of Asset-III i.e 4 number of 220 kV bays at Dehradun Sub-station being developed by PGCIL as 4.2.2017 under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations and held PTCUL is liable to bear yearly transmission charges in respect of Asset-III from its COD i.e. 4.2.2017 till the COD of downstream asset.
- c) The Commission in the impugned order relied only upon the minutes of the 23<sup>rd</sup> Standing Committee on Power System Planning of Northern Region (SCM) held on 16.2.2008 to conclude that PTCUL was responsible for building the downstream networks to be connected to 4 number of idle/unutilized 220 kV bays of PGCIL. The presence of representatives of PTCUL in the said meeting has





been misconstrued and misinterpreted by the Commission to conclude that 6 number of 220 kV bays were being constructed by PGCIL for the use or benefit of PTCUL and that there was a corresponding duty on PTCUL to build the downstream networks. On the basis of this conclusion, the Commission proceeded to approve the COD of Asset-III under proviso (ii) to Regulation 4(3) of the Tariff Regulations and held PTCUL liable to bear the yearly transmission charges from 4.2.2017 to the COD of the downstream network. The aforesaid finding and conclusion of the Commission is unsubstantiated by the minutes of the 23<sup>rd</sup> SCM and amounts to an error apparent on the face of record.

- d) The 6 number of 220 kV bays at 400/220 kV Sub-station (PGCIL), Sherpur, Dehradun were implemented by PGCIL as per the standard norms decided in the 23<sup>rd</sup> Standing Committee meeting held on 16.2.2008. As per the summary record of discussions in the said meeting, 6 number of 220 kV bays were decided to be built by PGCIL for providing 220 kV bays with 400/220 kV transformers. In discharge of its functions as CTU, an Inter-State Transmission System (ISTS) is schematized by PGCIL. In the facts of the present case also, construction of 6 number of 220 kV bays of 400/200 kV transmission system at Dehradun Sub-station was decided to be undertaken by PGCIL as per the then existing norms and to strengthen the Grid. They were not proposed to be constructed on the demand of PTCUL or for its requirements.
- e) PGCIL has failed to state the complete and correct factual scenario pertaining to Asset-III and/or the 6 number of 220 kV bays. PGCIL undertook the construction of sub-station and 6 number of 220 kV line bays in compliance of the standard



norms. The bays in question were neither constructed on the request/demand of PTCUL nor for its requirement. Resultantly, there was neither any commitment on the part of PTCUL to utilize all the proposed bays of the said sub-station within a time frame nor it ever undertook the obligation or responsibility for utilizing the spare bays. It is a matter of record that there was no firm or concrete proposal given by PTCUL to PGCIL during the said meeting (or anytime thereafter) for utilization of the proposed 6 number of bays to be built at the Dehradun Sub-station. This is for the reason that in the year 2008, when 23<sup>rd</sup> meeting of the Standing Committee was convened, there was no specific need or forceable requirement on the part of PTCUL to utilize these 6 number of bays in future. PGCIL has thus failed to provide any basis in its petition for asserting that the downstream network was under the scope of PTCUL.

- f) No timelines for construction of the new sub-stations or bays or upstream/downstream systems or networks (to be built by PCGIL or any other beneficiary of the proposed transmission system) were fixed in the said meeting. The minutes of 23<sup>rd</sup> meeting do not record any cut-off date by which the transmission system or connecting bays/ lines were to be made ready or executed. There was no legal or binding commitment made by PTCUL for utilization of 6 number of 220 kV bays within any particular time frame. It is a matter of record that PGCIL itself finished construction of the transmission system in question after a time over-run of 62 months. It is only after this PGCIL executed the transmission system in February, 2017 that it started communicating with PTCUL regarding utilization of the unutilized 4 number of



220 kV bays. In the absence of any agreement or reciprocal commitment by PTCUL to utilize the bays constructed by PGCIL, there was no legal basis for holding it was liable to build the downstream network and to bear the yearly transmission charges.

- g) As per the minutes of 23rd SCM it is evident that out of 6 number of 220 kV bays, 2 number of 220 kV bays could also be utilized to facilitate evacuation of power from Kotlibhel HEPs of NHPC Limited and also later on, it was planned to utilize other 2 number of 220 kV bays for termination of 220 kV D/C Mori-Dehradun line (by PTCUL) for evacuation (though this plan was never finalized and ultimately could not be implemented). From these facts, it is clear that 6 number of 220 kV bays at 400 kV Sub -station of PGCIL were not solely planned for catering to the demand of the State (as projected by PGCIL) but also for evacuation of power from the Generating Projects.
- h) Subsequently, Kotlibhel HEPs of NHPC Limited could not materialized and implementation of 2 number of 220 kV bays (at PGCIL Sub-station) for 220 kV Mori-Dehradun line were assigned to PTCUL, as per the Tripartite LTA Agreement signed between PTCUL, PGCIL (CTU) and SJVN Ltd on 31.1.2020. Hence, as the bays are implemented as per the concurrence of NR constituents in the said meeting of Standing Committee, the constituents who were supposed to get allocated power from these HEPs are required to bear the cost of these bays. PTCUL cannot be saddled with the liability to bear the transmission charges. All these factors were/ are within the knowledge of PGCIL and the same ought to have been disclosed by it in Petition No. 104/TT/2020.
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- i) It is a matter of record that there is no contractual liability on PTCUL to utilize the said bays or to build the downstream networks connecting them. Since the bays in question were not erected to cater to any specific requirement of PTCUL, there is/was no legal obligation upon PTCUL to utilize these bays. There was no obligation either contractual or statutory on PTCUL so as to be bound to make any provision for utilization of the bays created by it. Admittedly, no Implementation Agreement or any other agreement or contract was executed between PCGIL and PTCUL at any time right from 16.2.2008 for construction of any downstream network connecting the bays.
- j) In the absence of any agreement or contract signed between the parties clearly providing a commitment by PTCUL for using the proposed bays and making the downstream networks, it cannot be held to be liable/ responsible to build downstream networks and also to bear the financial burden of the transmission charges. APTEL in the case of *Punjab State Power Corporation Ltd. (PSPCL) vs. Patran Transmission Company Ltd. (PTCL)* 2018 SCC Online APTEL 66 has held that for making a party liable for payment of transmission charges, a contractual relation between the parties has to be in existence. The said judgment holds that the liability to bear transmission charges on account of failure to commission downstream/ upstream network can be imposed only if there is an implementation agreement or some form of contractual obligation between the transmission licensee and CTU/STU/inter-State transmission licensee/LTTC clearly spelling out as to who is responsible for executing the upstream/downstream transmission systems.
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- k) PGCIL has not established the contractual liability on the part of PTCUL to be bound to make the downstream network or bear the burden of yearly transmission charges. Neither any Implementation Agreement or any other type of Agreement was ever executed between the parties for providing the interconnection or downstream network. Omission and/or inability on the part of PGCIL to place on record before the Commission any such Implementation Agreement or any other documentary proof, substantiates the averment of PTCUL that it never conceded to the idea of utilization of upcoming bays being created/constructed by the PGCIL. The minutes of 23rd SCM meetings cannot, therefore, in the absence of a signed agreement/contract between the parties be used to burden PTCUL with the liability of making the downstream system and bearing the transmission charges.
- l) The present case is not a case wherein proviso (ii) to Regulation 4(3) of the 2014 Tariff Regulations is applicable. The Commission has erred in approving the COD of Asset-III under the proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations. This is for the reason that Asset-III in question i.e. 4 number of 220 kV line bays whose COD is sought by PGCIL, is admittedly not in operation or put to regular use. The said asset was not in operation/put to regular use on the date of filing of first petition i.e. Petition No. 55/TT/2017, or second petition being Petition No. 104/TT/2020 on 6.1.2020. The amended Petition No.104/TT/2020 incorporating prayer (11) for approval of COD under proviso (ii) to Regulation 4(3) of the 2014 Tariff Regulations in paragraph 5.0 clearly states that 'the



associated downstream transmission system under the scope of PTCUL has not yet been executed.

- m) The Hon'ble Supreme Court in Power Grid Corporation of India Limited vs. Punjab State Power Corporation Limited (2016) 4 SCC 797 (the Barh-Balia case) while interpreting the second proviso to Regulation 3(12) of the 2009 Tariff Regulations held that COD of transmission lines under the proviso can be achieved only on fulfilment of three conditions, namely (i) the line has been charged; (ii) its trial operation has been successfully carried out, and (iii) it is in regular service. The Hon'ble Apex Court went on to hold that till the time the transmission line is not put to use, the COD cannot be approved. The said judgment of Hon'ble Supreme Court applies to the facts of the present case, in as much as PGCIL has itself admitted that Asset-III whose COD is prayed has not yet been executed and put to regular use.
- n) The Commission has wrongly invoked and applied the 2014 Tariff Regulations in the impugned order and has erroneously determined tariff thereunder. It is a matter of record that on the date of filing of Petition No.104/TT/2020, the 2014 Tariff Regulations were superseded by the 2019 Tariff Regulations. According to PTCUL, 2014 Tariff Regulations would continue to be applicable to only those assets/generators whose COD is determined prior to 1.4.2019 but the tariff is not determined.
- o) By application of proviso to Regulation 1(2) of the 2019 Tariff Regulations, as regards the relief of COD for Asset-III, the provisions of the 2019 Tariff Regulations would be applicable. The 2014 Tariff Regulations would cease to be
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applicable altogether as admittedly the COD of Asset-III was not approved prior to 1.4.2019. This fact is further obvious from the fact that Petition No.104/TT/2020 was filed before the Commission in the year 2020. The impugned order has been passed in ignorance of the said Regulations which are the only Regulations which would be said to be applicable qua Asset-III.

- p) The impugned order also commits a grave error apparent on the face of record by directing the parties to utilize the unutilized 220 kV bays of the Sherpur Sub-station for Mori-Dehradun line for which there is Tripartite LTA Agreement which has already been signed and executed amongst PGCIL with PTCUL and SJVN whereby construction of 220 kV bays for termination of 220 kV D/C Mori Dehradun line are/were under the scope of PTCUL. The implementation of 220 kV bays for Mori Dehradun line by PTCUL is distinct from unutilized 4 number of 220 kV bays at Sherpur-Dehradun station of PGCIL.
- q) PTCUL is not in a financial position to bear the transmission charges imposed in the impugned order.

10. In the background of aforesaid submissions, PTCUL has sought review of the order dated 31.3.2021 in Petition No. 104/TT/2020 to the extent prayed for in the petition.

11. During hearing of the matter on 20.1.2022, learned counsel for the Review Petitioner reiterated the submissions as made in the instant review petition and requested to consider the same.

### **Submissions of PGCIL**

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12. During hearing of the matter on 20.1.2022, the representative of PGCIL made the following submissions:

(a) During 34<sup>th</sup> NR Standing Committee Meeting, PTCUL stated that its 220 kV System from Dehradun Sub-station would be available by March, 2015 matching with COD of the Dehradun Sub-station.

(b) In the 43<sup>rd</sup> NRPC meeting, PTCUL informed that lines associated with the downstream system will be completed in November, 2021. Hence, it is clear from the said meetings that a timeline was agreed for completion of the downstream system.

(c) Issues raised by the Review Petitioner do not disclose any error apparent on the face of record in the order dated 31.3.2021 in Petition No. 104/TT/2020. Therefore, the Review Petition ought to be dismissed.

### **Analysis and Decision**

13. We have considered the submissions of the Review Petitioner and PGCIL, perused the order dated 31.3.2021 and have scrutinized the record.

14. PTCUL has sought review of the order dated 31.3.2021 on the ground that the Commission while approving the COD of Asset-III under proviso (ii) of Regulation 4 (3) of the 2014 Tariff Regulations has placed reliance on minutes of 23<sup>rd</sup> Standing Committee on Power System Planning of Northern Region held on 16.2.2008 to conclude that PTCUL was responsible for construction of downstream network to be connected to 4 number of unutilized 220 kV bays of PGCIL. Learned counsel for PTCUL has contended that its presence in the said meeting is misconstrued that 6 number of





220 kV bays being constructed by PGCIL were for the benefit and use of PTCUL and that it was incumbent upon PTCUL to construct the corresponding downstream network. Learned counsel further contended that the bays in question were not constructed on the demand of PTCUL and therefore, there was no commitment on the part of it to utilize the proposed bays of the sub-station within a time-frame. Learned counsel also contended that no timeline or cut-off date for construction of new sub-station or bays or upstream or downstream systems or networks to be built by PGCIL or any other beneficiary of the proposed transmission system were fixed in the said meeting. Learned counsel further contended that in the present case there is no contractual agreement between PGCIL and PTCUL for utilization of the line bays of the transmission system or for providing the downstream networks. Therefore, learned counsel submitted that PTCUL is not liable to make payment of the transmission charges. Learned counsel contended that COD of Asset-III under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations in the present case cannot be allowed as the same is not consistent with the principles laid down by Hon'ble Supreme Court in the matter of Powergrid Corporation of India Limited Vs. Punjab State Power Corporation Limited (2016) 4 SCC 797 (Barh-Balia case). Contending such, PTCUL has urged the Commission to hold that PTCUL is not liable to construct the downstream asset with respect to Asset-III and is also not liable to make payment of yearly transmission charges of Asset-III.

15. The representative of PGCIL has contended that during the 34<sup>th</sup> NR Standing Committee Meeting, PTCUL stated that its 220 kV System from Dehradun Sub-station



would be available by March, 2015 matching with COD of the Dehradun Sub-station. He further contended that in the 43<sup>rd</sup> NRPC meeting, PTCUL informed that lines associated with the downstream system will be completed in November, 2021 and as such timeline was agreed for completion of the downstream system in the above meetings. He also contended that there are no errors apparent on the face of record in the order dated 31.3.2021 and hence, the Review Petition may be dismissed.

16. Order 47 Rule 1 of Code of Civil Procedure, 1908, provides that a party considering itself aggrieved by an order may seek review of the order under the following circumstances:

*“(a) discovery of new and important matter or evidence which was not within knowledge of the Review Petitioner or could not be produced after the exercise of due diligence;*

*(b) Mistake or error apparent on the face of the record; and*

*(c) Any other sufficient reason.”*

17. On examination of the contentions of Review Petition, we do not find any error apparent on the face of record, which require modification of our order dated 31.3.2021. We observe that the averments made by the Review Petitioner in the present Review Petition have already been raised by it in the original Petition No. 104/TT/2020 and the same have already been addressed by us in our order dated 31.3.2021 in Petition No. 104/TT/2020 in paragraph 10 to paragraph 31. However, the contention of PTCUL with regard to COD of Asset-III to be covered under the 2019 Tariff Regulations is misplaced, as COD of Asset-III has been approved as 4.2.2017 under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations.



18. In our opinion, the case of the Review Petitioner does not fall under any of the three categories mentioned under Order 47 Rule 1 of Code of Civil Procedure, 1908. The Hon'ble Supreme Court in Lily Thomas & Ors v. Union of India & Ors. [2000] 6 SCC 224] observed as under:

*"56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with exercise of power. The review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review..."*

19. In view of above discussions, we are of the view that no ground is made out by the Review Petitioner to review the decision in the impugned order.

20. Review Petition No. 21/RP/2021 is accordingly disposed of along with IA No. 21/IA/2021 and IA No. 77/IA/2021.

**sd/-  
(Arun Goyal)  
Member**

**sd/-  
(I.S. Jha)  
Member**

**sd/-  
(P.K. Pujari)  
Chairperson**

